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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court Of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-06249, Circuit Court
Appeals Court Docket No.: 2024-000871

Horry Georgetown Technical College..... Appellant,

v.

Claycon Pharma RE, LLC, Pathway Treatment Center, LLC,
Pathway Clinic, LLC, and City of Conway Respondents.

RECORD ON APPEAL

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Horry Georgetown Technical College
PLAINTIFF(S)

Claycon Pharma Conway Re LLC 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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:

Motion to Dismiss by defendants Claycon Pharma Conway Re LLC, Pathway Treatment Center, LLC and Pathway Clinic LLC is GRANTED.

Attorney Douglas Zayicek is to prepare a formal order.

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 03/26/2024 .

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.



Horry Common Pleas

Case Caption: Horry Georgetown Technical College VS Claycon Pharma Conway
Re LLC , defendant, et al

Case Number: 2023CP2606249

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-03-26 12:28:31 page 3 of 3

STATE OF SOUTH CAROLINA)	IN THE COUR OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	C/A NO.: 2023-CP-26-06249
)	
Horry-Georgetown Technical College,)	
)	
Plaintiff,)	
)	
v.)	
)	
Claycon Pharma Conway RE, LLC,)	
Pathway Treatment Center, LLC, Pathway)	
Clinic LLC, and City of Conway,)	
)	
Defendants.)	

ORDER GRANTING DEFENDANTS CLAYCON PHARMA CONWAY RE, LLC, PATHWAY TREATMENT CENTER, LLC, AND PATHWAY CLINIC, LLC’S MOTION TO DISMISS, OR JUDGMENT ON THE PLEADINGS

Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC (“Defendants”), moved for an Order dismissing Plaintiff’s Amended Complaint (“Complaint”). The matter was before the Court via WebEx on Tuesday, March 26, 2024, at 9:30 a.m. For the reasons below, Defendants’ Motion to Dismiss is GRANTED.¹

I. BACKGROUND

Defendants have received a Certificate of Need from SC DHEC, to operate an opioid treatment center at 1800 Husted Road, in Conway, SC.² Importantly, Plaintiff has not named SC DHEC as a Defendant in this action. Plaintiff seeks a legal determination that the Certificate of Need should not have been issued under state law, nor can Defendants proceed under Defendant City of Conway’s Ordinances. Plaintiff’s case is premised on its belief that it is a “secondary

¹ Although Defendant City of Conway did not file a Motion to Dismiss, it stated at the beginning of the hearing that it joined with Defendants’ Motion to Dismiss, and that the Court’s ruling would be dispositive as to any claims against the City of Conway, as well.

² Complaint, Paragraph 4. All references to Complaint herein are to the Amended Complaint.

school” under either state law, or the City of Conway’s Ordinances, and as such, there is a mandatory spacing requirement between Defendants’ location and Plaintiff’s property.

Plaintiff: (1) alleges and makes the legal conclusion that it is a “secondary school” under South Carolina law; and (2) asks the Court to declare it a “secondary school” so that Plaintiff can obtain its requested relief. The first is not true, and therefore the Court cannot do the second.

Plaintiff cites S.C. Code Ann. Regs. 61-93.2624, as controlling authority.³ Subsection (D) states:

- D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:
1. The property line of a church;
 2. The property line of a public or private elementary or secondary school;
 3. A boundary of any Residential district;
 4. A public park adjacent to any Residential district; or
 5. The property line of a lot devoted to Residential use. (Emphasis added.)

Title 59 of the South Carolina Code, is “Education.” S.C. Code Ann. 59-1-150, entitled “‘Kindergarten,’ ‘elementary school,’ ‘middle school,’ ‘secondary school,’ ‘junior high school,’ and ‘high school’ defined,” states:

For the purposes of this chapter:

- (1) “Kindergarten” means any school which provides either education, instruction, or supervision below the first grade to children who will attain the age of five on or before the first day of November of the school year when they begin school.
- (2) “Elementary school” means any public school which contains grades no lower than kindergarten and no higher than the eighth.
- (3) “Middle school” means any public school which contains grades no lower than the fifth and no higher than the eighth.
- (4) “Secondary school” means either a junior high school or a high school.
- (5) “Junior high school” shall be considered synonymous with the term “high school.”

³ Complaint, Paragraph 14.

(6) “High school” means any public school which contains grades no lower than the seventh and no higher than the twelfth. (Emphasis added.)

In its Complaint, Plaintiff alleges it “operates two secondary educational facilities,” at 250 Allied Drive, and 2050 U.S. 501.⁴ Then, in Paragraphs 27, 33, and its Prayer for Relief, Plaintiff asks the Court to declare Plaintiff a “secondary school” under state law, and the City of Conway’s Ordinances.

In Defendant City’s Unified Development Ordinance (“UDO”), Section 5.1.32(3)(b), an outpatient treatment facility such as the one planned by Defendants, cannot be located within 1,000 feet of an “educational facility.” Per Section 2.2.1 of that same UDO, an “educational facility” is defined as one meeting the “state requirements for elementary and secondary education,” which is discussed above.

Plaintiff’s entire case is predicated upon its legal conclusion, or request, that it be declared a secondary school under state and local law. Plaintiff is not a secondary school under state or local law. Thus, the Court cannot grant Plaintiff’s requested relief as a matter of law.

II. LAW

A. Statutory Construction

The matters before the Court are issues of statutory construction and standing, both of which are solely matters of law for the Court to decide. *See, e.g., Boiter v. South Carolina Dept. of Transp.*, 393 S.C. 123, 712 S.E.2d 401 (2011) (“Questions of statutory construction are a matter of law.”); *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d

⁴ Complaint, Paragraph 1. It does not appear that either location is within 500 feet of Defendant’s property, but that specific issue is not before the Court in this Motion to Dismiss.

841, 843 (1995) (“The determination of legislative intent is a matter of law.”); *Carnival Corp., et al. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E.2d 846, (2014); *Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d 46 (1984) (“The trial judge should have held as a matter of law that [plaintiff] had no standing to sue....”).

In deciding a motion to dismiss, the trial court should consider only the allegations set forth in the Complaint. *Plyler v. Burns, et al.*, 373 S.C. 637, 647 S.E.2d 188 (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). A 12(b)(6) motion should not be granted if “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* The question is whether, in the light most favorable to the Plaintiff, and with every reasonable doubt resolved in its behalf, the Complaint states any valid claim for relief. *Id.* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

However, these requirements only apply to “well pled facts,” and the Court is not bound to admit all inferences drawn by Plaintiff, or Plaintiff’s mere conclusions of law. In fact, allegations that are conclusory rather than factual should be disregarded. If a fact is well pled, inferences or conclusions **that may properly arise** therefrom can be deemed true. *Crowe v. Domestic Loans, Inc.*, 242 S.C. 310, 130 S.E.2d 845 (1963) (emphasis added). While a pleading under attack must be liberally construed so that substantial justice is done between the parties, substantial justice is done when inadequate pleadings seeking relief that cannot be obtained are summarily dismissed. *See Moore v. City of Columbia*, 284 S.C. 278, 326 S.E.2d 157 (Ct. App. 1985). Stated another way, where the allegations of the complaint fail to adequately allege a valid or complete cause of action or support a reasonable inference of judgment, judgment upon the pleadings is proper. *See e.g., Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” *Bryant v. State*, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used. *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

Where a statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). Courts must reject a statutory interpretation that would defeat the plain legislative intention. *See Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). Once the legislature has made choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy. *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989).

What a legislature says in the text of a statute is considered the best evidence of legislative intent or will. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *Durham v. United Cos. Fin. Corp.*, 331 S.C. 600, 503 S.E.2d 465 (1998); *Adkins v. Comcar Indus., Inc.*, 323 S.C. 409, 475 S.E.2d 762 (1996); *Worsley Cos. v. South Carolina Dep't of Health & Envtl. Control*, 351 S.C. 97, 102, 567 S.E.2d 907, 910 (Ct. App. 2002); *see also Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970) (Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language.) Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous

statute. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000); *Bayle*, 344 S.C. at 122, 542 S.E.2d at 739.

This case also requires the Court to review a SC DHEC regulation, and an Ordinance of Defendant City. But the legal analysis of those is the same as the Court must use for statutory construction. Regulations are interpreted using the same rules of statutory construction. *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). Ordinances are also subject to the standard rules of statutory construction. *Olds v. City of Goose Creek*, 424 S.C. 240, 818 S.E.2d 5 (2018).

Plaintiff, a college,⁵ certainly has grades higher than twelfth. Plaintiff does not in any way allege or argue that it does not have grades “no higher than the twelfth.” The express terms of S.C. Code Ann. 59-1-150 do not include a college within its definition. In fact, the South Carolina General Assembly used words that expressly exclude any institutions of higher learning, such as Plaintiff, from the definition of “secondary school.” This Court clearly must assume that the General Assembly chose its words carefully, and the language it used is clear and unambiguous. The South Carolina General Assembly excluded Plaintiff and other colleges by saying that a secondary school cannot have grades higher than twelfth. Legislative intent is clear in this case.

Although not important to the Court’s decision, Plaintiff’s website states Plaintiff is a “two-year community/technology college,” and that since its founding, has provided “post-secondary” programs. So even Plaintiff does not hold itself out as a “secondary school;” it holds itself out as a college, and “post-secondary” school. Therefore, there is no set of allegations plead or argued

⁵ See Plaintiff’s Memorandum of Law, Page 1, and of course, Plaintiff’s name.

by Plaintiff that would in any way allow it to be classified as a “secondary school” under state law, and therefore it is not entitled to the spacing requirements in S.C. Regs. Ann. 61-93.2624.

The same logic applies to Defendant City of Conway Ordinances. In its Unified Development Ordinance (“UDO”), Section 5.1.32(3)(b), an outpatient treatment facility such as the one planned by Defendants, cannot be located within 1,000 feet of an “educational facility.” Per Section 2.2.1 of that same UDO, an “educational facility” is defined as one meeting the “state requirements for elementary and secondary education,” which is discussed above. Therefore, Defendant City’s Ordinances also do not allow any relief for Plaintiff.

The Court applauds Plaintiff’s dual enrollment program, and has no doubt it provides wonderful opportunities for students who are able to attend. But simply allowing high school students to get a taste of the college experience, and take some college-level classes on Plaintiff’s campus, does not make Plaintiff a “secondary school” under state or local law.

Even if “college” is not defined in the statutory scheme discussed above, any reasonable and common definition of “college” would include “higher learning,” meaning including grades higher than the twelfth. When faced with an undefined term, the court must interpret the term in accord with its usual and customary meaning. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994); *Hudson*, 336 S.C. at 246, 519 S.E.2d at 581; *see also Santee Cooper Resort v. South Carolina Pub. Serv. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989). Again, Plaintiff does not allege or argue that it only has grades twelfth or lower. Doing so would defy logic.

B. Standing

In addition to the statutory construction analysis above, Plaintiff lacks standing to bring this action. In its Complaint and Memorandum of Law in Opposition to Defendant's Motion to Dismiss, Plaintiff states it hosts "students from various high schools throughout the County."⁶ Thus, Plaintiff admits these are high school students. It is important to note the Horry County School District is not a party to this lawsuit. Plaintiff does not allege that it gives diplomas to those students. While those students take some classes at Plaintiff's campus, those students are Horry County School District students, and Plaintiff still has grades higher than twelfth.

Standing to sue is a fundamental requirement in filing an action. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). For a party to have standing, three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291–92 (2001). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.* Plaintiff does not satisfy the first element. Because Plaintiff has grades higher than twelfth, Plaintiff at best alleges only a generalized grievance suffered by the public as a whole, or an injury that may be suffered by another entity, and fails to allege any particularized harm to itself that is allowed relief under the law.

Standing may be acquired: (1) by statute; (2) under the principle of "constitutional standing; or (3) via the "public importance" exception to general standing requirements.

⁶ See Plaintiff's Memorandum of Law, Page 1.

Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). In its Motion to Reconsider, Plaintiff alleges it has standing under the “public importance” exception.⁷

South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where “an issue is of such public importance as to require its resolution for future guidance. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n, et al.*, 407 S.C. 67, 753 S.E.2d 846 (2014) (citing *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Whether the exception applies in a particular case turns on whether resolution of the dispute is needed for “future guidance.” *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). Importantly for the case at hand, if the claims asserted by Plaintiff “could be brought by other parties who can show the required injury,” Plaintiff does not have standing. *See Carnival Corp.*, 407 S.C. at 81.

The Horry County School system, as having grades no higher than twelfth, might be a possible party that may be able to show the required injury to confer standing. However, as stated above, it is not a party to this action. With no injury suffered by Plaintiff that can be afforded relief under the law, Plaintiff lacks standing.

III. PLAINTIFF’S CAUSES OF ACTION

Plaintiff’s First Cause of Action requests a declaratory judgment that the spacing requirement in Defendant City’s Code of Ordinances preempts the spacing requirement under state law. Because Plaintiff is not protected by either spacing requirement, Plaintiff seeks an advisory opinion from the Court. Courts do not issue advisory opinions. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004).

⁷ Plaintiff is not an association, and does not allege associational standing.

Plaintiff's Second Cause of Action asks the Court to declare Plaintiff entitled to the spacing protection under Defendant City's Code of Ordinances. Plaintiff's Third Cause of Action seeks a declaratory judgment that any variance granted by Defendant City either was not granted, or if granted, was unlawful. The discussion above shows that neither is possible based on the clear and unambiguous language in the applicable ordinances.

Plaintiff's Fourth Cause of Action asks for a declaratory judgment declaring that Plaintiff is a secondary school under state law. As discussed above, the Court cannot grant this requested relief based on clear statutory language.

Plaintiff's Fifth Cause of Action asks for a declaratory judgment as to the spacing requirement under state law. Because the Court has already ruled that Plaintiff is not a secondary school under state law, this would be another advisory opinion.

Plaintiff's sixth cause of action asks for an order enjoining the establishment of any opioid treatment center on Defendants' property. Defendant has not shown it is entitled to any relief under its Complaint; therefore, any type of injunctive relief would be improper for the Court to consider.

Finally, Plaintiff's seventh cause of action asks for attorney's fees and costs under S.C. Code Ann. 15-53-100. Because Plaintiff was not the prevailing party, this cause of action is moot.

IV. CONCLUSION

The Court is very mindful of the issues involved in this case, and their sensitive nature. However, the law is clear and unambiguous, which leaves the Court no ability to rule otherwise. If the South Carolina General Assembly chooses to change the definition of "secondary school"

under state law, it is obviously free to do so. However, this Court is bound to defer to the intent of the General Assembly as proclaimed by the words used in its statutes.

“Courts are limited to resolving cases and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances.” *Id.* Generalized harm, as alleged here, is to be remedied by the legislative and executive branches. “If existing laws and regulations or their enforcement fail to protect the public from harm, it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box.” *Id.*

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants’ Motion to Dismiss is granted, and Plaintiff’s Amended Complaint be dismissed with prejudice.⁸

IT IS SO ORDERED!

[PREPARED FOR ELECTRONIC SIGNATURE]

⁸ Plaintiff generically asked the Court at the hearing whether it could amend the Complaint. In its Motion to Reconsider, Plaintiff makes the same generic request. However, at no point has Plaintiff presented to the Court any proposed changes that would cure the identified deficiencies. *Paradis v. Charleston C’nty School Dist. et al.*, 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018), *rev’d on other grounds (citing Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) (“A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.”)) Here, the issue is futility. Futility is a main reason for denying the opportunity to amend. Even though not made by Plaintiff, a trial court may deny a motion to amend if the amendment would be clearly futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), *rev’d*, 401 S.C. 1, 736 S.E.2d 242 (2012) (“Although leave to amend should generally be ‘freely given,’ ... it may be denied where the proposed amendment would be futile.”) *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 826 S.E.2d 585 (2019). Plaintiff has not offered any allegations or facts to show that it does not contain grades higher than twelfth. Therefore, any motion to amend would be futile.



Horry Common Pleas

Case Caption: Horry Georgetown Technical College VS Claycon Pharma Conway
Re LLC , defendant, et al

Case Number: 2023CP2606249

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-04-24 14:04:29 page 12 of 12

Horry Georgetown Technical College
PLAINTIFF(S)

Claycon Pharma Conway Re LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- 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:

On 5/28/2024, the plaintiff filed a Notice of Appeal in this case, appealing this Court's "Order Granting Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic, LLC's Motion to Dismiss or Judgment On the Pleadings" filed 4/26/2024. Therefore, this Court does not have jurisdiction to rule upon the defendants' "Motion To Reconsider and Motion for Leave to Amend Complaint" filed 4/5/2024 or "Amended Motion to Reconsider and Motion for Leave to Amend Complaint" filed 4/26/2024.

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 06/04/2024 .

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.



Horry Common Pleas

Case Caption: Horry Georgetown Technical College VS Claycon Pharma Conway
Re LLC , defendant, et al
Case Number: 2023CP2606249
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-06-04 11:05:22 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC and Pathway Clinic
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26_____

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at Post Office Box 11844, Columbia, South Carolina 29211, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer and defend the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: s/Charles J. Boykin

Charles J. Boykin, Esq. (SC Bar #65149)

Kenneth A. Davis, Esq. (SC Bar #66416)

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October 10, 2023
Columbia, South Carolina

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC and Pathway Clinic
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26- _____

**COMPLAINT FOR DECLARATORY
RELIEF**

NOW INTO COURT COMES PLAINTIFF, seeking a Declaratory Judgment against the Defendant showing unto the Court the following:

PARTIES AND JURISDICTION

1. Defendant, Claycon Pharma Conway RE, LLC (Claycon) owns real property located at 1800 Husted Road, City of Conway, South Carolina, TPMS # 383-01-04-0016-20. This property is located in a zoning district designated as heavy industrial.

2. Plaintiff, Horry-Georgetown Technical College (“HGTC”), operates two secondary educational facilities, located at 250 Allied Drive (“HGTC’s Facility”) and 2050 U.S. 501. The property line of HGTC’s Facility is less than 250 feet from the property line of 1800 Husted Road.

3. Defendants Pathway Treatment Center, LLC and Pathway Clinic LLC are tenants of Claycon.

4. Pathway Treatment Center, LLC, (“Pathway Treatment”) is a health care facility as defined by S.C. Ann. §44-7-130(10). It has obtained a Certificate of Need from South Carolina Department of Health and Environmental Control to operate an opioid treatment center

on the subject property located at 1800 Husted Road. This opioid treatment center is considered a health care facility as defined by S.C. Ann. §44-7-130(10).

5. Pathway Clinic, LLC (“Pathway Clinic”) is a health care facility that seeks to provide treatment to patients with substance abuse problems.

6. This Court has jurisdiction to hear this matter pursuant to the Uniform Declaratory Judgments Act. S.C. Code Ann. § 15-53-30 and § 15-53-20.

FACTUAL CIRCUMSTANCES

7. Each of Plaintiff HGTC’s locations provides instruction and training to secondary school students from various high schools throughout Horry County and the City of Conway. At any given time during the school year, HGTC hosts upwards of 300 secondary school students in these two locations. These students earn both high school and college credits, undergoing vocational training in areas such as welding, HVAC, carpentry, and electrical work.

8. The City of Conway has enacted Unified Development Ordinance (“UDO”) § 5.1.32(B), which requires a 1,000-foot buffer between outpatient treatment facilities for drug or alcohol abuse and any religious facilities or educational facilities. UDO 5.1.32(B) was enacted in accordance with Title 6, Chapter 29 of the South Carolina Code, known as the “South Carolina Government Comprehensive Planning Enabling Act of 1994.”

9. On March 14, 2023, Claycon, Pathway Treatment, and Pathway Clinic (collectively, “Claycon Group”) filed an action for declaratory judgement, arguing that UDO § 5.1.32(B) was preempted by S.C. Code Ann. § 44-7-78 by way of S.C. Code Ann. Regs. 61-93.2624 (2020). Claycon Group prayed for a declaratory judgement, injunctive relief, and attorney’s fees.

10. S.C. Code Ann. § 44-7-78 provides:

Notwithstanding any other provision of law, an entity that operates a health care facility as defined in Section 44-7-130(10) may develop and operate facilities, programs, and services in any location where such facilities, programs, or services support the entity or provide services to residents in the area, provided all other statutory and regulatory requirements are met, including the State Certification of Need and Health Facility Licensure Act, Article 3, Chapter 7, Title 44 and related regulations promulgated by the department.

11. S.C. Code Ann. Regs. 61-93.2624 (2020) states in part:

D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:

1. The property line of a church;
2. The property line of a public or private elementary or secondary school;
3. A boundary of any Residential district;
4. A public park adjacent to any Residential district; or
5. The property line of a lot devoted to Residential use.

12. On May 25, 2023, the City of Conway Board of Zoning Appeals granted Claycon Group a variance, allowing the operation of an outpatient treatment facility within 1000 feet of a *religious* institution. The Order states, “[t]his order does not determine whether any existing land use (including but not limited to HGTC use) within the 500-foot buffer requirement now applicable to the property under UDO § 5.1.32(B)(3)(b) is or is not a protected use.” There has since been no variance granted that allows Claycon Group to operate its treatment facility within 1000 feet of an *educational* facility.

13. On July 25, 2023, Plaintiff HGTC filed a Motion to Intervene in Claycon Group’s Declaratory Judgment Action.

14. On August 21, 2023, Claycon Group voluntarily dismissed their action against the City of Conway pursuant to Rule 41(a), SCRPC. The Court did not rule on HGTC’s Motion to Intervene.

FIRST CAUSE OF ACTION

15. Each and every allegation set forth hereinabove is realleged and repeated herein.

16. Plaintiff HGTC believes that UDO 5.1.32(B) is not preempted by S.C. Code Ann. 44-7-78 or S.C. Code Ann. Regs. 61-93.2624 (2020).

17. S.C. Code Ann. § 44-7-78 plainly uses the phrases “notwithstanding *any* other provision of law” and “provided all other statutory and regulatory requirements are met. . . .” If the legislature wanted SCDHEC regulations to be the sole authority regarding the location of healthcare facilities, they would have stated as much in the statute. Ordinances are necessarily to be considered under the inclusive language of the statute.

18. The plain language of S.C. Code Ann. Regs. 61-93.2624 (2020) says that an opioid treatment facility “shall not operate within 500 feet. . . .” of a secondary school. This language does not mean that if a location is more than 500 feet from a secondary school, it must be lawful. It only means that it *cannot be lawful if it is less than 500 feet* from the secondary school.

19. In any event, S.C. Code Ann. § 6-29-960 specifically addresses any alleged conflict between UDO 5.1.32(B) and § 44-7-78 or 61-93.2624. S.C. Code Ann. § 6-29-960 provides:

When the regulations made under authority of this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under another statute, or local ordinance or regulation, the regulations made under authority of this chapter govern. When the provisions of another statute require more restrictive standards than are required by the regulations made under authority of this chapter, the provisions of that statute govern.

20. UDO 5.1.32(B) was enacted under the authority of Title 6, Chapter 29 of the S.C. Code. UDO 5.1.32(B) imposes more restrictive standards than those implicated by 44-7-78. Accordingly, UDO 5.1.32(B) governs since it is the more restrictive standard.

21. Plaintiff HGTC believes that they are entitled to a declaratory judgement declaring that UDO 5.1.32(B) is not preempted by S.C. Code Ann. 44-7-78 or S.C. Code Ann. Regs. 61-93.2624 (2020).

SECOND CAUSE OF ACTION

22. Each and every allegation set forth hereinabove is realleged and repeated herein.

23. UDO 2.2.1 defines an educational facility as “any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge and meets state requirements for elementary and secondary education.” UDO 2.2.1.

24. Plaintiff HGTC believes that they are entitled to a declaratory judgement, finding that HGTC’s Facility, located at 250 Allied Drive, is a “public or private educational facility” within the meaning of UDO 5.1.32(B)(3)(b).

THIRD CAUSE OF ACTION

25. Each and every allegation set forth hereinabove is realleged and repeated herein.

26. In considering the aforementioned variance, the City of Conway Board of Zoning appeals did not address whether an opioid treatment facility at 1800 Husted Road would be located within 1000 feet of a public educational facility.

27. Plaintiff HGTC believes that they are entitled to a declaratory judgement finding that there has been no variance granted from UDO 5.1.32(B) allowing Claycon Group to establish an outpatient treatment facility within 1000 feet of an educational facility.

28. In the alternative, Plaintiff HGTC seeks a declaratory judgment that, to the extent that any variance was granted, such a variance is unlawful and pre-empted by S.C. Code Ann. Regs. 61-93.2624 (2020).

FOURTH CAUSE OF ACTION

29. Each and every allegation set forth hereinabove is realleged and repeated herein.

30. Plaintiff HGTC believes that they are entitled to a declaratory judgement finding that HGTC’s Facility, located at 250 Allied Drive, is a public or private secondary school within the meaning of S.C. Code Ann. Regs. 61-93.2624 (2020).

FIFTH CAUSE OF ACTION

31. Each and every allegation set forth hereinabove is realleged and repeated herein.

32. All Property lines of the 1800 Husted Drive property are less than 500 feet from the property line of HGTC’s Facility. Therefore, it is impossible for any facility on the Husted Drive property to be located more than 500 feet away from HGTC’s facility.

33. S.C. Code Ann. § 44-7-78 authorizes SCDHEC to promulgate regulations for the establishment of health care facilities.

34. SCDHEC has defined health care facilities to include “. . .alcohol and substance abuse hospitals. . .narcotic treatment programs. . .and any other facility for which Certificate of Need review is required by federal law.” S.C. Code Ann. § 44-7-130(10) alcohol and substance abuse hospitals”

35. S.C. Code Ann. Regs. 61-93.2624 (2020) prohibits the establishment of an opioid treatment facility within 500 feet of the property line of a public or private secondary school.

36. Plaintiff HGTC believes that they are entitled to a declaratory judgement finding that the establishment of an opioid treatment facility at 1800 Husted Road by either Pathway

Clinic, Pathway Treatment, or Claycon would violate S.C. Code Ann. Regs. 61-93.2624 (2020), as it would be within 500 feet of HGTC's Facility.

SIXTH CAUSE OF ACTION

37. Each and every allegation set forth hereinabove is realleged and repeated herein.

38. This Court has the authority to grant further relief based on a declaratory judgment whenever such relief is necessary or proper, pursuant to S.C. Code Ann. 15-53-120.

39. Plaintiff HGTC believes that further relief is proper here and should be granted in the form of an order enjoining the establishment of any opioid treatment center on the property located at 1800 Husted Road, Conway, SC 29526.

SEVENTH CAUSE OF ACTION

40. Each and every allegation set forth hereinabove is realleged and repeated herein.

41. Plaintiff believes that if they prevail in the above matter, the Court may allow Plaintiff to recover reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 15-53-100.

42. Plaintiff HGTC believes that they are entitled to an order from the Court granting them reasonable attorney's fees to be determined by the court pursuant to S.C. Code Ann. § 15-53-100.

WHEREFORE, the plaintiff respectfully requests that the court award the following relief:

- (1) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that UDO 5.1.32(B) is not preempted by S.C. Code Ann. § 44-7-78, S.C. Code Ann. Regs;

- (2) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that HGTC's Facility, located at 250 Allied Drive, is a "public or private educational facility" within the meaning of UDO 5.1.32(B)(3)(b);
- (3) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that no variance has been granted from UDO 5.1.32(B) that would allow Claycon Group to establish an outpatient treatment facility at 1800 Husted Road. Alternatively, entry of an order declaring that, to the extent that any variance to that effect was granted, such a variance is unlawful under S.C. Code Ann. Regs 61-93.2624;
- (4) Entry of a judgement in favor of Plaintiff HGTC, for the entry of an order declaring that HGTC's Facility, located at 250 Allied Drive, is a "public or private secondary school" within the meaning of S.C. Code Ann. Regs 61-93.2624;
- (5) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that no opioid treatment facility may be established at 1800 Husted Road, since establishing such a facility would be unlawful under S.C. Code Ann. Regs 61-93.2624;
- (6) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order granting Plaintiff HGTC's request for attorneys' fees pursuant to S.C. Ann. § 15-77-300;
- (7) Entry of a judgement in favor of Plaintiff HGTC, for injunctive relief preventing Claycon Group or any of its members from establishing an opioid treatment facility on the property located at 1800 Husted Rd; and

(8) Such other relief that the Court finds just and proper.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: s/Charles J. Boykin

Charles J. Boykin (SC Bar #65149)

Kenneth A. Davis (SC Bar #66416)

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Attorneys for the Plaintiff

October 10, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC, Pathway Clinic LLC,
and City of Conway,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26-06249

AMENDED SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at Post Office Box 11844, Columbia, South Carolina 29211, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer and defend the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: s/Charles J. Boykin

Charles J. Boykin, Esq. (SC Bar #65149)

Kenneth A. Davis, Esq. (SC Bar #66416)

Tierney F. Goodwyn, Esq. (SC Bar #102035)

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October 12, 2023
Columbia, South Carolina

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC, Pathway Clinic LLC,
and City of Conway,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26- 06249

**AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

NOW INTO COURT COMES PLAINTIFF, seeking a Declaratory Judgment against the Defendants showing unto the Court the following:

PARTIES AND JURISDICTION

1. Plaintiff, Horry-Georgetown Technical College (“HGTC”), operates two secondary educational facilities, located at 250 Allied Drive (“HGTC’s Facility”) and 2050 U.S. 501.
2. Defendant, Claycon Pharma Conway RE, LLC (Claycon) owns real property located at 1800 Husted Road, City of Conway, South Carolina, TPMS # 383-01-04-0016-20. This property is located in a zoning district designated as heavy industrial.
3. Defendants Pathway Treatment Center, LLC and Pathway Clinic LLC are tenants of Claycon.
4. Pathway Treatment Center, LLC, (“Pathway Treatment”) is a health care facility as defined by S.C. Ann. §44-7-130(10). It has obtained a Certificate of Need from South Carolina Department of Health and Environmental Control to operate an opioid treatment

center on the subject property located at 1800 Husted Road. This opioid treatment center is considered a health care facility as defined by S.C. Ann. §44-7-130(10).

5. Pathway Clinic, LLC (“Pathway Clinic”) is a health care facility that seeks to provide treatment to patients with substance abuse problems.
6. Defendant City of Conway is a duly organized municipality under the laws of South Carolina. The City of Conway is located in Horry County, South Carolina.
7. This Court has jurisdiction to hear this matter pursuant to the Uniform Declaratory Judgments Act. S.C. Code Ann. § 15-53-30 and § 15-53-20.

FACTUAL CIRCUMSTANCES

8. Each of Plaintiff HGTC’s locations provide instruction and training to secondary school students from various high schools throughout Horry County and the City of Conway. At any given time during the school year, HGTC hosts upwards of 300 secondary school students in these two locations. These students earn both high school and college credits, undergoing vocational training in areas such as welding, HVAC, carpentry, and electrical work.
9. Defendants Claycon, Pathway Treatment, and Pathway Clinic intends to establish an opioid treatment center at 1800 Husted Road.
10. The property line of HGTC’s Facility is less than 250 feet from the property line of 1800 Husted Road.
11. The City of Conway has enacted Unified Development Ordinance (“UDO”) § 5.1.32(B), which requires a 1,000-foot buffer between outpatient treatment facilities for drug or alcohol abuse and any religious facilities or educational facilities. UDO 5.1.32(B) was

enacted in accordance with Title 6, Chapter 29 of the South Carolina Code, known as the “South Carolina Government Comprehensive Planning Enabling Act of 1994.”

12. On March 14, 2023, Claycon, Pathway Treatment, and Pathway Clinic (collectively, “Claycon Group”) filed an action for declaratory judgement, arguing that UDO § 5.1.32(B) was preempted by S.C. Code Ann. § 44-7-78 by way of S.C. Code Ann. Regs. 61-93.2624 (2020). Claycon Group prayed for a declaratory judgement, injunctive relief, and attorney’s fees.

13. S.C. Code Ann. § 44-7-78 provides:

Notwithstanding any other provision of law, an entity that operates a health care facility as defined in Section 44-7-130(10) may develop and operate facilities, programs, and services in any location where such facilities, programs, or services support the entity or provide services to residents in the area, provided all other statutory and regulatory requirements are met, including the State Certification of Need and Health Facility Licensure Act, Article 3, Chapter 7, Title 44 and related regulations promulgated by the department.

14. S.C. Code Ann. Regs. 61-93.2624 (2020) states in part:

D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:

1. The property line of a church;
2. The property line of a public or private elementary or secondary school;
3. A boundary of any Residential district;
4. A public park adjacent to any Residential district; or
5. The property line of a lot devoted to Residential use.

15. On May 25, 2023, the City of Conway Board of Zoning Appeals granted Claycon Group a variance, allowing the operation of an outpatient treatment facility within 1000 feet of a *religious* institution. The Order states, “[t]his order does not determine whether any existing land use (including but not limited to HGTC use) within the 500-foot buffer requirement now applicable to the property under UDO § 5.1.32(B)(3)(b) is or is not a

protected use.” There has since been no variance granted that allows Claycon Group to operate its treatment facility within 1000 feet of an *educational* facility.

16. On July 25, 2023, Plaintiff HGTC filed a Motion to Intervene in Claycon Group’s Declaratory Judgment Action.
17. On August 21, 2023, Claycon Group voluntarily dismissed their action against the City of Conway pursuant to Rule 41(a), SCRCPC. The Court did not rule on HGTC’s Motion to Intervene.

FIRST CAUSE OF ACTION

18. Each and every allegation set forth hereinabove is realleged and repeated herein.
19. Plaintiff HGTC believes that UDO 5.1.32(B) is not preempted by S.C. Code Ann. 44-7-78 or S.C. Code Ann. Regs. 61-93.2624 (2020).
20. S.C. Code Ann. § 44-7-78 plainly uses the phrases “notwithstanding *any* other provision of law” and “provided all other statutory and regulatory requirements are met. . . .” If the legislature wanted SCDHEC regulations to be the sole authority regarding the location of healthcare facilities, they would have stated as much in the statute. Ordinances are necessarily to be considered under the inclusive language of the statute.
21. The plain language of S.C. Code Ann. Regs. 61-93.2624 (2020) says that an opioid treatment facility “shall not operate within 500 feet. . . .” of a secondary school. This language does not mean that if a location is more than 500 feet from a secondary school, it must be lawful. It only means that it *cannot be lawful if it is less than 500 feet* from the secondary school.

22. In any event, S.C. Code Ann. § 6-29-960 specifically addresses any alleged conflict between UDO 5.1.32(B) and § 44-7-78 or 61-93.2624. S.C. Code Ann. § 6-29-960 provides:

When the regulations made under authority of this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under another statute, or local ordinance or regulation, the regulations made under authority of this chapter govern. When the provisions of another statute require more restrictive standards than are required by the regulations made under authority of this chapter, the provisions of that statute govern.

23. UDO 5.1.32(B) was enacted under the authority of Title 6, Chapter 29 of the S.C. Code. UDO 5.1.32(B) imposes more restrictive standards than those implicated by 44-7-78. Accordingly, UDO 5.1.32(B) governs since it is the more restrictive standard.
24. Plaintiff HGTC believes that they are entitled to a declaratory judgement declaring that UDO 5.1.32(B) is not preempted by S.C. Code Ann. 44-7-78 or S.C. Code Ann. Regs. 61-93.2624 (2020).

SECOND CAUSE OF ACTION

25. Each and every allegation set forth hereinabove is realleged and repeated herein.
26. UDO 2.2.1 defines an educational facility as “any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge and meets state requirements for elementary and secondary education.” UDO 2.2.1.
27. Plaintiff HGTC believes that they are entitled to a declaratory judgement, finding that HGTC’s Facility, located at 250 Allied Drive, is a “public or private educational facility” within the meaning of UDO 5.1.32(B)(3)(b).

THIRD CAUSE OF ACTION

- 28. Each and every allegation set forth hereinabove is realleged and repeated herein.
- 29. In considering the aforementioned variance, the City of Conway Board of Zoning appeals did not address whether an opioid treatment facility at 1800 Husted Road would be located within 1000 feet of a public educational facility.
- 30. Plaintiff HGTC believes that they are entitled to a declaratory judgement finding that there has been no variance granted from UDO 5.1.32(B) allowing Claycon Group to establish an outpatient treatment facility within 1000 feet of an educational facility.
- 31. In the alternative, Plaintiff HGTC seeks a declaratory judgment that, to the extent that any variance was granted, such a variance is unlawful and pre-empted by S.C. Code Ann. Regs. 61-93.2624 (2020).

FOURTH CAUSE OF ACTION

- 32. Each and every allegation set forth hereinabove is realleged and repeated herein.
- 33. Plaintiff HGTC believes that they are entitled to a declaratory judgement finding that HGTC's Facility, located at 250 Allied Drive, is a public or private secondary school within the meaning of S.C. Code Ann. Regs. 61-93.2624 (2020).

FIFTH CAUSE OF ACTION

- 34. Each and every allegation set forth hereinabove is realleged and repeated herein.
- 35. All Property lines of the 1800 Husted Drive property are less than 500 feet from the property line of HGTC's Facility. Therefore, it is impossible for any facility on the Husted Drive property to be located more than 500 feet away from HGTC's facility.
- 36. S.C. Code Ann. § 44-7-78 authorizes SCDHEC to promulgate regulations for the establishment of health care facilities.

37. SCDHEC has defined health care facilities to include “. . .alcohol and substance abuse hospitals. . .narcotic treatment programs. . .and any other facility for which Certificate of Need review is required by federal law.” S.C. Code Ann. § 44-7-130(10) alcohol and substance abuse hospitals”
38. S.C. Code Ann. Regs. 61-93.2624 (2020) prohibits the establishment of an opioid treatment facility within 500 feet of the property line of a public or private secondary school.
39. Plaintiff HGTC believes that they are entitled to a declaratory judgement finding that the establishment of an opioid treatment facility at 1800 Husted Road by either Pathway Clinic, Pathway Treatment, or Claycon would violate S.C. Code Ann. Regs. 61-93.2624 (2020), as it would be within 500 feet of HGTC’s Facility.

SIXTH CAUSE OF ACTION

40. Each and every allegation set forth hereinabove is realleged and repeated herein.
41. This Court has the authority to grant further relief based on a declaratory judgment whenever such relief is necessary or proper, pursuant to S.C. Code Ann. 15-53-120.
42. Plaintiff HGTC believes that further relief is proper here and should be granted in the form of an order enjoining the establishment of any opioid treatment center on the property located at 1800 Husted Road, Conway, SC 29526.

SEVENTH CAUSE OF ACTION

43. Each and every allegation set forth hereinabove is realleged and repeated herein.
44. Plaintiff believes that if they prevail in the above matter, the Court may allow Plaintiff to recover reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 15-53-100.

45. Plaintiff HGTC believes that they are entitled to an order from the Court granting them reasonable attorney's fees to be determined by the court pursuant to S.C. Code Ann. § 15-53-100.

WHEREFORE, the plaintiff respectfully requests that the court award the following relief:

- (1) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that UDO 5.1.32(B) is not preempted by S.C. Code Ann. § 44-7-78, S.C. Code Ann. Regs;
- (2) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that HGTC's Facility, located at 250 Allied Drive, is a "public or private educational facility" within the meaning of UDO 5.1.32(B)(3)(b);
- (3) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that no variance has been granted from UDO 5.1.32(B) that would allow Claycon Group to establish an outpatient treatment facility at 1800 Husted Road. Alternatively, entry of an order declaring that, to the extent that any variance to that effect was granted, such a variance is unlawful under S.C. Code Ann. Regs 61-93.2624;
- (4) Entry of a judgement in favor of Plaintiff HGTC, for the entry of an order declaring that HGTC's Facility, located at 250 Allied Drive, is a "public or private secondary school" within the meaning of S.C. Code Ann. Regs 61-93.2624;
- (5) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order declaring that no opioid treatment facility may be established at 1800 Husted

Road, since establishing such a facility would be unlawful under S.C. Code Ann. Regs 61-93.2624;

- (6) Entry of a judgment in favor of Plaintiff HGTC, for the entry of an order granting Plaintiff HGTC's request for attorneys' fees pursuant to S.C. Ann. § 15-77-300;
- (7) Entry of a judgement in favor of Plaintiff HGTC, for injunctive relief preventing Claycon Group or any of its members from establishing an opioid treatment facility on the property located at 1800 Husted Rd; and
- (8) Such other relief that the Court finds just and proper.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: s/Charles J. Boykin

Charles J. Boykin (SC Bar #65149)

Kenneth A. Davis (SC Bar #66416)

Tierney F. Goodwyn (SC Bar #102035)

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Attorneys for the Plaintiff

October 12, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COUR OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	C/A NO.: 2023-CP-26-06249
)	
Horry-Georgetown Technical College,)	
)	
Plaintiff,)	
)	
v.)	
)	
Claycon Pharma Conway RE, LLC,)	
Pathway Treatment Center, LLC, Pathway)	
Clinic LLC, and City of Conway,)	
)	
Defendants.)	

DEFENDANTS CLAYCON PHARMA CONWAY RE, LLC, PATHWAY TREATMENT CENTER, LLC, AND PATHWAY CLINIC, LLC’S MOTION TO DISMISS, OR JUDGMENT ON THE PLEADINGS

TO: CHARLES L. BOYKIN, ESQ., KENNETH A. DAVIS, ESQ., AND TIERNEY F. GOODWYN, ESQ., ATTORNEYS FOR PLANITIFF

Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC (“Defendants”), by and through their undersigned attorneys, hereby move pursuant to SCRCP Rules 12(b)(6), (c), 7, 8, 10, 16, and any other applicable rule or authority, for an Order dismissing Plaintiff’s Amended Complaint (“Complaint”), or granting Defendants Judgment on the Pleadings. In addition, Defendants should be awarded attorney’s fees and costs under S.C. Code Ann. 15-53-100, and/or 15-77-300.

The grounds for this Motion are as follows. Plaintiff admits Defendants have received a Certificate of Need from the State of South Carolina for an opioid treatment center, and Plaintiff does not name the State or any agency thereof as a party to this action. Therefore, any attempt by Plaintiff in this action to try to collaterally attack that Certificate of Need is completely improper.

Plaintiff's entire case is predicated upon its improper conclusion that it is an "elementary or secondary school" under South Carolina law. Plaintiff repeatedly attempts to allege state law requires opioid facilities to be a certain distance from all "educational" facilities. However, state law is clear that its spacing restrictions do not apply to all "educational" facilities, just "elementary or secondary" schools. S.C. Code Ann. Regs. 61-93.2624; *Complaint Paragraph 14*.

Plaintiff does not allege it is an elementary school, but does repeatedly refer to itself as a "secondary" school. *See, e.g., Complaint Paragraphs 8, 21*. Plaintiff is a college, not an "elementary or secondary school." Plaintiff's allegations in this action belie its own marketing. Attached as Exhibit A is the "About HGTC" information from Plaintiff's website. Plaintiff expressly describes itself as a "two-year technical college," that from its founding in 1966, provides "post-secondary" programs, "lifelong learning," and access to "other post-secondary education" opportunities.

State law defines a "secondary school" as being only "a junior high school or a high school." S.C. Code Ann. 59-1-150(4). A "high school" is defined as any public school "which contains grades no lower than the seventh, *and no higher than the twelfth.*" *Id., at (6), emphasis added*. Plaintiff, a professed "college" that provides "post-secondary" education, clearly has grades "higher than the twelfth," meaning the spacing requirements for opioid treatment centers expressly do not apply to Plaintiff. If the General Assembly wanted opioid treatment centers to be located a certain distance from all "educational" facilities, the General Assembly could have easily provided so. But it did not.

Defendant City of Conway's Ordinances contain an almost identical definition, and rely on the state law definition above. Per Defendant City of Conway, an "educational facility" is defined as "any building or part thereof which is designed, constructed, or used for education or instruction

in any branch of knowledge *and meets state law requirements for elementary and secondary education.*” City of Conway Unified Development Ordinances 2.2.1, 5.1.32 (emphasis added). Therefore, Plaintiff does not qualify for any specific spacing requirements under Defendant City of Conway’s ordinances, either.

Plaintiff offers some of the services that Defendants offer. For example, Plaintiff has had an “Addiction & Recovery” Lecture Series to educate the public on addiction-related issues. Defendants applaud all efforts to educate the public on these issues. The opioid addiction problem gripping the nation is well known and does not need to be discussed in this Motion. Defendants hope they can partner with Plaintiff to offer Plaintiff’s students, staff, and the general public with additional and convenient resources and services to help combat addiction. Cooperation, not litigation, is the solution.

Defendants reserve the right to assert any other basis or ground for dismissal that may exist. Defendants will rely on the allegations in the Complaint, and South Carolina law, in support of this Motion. Defendants’ time to file a responsive pleading is stayed until the disposition of this Motion, but to the extent a response is due now, Defendants expressly deny the allegations in Plaintiff’s Complaint and its requested relief, and demand strict proof thereof.

In accordance with Rule 11, SCRCP, the undersigned affirms consultation with opposing counsel is not required, would serve no useful purpose, or could not be timely had.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

Attorneys for Defendants Claycon Pharma Conway
RE, LLC, Pathway Treatment Center, LLC, and
Pathway Clinic LLC

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Dated: December 4, 2023.

EXHIBIT A

About HGTC

[Home \(/\)](#) / [About HGTC](#)



NAVIGATE THIS SECTION ▼

Contact Us

✉ admissions@hgtc.edu(843) 347-3186 (tel:1-843-347-3186)



[Need Help? \(http://dev.hgtc.edu/admissions/student_information/index.html\)](http://dev.hgtc.edu/admissions/student_information/index.html)

About HGTC

Horry-Georgetown Technical College (HGTC) is a comprehensive two-year community/technical college ideally situated on the Grand Strand in Myrtle Beach, South Carolina. HGTC offers more than 70 **[associate degree, diploma, and certificate programs](https://www.hgtc.edu/academics/academic-departments/programs.html)** (<https://www.hgtc.edu/academics/academic-departments/programs.html>) for students who are either seeking quick entry into the workforce or desiring to **[transfer \(/academics/university-transfer/index.html\)](https://www.hgtc.edu/academics/academic-departments/programs.html)** to a senior institution to pursue a bachelor's degree.

Since its founding in 1966, Horry-Georgetown Technical College has provided post-secondary vocational, technical, and occupational programs that lead directly to securing or continuing employment; associate degree programs that enable students to gain access to other post-secondary education; and personal interest classes, **programs (/jobtraining/)**, and services that meet the **job training (/jobtraining/)**, **occupational advancement (/jobtraining/)**, and lifelong-learning needs of the residents and employers in its service area.

As a member of the **South Carolina Technical College System** (<http://www.sctechsystem.com/>), HGTC is a public, two-year technical college, enrolling 7,750 to 9,500 college-credit-curriculum students (fall head count) and providing workforce development programs for 8,000 to 10,000 participants per year.

HGTC provides services to the individuals and employers of Horry and Georgetown Counties; certain academic programs serve regional, national, and even international needs. The College values partnerships with business, industry, community agencies, and other educational and governmental institutions that support the growth and development of the community.

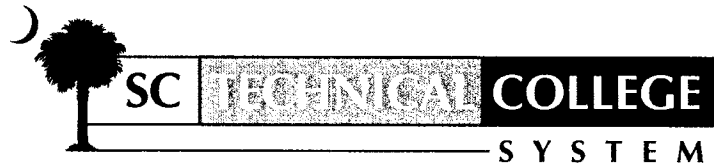
Did You Know?

HGTC is the fourth-largest of the 16 South Carolina technical colleges and is one of the fastest-growing higher education institutions in the state.

The College was established in 1961 as Horry-Marion-Georgetown Technical Education Center, and received its first class of students--123 members strong--in 1966.

Since the first graduating class, the College has graduated more than 27,000 students, 90% of whom have remained in Horry and Georgetown Counties as part of the local workforce.

HGTC offers three convenient campus **locations** (/about_hgtc/campuslocations/) in Myrtle Beach, Conway and Georgetown County.



Apply to HGTC (<https://www.hgtc.edu/applynow>)



More than 70 Programs (</academics/academic-departments/programs.html>)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No. 2023-CP-26-06249

Horry Georgetown Technical College,

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC, Pathway Clinic LLC,
and City of Conway,

Defendant(s).

***CITY OF CONWAY'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT***

Defendant City of Conway (hereinafter "Conway") by and through its undersigned counsel, hereby answers the Plaintiff's Amended Complaint and would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiff's Complaint that is not specifically admitted, explained, or qualified is denied and strict proof is demanded thereof.
2. The allegations of Paragraph 1 of Plaintiff's Amended Complaint are denied.
3. The allegations of Paragraphs 2, 3, 4, 5, 6, and 7 are admitted upon information and belief.
4. In response to the allegations of Paragraph 8, Conway is without sufficient knowledge or information to form a belief as to the allegation; therefore, the allegations are denied and strict proof is demanded thereof.
5. The allegations of Paragraph 9 are admitted upon information and belief.
6. The allegations of Paragraph 10 are denied.

7. In response to Paragraph 11, Conway admits that UDO § 5.1.32(B) was enacted and craves reference to the specific language contained therein and denies any allegation inconsistent with the specific language.

8. In response to Paragraph 12, Conway admits that Claycon Group filed a civil action on March 14, 2023 and craves reference to the filed pleadings for the arguments and relief requested therein.

9. The allegations of Paragraphs 13 and 14.

10. In response to the allegations of Paragraph 15, Conway admits only that on May 25, 2023, the City of Conway Board of Zoning Appeals granted a request to reduce the buffer required by UDO § 5.1.32(B)(3)(b) from 1,000 feet to 500 feet for an Outpatient Treatment Facility use at the property located at 1800 Husted Road and craves reference to the language contained in the May 25, 2023 Order and denies any allegation inconsistent therewith. The remaining allegations of Paragraph 15 are denied.

11. The allegations of Paragraphs 16, and 17 are admitted.

12. In response to the allegations of Paragraph 18, Conway repeats and realleges its answers and responses to Paragraphs 1 through 17 as if fully repeated verbatim herein.

13. The allegations of Paragraphs 19, 20, 21, 22, and 23 are admitted.

14. The allegations of Paragraph 24 are denied.

15. In response to the allegations of Paragraph 25, Conway repeats and realleges its answers and responses to Paragraphs 1 through 24 as if fully repeated verbatim herein.

16. The allegations of Paragraph 26 are admitted.

17. The allegations of Paragraph 27 are denied.

18. In response to the allegations of Paragraph 28, Conway repeats and realleges its answers and responses to Paragraphs 1 through 27 as if fully repeated verbatim herein.

19. The allegations of Paragraphs 29, 30, and 31 are denied.

20. In response to the allegations of Paragraph 32, Conway repeats and realleges its answers and responses to Paragraphs 1 through 31 as if fully repeated verbatim herein.

21. The allegations of Paragraph 33 are denied.

22. In response to the allegations of Paragraph 34, Conway repeats and realleges its answers and responses to Paragraphs 1 through 33 as if fully repeated verbatim herein.

23. The allegations of Paragraph 35 are denied.

24. The allegations of Paragraphs 36 and 37 are admitted.

25. In response to the allegations of Paragraph 38, Conway would crave reference to the referenced regulation and deny any allegation inconsistent therewith.

26. The allegations of Paragraph 39 are denied.

27. In response to the allegations of Paragraph 40, Conway repeats and realleges its answers and responses to Paragraphs 1 through 39 as if fully repeated verbatim herein.

28. The allegations of Paragraph 41 are admitted.

29. The allegations of Paragraph 42 are denied.

30. In response to the allegations of Paragraph 43, Conway repeats and realleges its answers and responses to Paragraphs 1 through 42 as if fully repeated verbatim herein.

31. The allegations of Paragraphs 44 and 45 are denied.

32. In response to the paragraph beginning WHEREFORE, Conway would assert that this is Plaintiff's prayer for relief and does not require a response from this defendant, however, to the extent that a response is deemed to be required, this paragraph is denied.

FOR A SECOND AND FURTHER DEFENSE

33. That Plaintiff's claims are barred due to its failure to exhaust its administrative remedies.

FOR A THIRD AND FURTHER DEFENSE

34. That Plaintiff's claims are barred due to its failure to timely appeal the May 25, 2023 order of the City of Conway Board of Zoning Appeals.

FOR A FOURTH AND FURTHER DEFENSE

35. That Plaintiff's claims should be dismissed for failure to join the State of South Carolina or its applicable subdivision as a necessary party pursuant to Rule 19, SCRPC.

FOR A FIFTH AND FURTHER DEFENSE

36. That Plaintiff's claims should be dismissed for its failure to timely challenge the zoning regulation and variance thereto with the time periods set forth in S.C. Code Ann § 6-29-760.

WHEREFORE, Defendant City of Conway respectfully prays unto this Honorable Court as follows:

- A. For dismissal of Plaintiff's Amended Complaint
- B. For an award of the City of Conway's reasonable attorney's fees and costs as allowed by statute;
- C. For such other and further relief as this Honorable Court determines to be just and proper.

[signature on following page]

SLIGH LAW FIRM, P.A.

s/ David R. Sligh

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Dated: December 28, 2023
Conway, South Carolina

ATTORNEYS FOR DEFENDANT CITY OF
CONWAY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC, Pathway Clinic LLC,
and City of Conway,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26-06249

**PLAINTIFF’S MEMORANDUM OF LAW
IN OPPOSITION TO CLAYCON
PHARMA CONWAY RE, LLC,
PATHWAY TREATMENT CENTER,
LLC, AND PATHWAY CLINIC LLC’S
MOTION TO DISMISS**

Plaintiff Horry-Georgetown Technical College (hereinafter “HGTC”), by and through its undersigned counsel, hereby submits this Memorandum of Law in Opposition to the Motion to Dismiss filed by Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC (hereinafter collectively referred to as “Claycon”).

HGTC requests this court to deny Claycon’s Motion to Dismiss as HGTC is a secondary educational facility within the meaning of S.C. Code Ann. Regs. 61-93.2624 (2020), which prohibits opioid treatment centers from being established within 1,000 feet of a public or private educational facility.

STATEMENT OF FACTS

HGTC is a technical college, which has an educational facility, located at 250 Allied Drive, Conway, SC 29526 (“HGTC’s Facility”). At this location, HGTC provides courses in welding, plumbing, and other manufacturing-related trades. These courses are attended by students from various high schools throughout the County as part of the dual enrollment program. HCS Early College High (“HCS”) is a state-recognized high school which enrolls students from grades nine

(9) through twelve (12). HCS's main campus is located on HGTC's main campus at 2050 US-501, Conway, SC 29526.

Claycon intends to open an opioid treatment center at 1800 Husted Road, Conway, SC 29526. 1800 Husted Road is approximately 250 feet from HGTC's Facility.

The City of Conway has enacted Unified Development Ordinance ("UDO") § 5.1.32(B), which requires a 1,000-foot buffer between outpatient treatment facilities for drug or alcohol abuse and public or private educational facilities. UDO 5.1.32(B). UDO § 2.2.1 defines educational facilities as "Any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge and meets state requirements for elementary and secondary education." UDO § 2.2.1.

On May 25, 2023, the City of Conway Board of Zoning Appeals granted Claycon a variance, allowing the operation of an outpatient treatment facility within 1000 feet of a *religious* institution. The order granting the variance states, "[t]his order does not determine whether any existing land use (including but not limited to HGTC use) within the 500-foot buffer requirement now applicable to the property under UDO § 5.1.32(B)(3)(b) is or is not a protected use." (*See* ¶12, Amended Complaint).

Additionally, the South Carolina Department of Health and Environmental Control ("SCDHEC") has enacted S.C. Code Ann. Regs. 61-93.2624(D) (2020), which states:

- D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:
1. The property line of a church;
 2. The property line of a public or private elementary or secondary school;
 3. A boundary of any Residential district;
 4. A public park adjacent to any Residential district; or
 5. The property line of a lot devoted to Residential use.
- S.C. Code Ann. Regs. 61-93.2624(D) (2020).

HGTC filed a Complaint for Declaratory Relief on October 10, 2023, seeking to prevent Claycon from establishing an opioid treatment center at 1800 Husted Road. (*See* Complaint). HGTC filed an Amended Complaint for Declaratory Relief on October 12, 2023, adding the City of Conway as a defendant. (*See* Amended Complaint) Claycon filed this Motion to Dismiss or for Judgement on the Pleadings on December 4, 2023. (*See* Def. Motion to Dismiss, filed 12/4/2023).

STANDARD OF REVIEW

Under Rule 12(b)(6), SCRCF, a defendant may move to dismiss a claim based on a plaintiff's failure to plead facts sufficient to constitute a cause of action. Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 596 S.E.2d 42 (2004). The court should consider *only the allegations set forth in the pleadings* in considering a motion under Rule 12, SCRCF. Id. The court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Id. A motion to dismiss should not be granted if the alleged facts and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.

Argument

- I. Section 44-7-78 of the South Carolina Code requires Health Care Facilities to comply with all statutory and regulatory requirements.

Under S.C. Code Ann. § 44-7-78, an entity that operates a healthcare facility may operate a facility in a location as long as it supports the entity or serves area residents, “*provided all other statutory and regulatory requirements are met*, including the State Certification of Need and Health Facility Licensure Act, Article 3, Chapter 7, Title 44 and related regulations promulgated by the department.”

UDO § 5.1.32(B) prohibits opioid treatment centers from being located within 1,000 feet of a public or private educational facility. S.C. Code Ann. Regs. § 61-93.2624(D) prohibits opioid

treatment facilities from being located within 500 feet of a secondary school. Here, Claycon's intended location is in violation of both UDO § 5.1.32(B) and S.C. Code Ann. Regs § 61-93.2624(D) (2020).

HGTC's Facility is approximately 250 feet from Claycon's planned opioid treatment center. High School students from schools throughout Horry County attend classes at HGTC's Facility as part of the dual enrollment and PACE programs. HCS Early College High ("HCS") is a state-recognized high school which enrolls students from grades nine (9) through twelve (12). HCS is located on HGTC's main campus at 2050 US-501, Conway, SC 29526. That campus is approximately 2,000 feet from Claycon's proposed treatment center, however, HCS students attend classes at HGTC's Facility, utilizing a shuttle for transport between the main campus and HGTC's Facility. Therefore, HGTC's Facility is essentially part of HCS's campus and is an extension of every participating high school in Horry County. Accordingly, Claycon's planned opioid treatment center is located less than 500 feet from HGTC's Facility that serves high school students, which would violate both UDO § 5.1.32(B) and S.C. Code Ann. Regs. § 61-93.2624(D).

Additionally, Plaintiff's action is not a collateral attack on Claycon's alleged Certificate of Need. A Certificate of Need is a healthcare license. As a licensure program, the Certificate of Need requirement is intended to "prevent unnecessary duplication of health care facilities. . . and ensure that high quality services are provided in health facilities in this state." S.C. Code Ann § 44-7-120. A Certificate of Need does not discharge the receiving entity's responsibility to abide by other statutes and regulations. *See* S.C. Code Ann. § 44-7-78. Even further, Claycon was never issued a Certificate of Need due to the passage of Act 20, which amended the State Health Facility Licensure Act. 2023 Act No. 20 (Effective May 16, 2023).

II. Claycon cites a statutory definition of secondary school that is irrelevant to the public health concerns at issue in this case.

Claycon cites S.C. Code Ann. § 59-1-150 as support for its contention that HGTC is not a secondary school. However, § 59-1-150 explicitly states that those definitions are for the purpose of that Chapter. Section 59-1-150 is part of an organizational statutory scheme, which is intended to “provide for a State system of public education and for the establishment, organization, operation, and support of such State system.” S.C. Code Ann. § 59-1-20. This statutory scheme is known as the South Carolina School Code, which provides policies, procedures, and other parameters for the internal operations of public schools in our State. S.C. Code Ann. §59-1-10 et. seq.

The South Carolina School Code does not address public health concerns such as whether a specific activity is allowed within a certain distance of a school. Rather, those concerns are addressed by SCDHEC regulations, among other regulations and statutes, which are specifically designed for that purpose. An example is S.C. Code Ann. Regs. § 61-93.2624(D), which prohibits opioid treatment centers from being within 500 feet of a secondary school.

III. Allowing the South Carolina School Code to narrowly define what constitutes a secondary school would undermine public policy and violate the rules of statutory construction.

The South Carolina Supreme Court has held that “[r]egulations are interpreted using the same rules of construction as statutes.” Murphy v. S.C. Dep’t of Health & Env’tl. Control, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). Under South Carolina law, “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “However, where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed.” Id. However, “[c]ourts will reject a statutory interpretation which would lead to a

result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

The plain language of S.C. Code Ann. § 59-1-150 states that those definitions are for the purpose of establishing a system of public education in our State. This purpose does not pertain to SCDHEC and §59-1-150 and is not the enabling legislation for S.C. Code Ann. Regs. § 61-93.2624(D). The definitions set forth in the South Carolina School Code were not intended to apply to S.C. Code Ann. Regs § 61-93.2624(D). Even further, S.C. Code Ann. Regs. § 61-93 does not define what constitutes a secondary school. If SCDHEC wanted to adopt the definition contained in the South Carolina School Code, they could have done so merely by reference. Therefore, the definition of secondary school should be determined using the rules of statutory construction.

Here, applying the South Carolina School Code’s definition of secondary school would plainly lead to an absurd result. In promulgating S.C. Code Ann. Regs § 61-93.2624(D), SCDHEC sought to prevent opioid treatment facilities from being too close to religious institutions and areas that are regularly populated by children and adolescents. HGTC’s Facility is an educational facility, which regularly hosts large numbers of adolescent high school students. Those adolescent students are the same specific class of people that SCDHEC sought to prevent from being regularly exposed to opioid treatment centers. Therefore, excluding them from the protections that traditional high school students enjoy would be a plainly absurd result since it would regularly expose those same adolescents to an opioid treatment center.

Even further, excluding those students from those protections would undermine public policy. South Carolina has established dual enrollment, PACE, and institutions like HCS with the goal of providing greater educational opportunities to the children and adolescents of our State. As a result, our State has a vested interest in maintaining an environment that is conducive to developing young minds in a healthy environment.

SCDHEC has taken steps to create that type of environment by promulgating S.C. Code Ann. Regs § 61-93.2624(D), which evidences the public policy of ensuring that adolescent students are not regularly exposed to opioid treatment centers. Therefore, excluding HGTC's Facility from the category of secondary schools would deprive its students of those same protections thereby undermining the public policy of our State. In order to maintain that type of environment and further public policy goals, the high school students who attend HGTC's Facility should be afforded the same protections as those who attend a traditional high school.

CONCLUSION

For the aforementioned reasons, HGTC respectfully requests that this Court deny Claycon's Motion to Dismiss or for Judgement on the Pleadings. In the alternative, HGTC requests that this Court allow HGTC leave to amend its Complaint for Declaratory Relief.

BOYKIN & DAVIS, LLC

By: Christopher R. Acre

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Attorneys for Plaintiff Horry-Georgetown
Technical College

March 15, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC, Pathway Clinic LLC,
and City of Conway,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26-06249

**MOTION TO RECONSIDER AND
MOTION FOR LEAVE TO AMEND
COMPLAINT**

**TO: DOUGLAS M. ZAYICEK, ROBERT SHELTON, ATTORNEYS FOR
DEFENDANTS**

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 59(e), SCRPC, Horry Georgetown Technical College by and through its undersigned counsel, hereby moves this Court for reconsideration of the Court’s Form 4 Order dated March 26, 2024, wherein it Granted Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC’s (“Defendants”) Motion to Dismiss. Alternatively, HGTC requests that this Court either dismiss this Action without prejudice or grant HGTC leave to amend its complaint, pursuant to Rule 15, SCRPC. A written order has not been filed. The grounds for this Motion are as follows:

1. Plaintiff Asks this Court to Definitively Rule on Plaintiff’s Seven Causes of Action.

Under South Carolina law, a motion for reconsideration may be brought under Rule 59(e), SCRPC. Elam v. S.C. DOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The South Carolina Supreme Court has held:

A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or

issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id.

On March 26, 2024, this Court found that HGTC lacked standing to bring this action and granted Defendants' Motion to Dismiss with prejudice. It is unclear as to whether the Court found that HGTC lacked standing as to each of its causes of action. As such, Plaintiff asks this Court to rule on the Causes of Action.

2. Pursuant to S.C. Code Ann. § 15-53-10, HGTC has Standing to Request a Declaratory Judgement Finding that it is an Education Facility Within the Meaning of UDO § 5.1.32(B).

Plaintiff asks this Court to reconsider its Order Granting Defendants' Motion to Dismiss as HGTC has standing under the statutory and common law of South Carolina. The South Carolina Supreme Court has held that “[s]tanding, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception.” Youngblood v. S.C. Dep't of Soc. Servs., 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013).

HGTC has statutory standing to bring this declaratory judgement action because it is an interested party, by way of a deed establishing ownership, seeking to have its legal status determined under a municipal ordinance. S.C. Code Ann. § 15-53-10 of the Uniform Declaratory Judgements Act provides:

“[a]ny person interested under a deed, will, written contract or other writings constituting a contract or 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 Ann. § 15-53-10.

HGTC is the owner of the properties at 250 Allied Drive, Conway, SC 29526 and HGTC's main campus. Pursuant to those deeds, HGTC has an interest in its legal status as an education facility. HGTC seeks a declaratory judgement finding that its property located at 250 Allied Drive, Conway, SC 29526, is an "education facility" within the meaning of Unified Development Ordinance § 5.1.32(B). Therefore, HGTC is a party, interested under a deed, seeking to have this Court declare its rights, status, or legal relations under a municipal ordinance. Accordingly, HGTC has statutory standing to bring this declaratory judgement action under S.C. Code Ann. § 15-53-10.

Additionally, HGTC has standing under the public importance exception, which states that "standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). Public education of high-school aged students is undoubtedly of immense public importance. Here, a state-recognized high school, HCS Early College High School, is located on HGTC's main campus and its students attend classes at the 250 Allied Drive location. HGTC brings this action to ascertain its legal status as an educational facility in order to determine whether high school students on its campus are entitled to the same level of protection as other high school students.

Defendants have argued that HCS Early College High School and dual enrollment are one in the same—they are not. Dual enrollment is a program where students enrolled in *various high schools* throughout the county take college classes at HGTC. *See* Horry-Georgetown Technical College, *Pace Dual Enrollment Frequently Asked Questions*, https://www.hgtc.edu/academics/high_school_programs/pace/faq.html (last visited 4/5/2024).

In contrast, HCS Early College High School is a secondary school, recognized by the South Carolina Department of Education (“SCDOE”). HCS Early College High School’s main campus is located on the main campus of HGTC. Students enrolled in Early College High School are grades nine (9) through twelve (12) and are enrolled in high schools courses, receiving Carnegie credits, required by the SCDOE. Students may also enroll in college courses as appropriate. HCS Early College High School students also attend classes at HGTC’s facilities, including the facility at 250 Allied Drive.

3. Alternatively, this Court Should Grant HGTC Leave to Amend its Complaint or Dismiss HGTC’s Action Without Prejudice.

The South Carolina Supreme Court has held that “[w]hen a trial court finds a complaint fails to state facts sufficient to constitute a cause of action under [Rule 12(b)(6), SCRC] the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 826 S.E.2d 585 (2019). However, leave to amend may be denied “where the proposed amendment would be futile.” Id. at 182, 589. This Court has acknowledged a material question of fact in the existence of HCS Early College High School and its relationship to HGTC. Given HGTC’s proprietary interest in the properties at issue and the implications of HCS Earl College High School’s existence on the properties’ status as an educational facility, a dismissal with prejudice at the pleading stage is premature.

HGTC should therefore be granted leave to amend its complaint to more definitively plead facts supporting its standing to bring this Action and the existence of HCS Early College High School.

[SIGNATURE BLOCK NEXT PAGE]

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Technical College

April 5, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Horry-Georgetown Technical College

Plaintiff,

vs.

Claycon Pharma Conway RE, LLC, Pathway
Treatment Center, LLC, Pathway Clinic LLC,
and City of Conway,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-26-06249

**AMENDED MOTION TO RECONSIDER
AND MOTION FOR LEAVE TO AMEND
COMPLAINT**

**TO: DOUGLAS M. ZAYICEK, ROBERT SHELTON, ATTORNEYS FOR
DEFENDANTS**

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 59(e), SCRPC, Horry Georgetown Technical College by and through its undersigned counsel, hereby moves this Court for reconsideration of the Order Granting Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC's ("Defendants") Motion to Dismiss, filed April 26, 2024 and attached hereto as Exhibit A. This Motion was heard on March 26, 2024 (the "Hearing"). The Form 4 was filed on March 26, 2024 and is attached hereto as Exhibit B.

HGTC requests that this Court either 1) dismiss this Action without prejudice 2) grant HGTC leave to amend its complaint, pursuant to Rule 15, SCRPC, or 3) strike any ruling regarding HGTC's status as a public educational facility within the meaning of Unified Development Ordinance 5.1.32(B) and HGTC's status as a public secondary school within the meaning of S.C. Code Ann. Regs § 61-93.2624. The grounds for this Motion are as follows:

1. Pursuant to S.C. Code Ann. § 15-53-10, HGTC has Standing to Request a Declaratory Judgment Finding that it is an Education Facility Within the Meaning of UDO § 5.1.32(B) and S.C. Code Ann. Regs. 61-93.2624.

During the Hearing the Court *sua sponte* raised the issue of HGTC’s standing to bring this Action. The Court ruled that HGTC lacked standing to bring this Action. Plaintiff asks this Court to reconsider its Order Granting Defendants’ Motion to Dismiss as HGTC has standing under the statutory and common law of South Carolina. The South Carolina Supreme Court has held that “[s]tanding, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception.” Youngblood v. S.C. Dep’t of Soc. Servs., 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013).

HGTC has statutory standing to bring this declaratory judgment action because it is an interested party, by way of a deed establishing ownership, seeking to have its legal status determined under a municipal ordinance. S.C. Code Ann. § 15-53-10 of the Uniform Declaratory Judgments Act provides:

“[a]ny person interested under a deed, will, written contract or other writings constituting a contract or 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 Ann. § 15-53-10.

HGTC is the owner of the properties at 250 Allied Drive, Conway, SC 29526 and HGTC’s main campus. Pursuant to those deeds, HGTC has an interest in its legal status as an education facility. HGTC seeks a declaratory judgment finding that its property located at 250 Allied Drive, Conway, SC 29526, is an “education facility” within the meaning of Unified Development Ordinance § 5.1.32(B). Therefore, HGTC is a party, interested under a deed, seeking to have this

Court declare its rights, status, or legal relations under a municipal ordinance. Accordingly, HGTC has statutory standing to bring this declaratory judgment action under S.C. Code Ann. § 15-53-10.

Additionally, HGTC has standing under the public importance exception, which states that “standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.” ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). Public education of high-school aged students is undoubtedly of immense public importance. Here, a state-recognized high school, HCS Early College High School, is located on HGTC’s main campus and its students attend classes at the 250 Allied Drive location. HGTC brings this action to ascertain its legal status as an educational facility in order to determine whether high school students on its campus are entitled to the same level of protection as other high school students.

Defendants have argued that HCS Early College High School and dual enrollment are one in the same—they are not. Dual enrollment is a program where students enrolled in *various high schools* throughout the county take college classes at HGTC. *See* Horry-Georgetown Technical College, *Pace Dual Enrollment Frequently Asked Questions*, https://www.hgtc.edu/academics/high_school_programs/pace/faq.html (last visited 4/5/2024).

In contrast, HCS Early College High School is a secondary school, recognized by the South Carolina Department of Education (“SCDOE”). HCS Early College High School’s main campus is located on the main campus of HGTC. Students enrolled in Early College High School are grades nine (9) through twelve (12) and are enrolled in high schools courses, receiving Carnegie credits, required by the SCDOE. Students may also enroll in college courses as appropriate. HCS Early College High School students also attend classes at HGTC’s facilities, including the facility at 250 Allied Drive.

2. Alternatively, this Court Should Grant HGTC Leave to Amend its Complaint or Dismiss HGTC's Action Without Prejudice.

The South Carolina Supreme Court has held that “[w]hen a trial court finds a complaint fails to state facts sufficient to constitute a cause of action under [Rule 12(b)(6), SCRPC] the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 826 S.E.2d 585 (2019). However, leave to amend may be denied “where the proposed amendment would be futile.” Id. at 182, 589. This Court has acknowledged a material question of fact in the existence of HCS Early College High School and its relationship to HGTC. Given HGTC’s proprietary interest in the properties at issue and the implications of HCS Earl College High School’s existence on the properties’ status as an educational facility, a dismissal with prejudice at the pleading stage is premature.

HGTC should therefore be granted leave to amend its complaint to more definitively plead facts supporting its standing to bring this Action and the existence of HCS Early College High School.

3. The Court Improperly Relied on Documents Outside of the Pleadings.

“A motion to dismiss may be converted into a motion for summary judgment when the court considers matters outside of the pleadings.” Charleston County Sch. Dist. V. Harrel, 393 S.C. 552, 713 S.E.2d 604 (2011) (finding that it was inappropriate for the court to consider matters outside of the pleadings without giving the parties a reasonable opportunity to introduce evidentiary matters of their own.). For summary judgement to be granted, the evidence and pleadings must show that there “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC.

During the Hearing on March 26, 2024, Defendants introduced documents, including a map, a course listing from Early College High School, and promotional materials issued by HGTC. The Court further cites HGTC's website in its Order Granting Defendants Motion to Dismiss. (*See* Order Granting Motion to Dismiss). These materials were not contained in the pleadings. Accordingly, the Court erred by issuing definitive rulings regarding the merits of HGTC's causes of action while considering documentary evidence that was not contained in the pleadings and without giving HGTC a reasonable opportunity to introduce evidence of its own.

Additionally, the Court instructed Defendants' Counsel to draft the Order Granting Defendants' Motion to Dismiss while specifically instructing Defendants' Counsel to include an acknowledgement that HGTC raised the existence of HCS Early College High School in its Memorandum and during the Hearing. The Court also acknowledged that HCS Early College High School's status as a high school was unknown. The Court further expounded that if HCS Early College High School was in fact a high school, it would have standing to bring this Action. There is no mention of HCS Early College High School in the Order Granting Defendants' Motion to Dismiss.

The Court's acknowledgement of the uncertainty regarding HCS Early College High Schools status constitutes a genuine issue of material fact which renders summary judgement improper. HCS Early College High School is a state-recognized high school. Therefore, its presence *on the property of HGTC* necessarily effects the status of HGTC's properties at issue under UDO § 5.1.32(B) and S.C. Code Ann. Regs. § 61-93.2624. Because it is a genuine issue of fact and the Court did not allow HGTC a reasonable opportunity to produce evidence of HCS Early College High School's legal status, it would be improper to grant summary judgment.

Therefore, HGTC requests that the Court alter the judgement to eliminate any ruling that HGTC is not a public education facility within the meaning of UDO 5.1.32(B). Additionally, HGTC requests that this Court alter its judgement to eliminate any ruling that HGTC is not a public secondary school within the meaning of S.C. Code Ann. Regs. 61-93.2624.

4. If HGTC Lacks Standing to Bring This Action, the Court Lacks Subject Matter Jurisdiction to Rule That HGTC is not a Public Education Facility Within The Meaning Of UDO 5.1.32(B) and a Public Secondary School Within the Meaning of S.C. Code Ann. Regs. 61-93.2624.

The South Carolina Supreme Court has held that “[a] motion to dismiss for lack of standing challenges the court’s subject matter jurisdiction.” S.C. Pub. Interest Found v. Wilson, 437 S.C. 334, 878 S.E.2d 891 (2022); *See also* Bardeen Props., NV v. Eidolon Corp., 326 S.C. 166, 169 485 S.E.2d 371, 372 (1997)(“We have previous indicated that a party’s lack of standing as a real party in interest deprives a court of subject matter jurisdiction.”). “Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the proceedings in question belong.’” Dove v. Gold Kist, 314 S.C. 235, 238, 442 S.E.2d 598, (1994). Additionally, the South Carolina Supreme Court has held that “[a] court lacking subject matter jurisdiction, however, has no authority to act. . . .” Dove v. Gold Kist, 314 S.C. 235, 238, 442 S.E.2d 598, (1994).

Therefore, if HGTC lacks standing to bring this action, this Court necessarily lacks subject matter jurisdiction to rule on the merits of any of HGTC’s Causes of Action. HGTC, in its Second Cause of Action, seeks a declaratory judgment “finding that HGTC’s Facility, located at 250 Allied Drive, is a ‘public or private educational facility’ within the meaning of UDO 5.1.32(B)(3)(b).” (*See* Complaint, ¶ 27). In its Fourth Cause of Action, HGTC seeks “a declaratory judgement

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Horry-Georgetown Technical College,)
)
)
Plaintiff,)
)
v.)
)
Claycon Pharma Conway RE, LLC,)
Pathway Treatment Center, LLC, Pathway)
Clinic LLC, and City of Conway,)
)
)
Defendants.)

IN THE COUR OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C/A NO.: 2023-CP-26-06249

ORDER GRANTING DEFENDANTS CLAYCON PHARMA CONWAY RE, LLC, PATHWAY TREATMENT CENTER, LLC, AND PATHWAY CLINIC, LLC’S MOTION TO DISMISS, OR JUDGMENT ON THE PLEADINGS

Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC (“Defendants”), moved for an Order dismissing Plaintiff’s Amended Complaint (“Complaint”). The matter was before the Court via WebEx on Tuesday, March 26, 2024, at 9:30 a.m. For the reasons below, Defendants’ Motion to Dismiss is GRANTED.¹

I. BACKGROUND

Defendants have received a Certificate of Need from SC DHEC, to operate an opioid treatment center at 1800 Husted Road, in Conway, SC.² Importantly, Plaintiff has not named SC DHEC as a Defendant in this action. Plaintiff seeks a legal determination that the Certificate of Need should not have been issued under state law, nor can Defendants proceed under Defendant City of Conway’s Ordinances. Plaintiff’s case is premised on its belief that it is a “secondary

¹ Although Defendant City of Conway did not file a Motion to Dismiss, it stated at the beginning of the hearing that it joined with Defendants’ Motion to Dismiss, and that the Court’s ruling would be dispositive as to any claims against the City of Conway, as well.
² Complaint, Paragraph 4. All references to Complaint herein are to the Amended Complaint.

school” under either state law, or the City of Conway’s Ordinances, and as such, there is a mandatory spacing requirement between Defendants’ location and Plaintiff’s property.

Plaintiff: (1) alleges and makes the legal conclusion that it is a “secondary school” under South Carolina law; and (2) asks the Court to declare it a “secondary school” so that Plaintiff can obtain its requested relief. The first is not true, and therefore the Court cannot do the second.

Plaintiff cites S.C. Code Ann. Regs. 61-93.2624, as controlling authority.³ Subsection (D) states:

- D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:
 1. The property line of a church;
 2. The property line of a public or private elementary or secondary school;
 3. A boundary of any Residential district;
 4. A public park adjacent to any Residential district; or
 5. The property line of a lot devoted to Residential use. (Emphasis added.)

Title 59 of the South Carolina Code, is “Education.” S.C. Code Ann. 59-1-150, entitled “‘Kindergarten,’ ‘elementary school,’ ‘middle school,’ ‘secondary school,’ ‘junior high school,’ and ‘high school’ defined,” states:

- For the purposes of this chapter:
- (1) “Kindergarten” means any school which provides either education, instruction, or supervision below the first grade to children who will attain the age of five on or before the first day of November of the school year when they begin school.
 - (2) “Elementary school” means any public school which contains grades no lower than kindergarten and no higher than the eighth.
 - (3) “Middle school” means any public school which contains grades no lower than the fifth and no higher than the eighth.
 - (4) “Secondary school” means either a junior high school or a high school.
 - (5) “Junior high school” shall be considered synonymous with the term “high school.”

³ Complaint, Paragraph 14.

(6) “High school” means any public school which contains grades no lower than the seventh and no higher than the twelfth. (Emphasis added.)

In its Complaint, Plaintiff alleges it “operates two secondary educational facilities,” at 250 Allied Drive, and 2050 U.S. 501.⁴ Then, in Paragraphs 27, 33, and its Prayer for Relief, Plaintiff asks the Court to declare Plaintiff a “secondary school” under state law, and the City of Conway’s Ordinances.

In Defendant City’s Unified Development Ordinance (“UDO”), Section 5.1.32(3)(b), an outpatient treatment facility such as the one planned by Defendants, cannot be located within 1,000 feet of an “educational facility.” Per Section 2.2.1 of that same UDO, an “educational facility” is defined as one meeting the “state requirements for elementary and secondary education,” which is discussed above.

Plaintiff’s entire case is predicated upon its legal conclusion, or request, that it be declared a secondary school under state and local law. Plaintiff is not a secondary school under state or local law. Thus, the Court cannot grant Plaintiff’s requested relief as a matter of law.

II. LAW

A. Statutory Construction

The matters before the Court are issues of statutory construction and standing, both of which are solely matters of law for the Court to decide. *See, e.g., Boiter v. South Carolina Dept. of Transp.*, 393 S.C. 123, 712 S.E.2d 401 (2011) (“Questions of statutory construction are a matter of law.”); *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d

⁴ Complaint, Paragraph 1. It does not appear that either location is within 500 feet of Defendant’s property, but that specific issue is not before the Court in this Motion to Dismiss.

841, 843 (1995) (“The determination of legislative intent is a matter of law.”); *Carnival Corp., et al. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E.2d 846, (2014); *Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d 46 (1984) (“The trial judge should have held as a matter of law that [plaintiff] had no standing to sue....”).

In deciding a motion to dismiss, the trial court should consider only the allegations set forth in the Complaint. *Plyler v. Burns, et al.*, 373 S.C. 637, 647 S.E.2d 188 (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). A 12(b)(6) motion should not be granted if “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* The question is whether, in the light most favorable to the Plaintiff, and with every reasonable doubt resolved in its behalf, the Complaint states any valid claim for relief. *Id.* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

However, these requirements only apply to “well pled facts,” and the Court is not bound to admit all inferences drawn by Plaintiff, or Plaintiff’s mere conclusions of law. In fact, allegations that are conclusory rather than factual should be disregarded. If a fact is well pled, inferences or conclusions **that may properly arise** therefrom can be deemed true. *Crowe v. Domestic Loans, Inc.*, 242 S.C. 310, 130 S.E.2d 845 (1963) (emphasis added). While a pleading under attack must be liberally construed so that substantial justice is done between the parties, substantial justice is done when inadequate pleadings seeking relief that cannot be obtained are summarily dismissed. *See Moore v. City of Columbia*, 284 S.C. 278, 326 S.E.2d 157 (Ct. App. 1985). Stated another way, where the allegations of the complaint fail to adequately allege a valid or complete cause of action or support a reasonable inference of judgment, judgment upon the pleadings is proper. *See e.g., Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” *Bryant v. State*, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used. *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

Where a statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). Courts must reject a statutory interpretation that would defeat the plain legislative intention. *See Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). Once the legislature has made choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy. *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989).

What a legislature says in the text of a statute is considered the best evidence of legislative intent or will. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *Durham v. United Cos. Fin. Corp.*, 331 S.C. 600, 503 S.E.2d 465 (1998); *Adkins v. Comcar Indus., Inc.*, 323 S.C. 409, 475 S.E.2d 762 (1996); *Worsley Cos. v. South Carolina Dep't of Health & Envtl. Control*, 351 S.C. 97, 102, 567 S.E.2d 907, 910 (Ct. App. 2002); *see also Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970) (Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language.) Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous

statute. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000); *Bayle*, 344 S.C. at 122, 542 S.E.2d at 739.

This case also requires the Court to review a SC DHEC regulation, and an Ordinance of Defendant City. But the legal analysis of those is the same as the Court must use for statutory construction. Regulations are interpreted using the same rules of statutory construction. *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). Ordinances are also subject to the standard rules of statutory construction. *Olds v. City of Goose Creek*, 424 S.C. 240, 818 S.E.2d 5 (2018).

Plaintiff, a college,⁵ certainly has grades higher than twelfth. Plaintiff does not in any way allege or argue that it does not have grades “no higher than the twelfth.” The express terms of S.C. Code Ann. 59-1-150 do not include a college within its definition. In fact, the South Carolina General Assembly used words that expressly exclude any institutions of higher learning, such as Plaintiff, from the definition of “secondary school.” This Court clearly must assume that the General Assembly chose its words carefully, and the language it used is clear and unambiguous. The South Carolina General Assembly excluded Plaintiff and other colleges by saying that a secondary school cannot have grades higher than twelfth. Legislative intent is clear in this case.

Although not important to the Court’s decision, Plaintiff’s website states Plaintiff is a “two-year community/technology college,” and that since its founding, has provided “post-secondary” programs. So even Plaintiff does not hold itself out as a “secondary school;” it holds itself out as a college, and “post-secondary” school. Therefore, there is no set of allegations plead or argued

⁵ See Plaintiff’s Memorandum of Law, Page 1, and of course, Plaintiff’s name.

by Plaintiff that would in any way allow it to be classified as a “secondary school” under state law, and therefore it is not entitled to the spacing requirements in S.C. Regs. Ann. 61-93.2624.

The same logic applies to Defendant City of Conway Ordinances. In its Unified Development Ordinance (“UDO”), Section 5.1.32(3)(b), an outpatient treatment facility such as the one planned by Defendants, cannot be located within 1,000 feet of an “educational facility.” Per Section 2.2.1 of that same UDO, an “educational facility” is defined as one meeting the “state requirements for elementary and secondary education,” which is discussed above. Therefore, Defendant City’s Ordinances also do not allow any relief for Plaintiff.

The Court applauds Plaintiff’s dual enrollment program, and has no doubt it provides wonderful opportunities for students who are able to attend. But simply allowing high school students to get a taste of the college experience, and take some college-level classes on Plaintiff’s campus, does not make Plaintiff a “secondary school” under state or local law.

Even if “college” is not defined in the statutory scheme discussed above, any reasonable and common definition of “college” would include “higher learning,” meaning including grades higher than the twelfth. When faced with an undefined term, the court must interpret the term in accord with its usual and customary meaning. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994); *Hudson*, 336 S.C. at 246, 519 S.E.2d at 581; *see also Santee Cooper Resort v. South Carolina Pub. Serv. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989). Again, Plaintiff does not allege or argue that it only has grades twelfth or lower. Doing so would defy logic.

B. Standing

In addition to the statutory construction analysis above, Plaintiff lacks standing to bring this action. In its Complaint and Memorandum of Law in Opposition to Defendant’s Motion to Dismiss, Plaintiff states it hosts “students from various high schools throughout the County.”⁶ Thus, Plaintiff admits these are high school students. It is important to note the Horry County School District is not a party to this lawsuit. Plaintiff does not allege that it gives diplomas to those students. While those students take some classes at Plaintiff’s campus, those students are Horry County School District students, and Plaintiff still has grades higher than twelfth.

Standing to sue is a fundamental requirement in filing an action. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). For a party to have standing, three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Sea Pines Ass’n for the Prot. of Wildlife v. S.C. Dep’t of Natural Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291–92 (2001). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.* Plaintiff does not satisfy the first element. Because Plaintiff has grades higher than twelfth, Plaintiff at best alleges only a generalized grievance suffered by the public as a whole, or an injury that may be suffered by another entity, and fails to allege any particularized harm to itself that is allowed relief under the law.

Standing may be acquired: (1) by statute; (2) under the principle of “constitutional standing; or (3) via the “public importance” exception to general standing requirements.

⁶ See Plaintiff’s Memorandum of Law, Page 1.

Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). In its Motion to Reconsider, Plaintiff alleges it has standing under the “public importance” exception.⁷

South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where “an issue is of such public importance as to require its resolution for future guidance. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n, et al.*, 407 S.C. 67, 753 S.E.2d 846 (2014) (citing *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Whether the exception applies in a particular case turns on whether resolution of the dispute is needed for “future guidance.” *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). Importantly for the case at hand, if the claims asserted by Plaintiff “could be brought by other parties who can show the required injury,” Plaintiff does not have standing. *See Carnival Corp.*, 407 S.C. at 81.

The Horry County School system, as having grades no higher than twelfth, might be a possible party that may be able to show the required injury to confer standing. However, as stated above, it is not a party to this action. With no injury suffered by Plaintiff that can be afforded relief under the law, Plaintiff lacks standing.

III. PLAINTIFF’S CAUSES OF ACTION

Plaintiff’s First Cause of Action requests a declaratory judgment that the spacing requirement in Defendant City’s Code of Ordinances preempts the spacing requirement under state law. Because Plaintiff is not protected by either spacing requirement, Plaintiff seeks an advisory opinion from the Court. Courts do not issue advisory opinions. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004).

⁷ Plaintiff is not an association, and does not allege associational standing.

Plaintiff's Second Cause of Action asks the Court to declare Plaintiff entitled to the spacing protection under Defendant City's Code of Ordinances. Plaintiff's Third Cause of Action seeks a declaratory judgment that any variance granted by Defendant City either was not granted, or if granted, was unlawful. The discussion above shows that neither is possible based on the clear and unambiguous language in the applicable ordinances.

Plaintiff's Fourth Cause of Action asks for a declaratory judgment declaring that Plaintiff is a secondary school under state law. As discussed above, the Court cannot grant this requested relief based on clear statutory language.

Plaintiff's Fifth Cause of Action asks for a declaratory judgment as to the spacing requirement under state law. Because the Court has already ruled that Plaintiff is not a secondary school under state law, this would be another advisory opinion.

Plaintiff's sixth cause of action asks for an order enjoining the establishment of any opioid treatment center on Defendants' property. Defendant has not shown it is entitled to any relief under its Complaint; therefore, any type of injunctive relief would be improper for the Court to consider.

Finally, Plaintiff's seventh cause of action asks for attorney's fees and costs under S.C. Code Ann. 15-53-100. Because Plaintiff was not the prevailing party, this cause of action is moot.

IV. CONCLUSION

The Court is very mindful of the issues involved in this case, and their sensitive nature. However, the law is clear and unambiguous, which leaves the Court no ability to rule otherwise. If the South Carolina General Assembly chooses to change the definition of "secondary school"

under state law, it is obviously free to do so. However, this Court is bound to defer to the intent of the General Assembly as proclaimed by the words used in its statutes.

“Courts are limited to resolving cases and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances.” *Id.* Generalized harm, as alleged here, is to be remedied by the legislative and executive branches. “If existing laws and regulations or their enforcement fail to protect the public from harm, it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box.” *Id.*

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants’ Motion to Dismiss is granted, and Plaintiff’s Amended Complaint be dismissed with prejudice.⁸

IT IS SO ORDERED!

[PREPARED FOR ELECTRONIC SIGNATURE]

⁸ Plaintiff generically asked the Court at the hearing whether it could amend the Complaint. In its Motion to Reconsider, Plaintiff makes the same generic request. However, at no point has Plaintiff presented to the Court any proposed changes that would cure the identified deficiencies. *Paradis v. Charleston C’nty School Dist. et al.*, 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018), *rev’d on other grounds (citing Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) (“A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.”)) Here, the issue is futility. Futility is a main reason for denying the opportunity to amend. Even though not made by Plaintiff, a trial court may deny a motion to amend if the amendment would be clearly futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), *rev’d*, 401 S.C. 1, 736 S.E.2d 242 (2012) (“Although leave to amend should generally be ‘freely given,’ ... it may be denied where the proposed amendment would be futile.”) *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 826 S.E.2d 585 (2019). Plaintiff has not offered any allegations or facts to show that it does not contain grades higher than twelfth. Therefore, any motion to amend would be futile.



Horry Common Pleas

Case Caption: Horry Georgetown Technical College VS Claycon Pharma Conway
Re LLC , defendant, et al

Case Number: 2023CP2606249

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-04-24 14:04:29 page 12 of 12

FILED ELECTRONICALLY FILED -- 2024 APR 26 10:03 PM -- HORRY -- COMMON PLEAS -- CASE#2023CP2606249

EXHIBIT B

Horry Georgetown Technical College
PLAINTIFF(S)

Claycon Pharma Conway Re LLC 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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:

Motion to Dismiss by defendants Claycon Pharma Conway Re LLC, Pathway Treatment Center, LLC and Pathway Clinic LLC is GRANTED.

Attorney Douglas Zayicek is to prepare a formal order.

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 03/26/2024 .

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.



Horry Common Pleas

Case Caption: Horry Georgetown Technical College VS Claycon Pharma Conway
Re LLC , defendant, et al
Case Number: 2023CP2606249
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-03-26 12:28:31 page 3 of 3

finding that HGTC's Facility, located at 250 Allied Drive, is a public or private secondary school within the meaning of S.C. Code Ann. Regs. 61-93.2624 (2020)." (See Complaint, ¶ 33).

In the Order Granting Defendants Motion to Dismiss, the Court rules on HGTC's Second Cause of Action and Third Cause of Action together, finding that "neither is possible based on the clear and unambiguous language in the applicable ordinances." Pertaining to HGTC's Fourth Cause of Action, the Court ruled that it "cannot grant this requested relief based on clear statutory language." (See Order Granting Defendants Motion to Dismiss). Both of these rulings address the merits of HGTC's claim. However, if HGTC lacks standing to bring this Action, this court lacks subject matter jurisdiction to make these rulings. Accordingly, HGTC asks that this Court alter its judgement to remove any rulings on the merits of HGTC's Cause of Action.

BOYKIN & DAVIS, LLC

By: Christopher R. Acre

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Attorneys for Plaintiff Horry-Georgetown
Technical College

April 26, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COUR OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	C/A NO.: 2023-CP-26-06249
)	
Horry-Georgetown Technical College,)	
)	
Plaintiff,)	
)	
v.)	
)	
Claycon Pharma Conway RE, LLC,)	
Pathway Treatment Center, LLC, Pathway)	
Clinic LLC, and City of Conway,)	
)	
Defendants.)	

MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION TO RECONSIDER, AND AMENDED MOTION TO RECONSIDER AND MOTION FOR LEAVE TO AMEND COMPLAINT

Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC (“Defendants”), moved for an Order dismissing Plaintiff’s Amended Complaint (“Complaint”). The matter was before the Court via WebEx on Tuesday, March 26, 2024, at 9:30 a.m. At that time, the Court granted Defendants’ Motion to Dismiss.

On April 5, 2024, Plaintiff filed a Motion to Reconsider and Motion for Leave to Amend Complaint, which was delivered to the Court via email. On April 26, 2024, the Court filed an Order granting Defendants’ Motion to Dismiss. On that same day, April 26, 2024, Plaintiff appears to have filed an Amended Motion to Reconsider and Motion for Leave of Court to Amend Complaint.

The Court’s Order of April 26, 2024, addresses all the issues raised by Plaintiff in Plaintiff’s April 5, 2024, Motion to Reconsider. Defendants take this opportunity to address the Amended Motion filed by Plaintiff on April 26, 2024.

First, the issues raised in Plaintiff's Amended Motion were never addressed at the hearing. Plaintiff's alleged standing based on being a "property owner" is being raised for the first time in Plaintiff's Amended Motion. A party cannot use Rule 59(e) to present something to the Court for the first time. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.")¹

Also, the Court's Order completely addresses the issue of standing, and the statutory language involved in this action. The State Regulations do not allow an outpatient treatment facility within 500 feet of a school containing grades "no higher than twelfth." Plaintiff still has not provided any evidence that it contains only grades twelve or lower. Nothing involving the statutory construction analysis depends on whether Plaintiff is a "property owner," or not.

Second, the undersigned has no information to indicate Plaintiff complied with the terms in SCRCF, Rule 59(g) with regard to Plaintiff's Amended Motion. SCRCF Rule 59(g) states

Judge to be Provided with Copy. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

The undersigned has not received anything showing Plaintiff complied with Rule 59(g) with regard to the Amended Motion. If there is no evidence showing Plaintiff provided Judge Culbertson a copy of the Amended Motion within ten days of April 26, that is alone sufficient reason to deny the Amended Motion. *See Smith v. Fedor*, 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017). In *Smith*, the Court of Appeals stated:

¹ It must be noted the property Plaintiff refers to is owned by the Horry Georgetown Technical College Commission.

The trial court properly denied Smith's motion for reconsideration because he failed to provide the motion to the trial judge within ten days of filing. Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.... Accordingly, the trial court properly denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge.

Third, the Court did not rely on any documents outside of the pleadings in its ruling. However, it must be noted Plaintiff asks the Court in its Amended Motion to specifically go to Plaintiff's website and review the Frequently Asked Questions page.

Finally, and most importantly, Plaintiff cites S.C. Code Ann. Regs. 61-93.2624, as controlling authority. That Regulation, along with S.C. Code Ann. 59-1-150, provides that no outpatient facility may be within 500 feet of the schools defined in 59-1-150. Not only does Plaintiff fail to provide any evidence that it is one of the protected schools, it is of the utmost importance to note: (1) Plaintiff alleges it is the owner of properties at 250 Allied Drive, and Plaintiff's main campus off of Highway 501; and (2) Defendants' property is at 1800 Husted Rd. **However, Plaintiff does not even allege that either of its properties are within 500 feet of Defendants' property. Because they are not.**

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

Attorneys for Defendants Claycon Pharma Conway
RE, LLC, Pathway Treatment Center, LLC, and
Pathway Clinic LLC

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Dated: May 24, 2024.

RECEIVED

May 28 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-06249

Horry-Georgetown Technical College.....Appellant,

v.

Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC,
Pathway Clinic LLC, and City of Conway.....Respondents,

NOTICE OF APPEAL

Horry-Georgetown Technical College appeals the order [judgment] of the Honorable Benjamin H. Culbertson, dated April 24, 2024. Appellant received written notice of entry of this order [judgment] on April 26, 2024.

May 28, 2024.

By: 

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

May 28 2024

SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-06249

Horry-Georgetown Technical College.....Appellant,

v.


Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC,
Pathway Clinic LLC, and City of Conway.....Respondents,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the counselors of record listed below,
by electronic mail and U.S. Mail a copy of same on May 28, 2024, addressed to:

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May 28 2024

SC Court of Appeals

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May 28, 2024

VIA ELECTRONIC AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Horry-Georgetown Technical College (Appellant) v. Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, Pathway Clinic LLC, and City of Conway (Respondents)
Lower Court C.A. No.: 2023-CP-26-06249

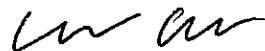
Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- 1) Proof of Service of the Notice of Appeal on the Respondents.
- 2) A copy of the Order Granting Defendants' Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic, LLC'S Motion To Dismiss, or Judgment on the Pleadings which is to be challenged on appeal.
- 3) Filing fee of \$250.

Should you have questions, please contact me directly.

Sincerely,



Christopher R. Acre

/aeg

Enclosures

cc: Douglas Michael Zayicek, Esq. (w/encls.)
Robert S. Shelton, Esq. (w/encls.)
David Richard Sligh, Esq. (w/encls.)
Charles J. Boykin, Esq. (w/o encls.)
Kenneth A. Davis, Esq. (w/o encls.)
Tierney F. Goodwyn, Esq. (w/o encls.)

ROA 0097

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF HORRY) C.A. NO. 2023-CP-26-06249

HORRY-GEORGETOWN TECHNICAL COLLEGE)
Plaintiff,)
versus)
)
CLAYTON PHARMA CONWAY RE, LLC,)
PATHWAY TREATMENT CENTER, LLC,)
PATHWAY CLINIC, LLC and)
CITY OF CONWAY)
Defendants)

H E A R I N G

DATE: March 26, 2024
TIME:
LOCATION: South Carolina Circuit Court 15
JUDGE: Benjamin H. Culbertson

TRANSCRIBED BY: Lynda Monroe

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Attorney for the City of Conway

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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PROCEEDING

THE COURT: All right. Is this everyone?

MR. ACRE: I believe so, Your Honor.

THE COURT: So this is 2023-CP-26-06249, Horry-Georgetown Technical College versus Clayton Pharma Conway Re, LLC, and others. According to my roster, this is a motion to dismiss by the Defendant.

Let's go around, give your names, capacity in which you're appearing at the hearing and where you're physically located at this time. All right. We'll start -- who wants to go first? Mr. Boykin?

MR. BOYKIN: Yes, Your Honor. Charles Boykin. I'm representing Horry-Georgetown Technical College. I'm here with Chris Acre and we are in Columbia, South Carolina, Your Honor.

THE COURT: All right. Mr. Zayicek?

MR. ZAYICEK: Your Honor, I represent all Defendants except for the City of Conway.

THE COURT: All right. And Mr. Sligh.

MR. SLIGH: Good morning, Your Honor. David Sligh here on behalf of the City of Conway from the Sligh in Conway, South Carolina.

THE COURT: All right. And Mr. Zayicek, where are you located now?

MR. ZAYICEK: I apologize, Your Honor. I'm in Myrtle

1 Beach.

2 THE COURT: Okay. And this is your motion?

3 MR. ZAYICEK: It is, Your Honor. Defendant's motion to
4 dismiss.

5 THE COURT: All right. Let me hear from you.

6 MR. ZAYICEK: Thank you, Your Honor. Good morning. As
7 I said this is Defendant's motion to dismiss based on basic
8 rules of statutory construction that I'll get into in just a
9 minute.

10 My clients have been given a certificate of need by
11 South Carolina DHEC for an opioid treatment center for its
12 property in the City of Conway. My clients property is
13 located in the Atlantic Center which is an industrial park
14 just off of Highway 501. I'm not sure if Your Honor knows
15 where that is. Let me see if I can share my content. I
16 don't know if that's appearing or not.

17 THE COURT. You're there. I see it.

18 MR. ZAYICEK: Okay.

19 THE COURT: Does everyone else see it? I can see it.

20 MR. ZAYICEK: Okay. Is it full screen, Your Honor?

21 THE COURT: No.

22 MR. ZAYICEK: I'm not sure -- if I can enlarge it.

23 THE COURT: That's got the whole map. Well, now it
24 enlarged it.

25 MR. ZAYICEK: Okay. And I'll go quickly, the location.

1 THE COURT: Okay.

2 MR. ZAYICEK: I just want to give a basic location to
3 Your Honor so Your Honor has a little bit of reference. This
4 is on 501 if Your Honor's going into the City of Conway.
5 It's on the right-hand side in an area known as the Atlantic
6 Center. Again, it's an industrial park as you can see on
7 this map and it's not really to size but Horry-Georgetown
8 Tech would be on the left-hand side with Coastal Carolina.

9 My Client's property is on the right-hand side, up in
10 the upper, left-hand corner. I don't know if Your Honor can
11 see where my mouse hand is?

12 THE COURT: I can, I can.

13 MR. ZAYICEK: But it's right about in here
14 (indicating). Again, this is not to scale but Horry-
15 Georgetown Tech has two buildings up here. The plumbing
16 service technology building and the building over here
17 (indicating) called the advanced manufacturing center. A
18 little better picture of the property is on the next page.
19 Again, you can see Horry-Georgetown Tech is across the
20 street. My Client's property is here (indicating). I can't
21 remember if this is the plumbing building or the technology
22 building. And then the other building that's at issue here
23 is where my cursor is now. So that's a general area of the
24 properties that are involved here.

25 As I said, the South Carolina DHEC has granted my

1 Client a certificate of need for this location. The
2 Plaintiffs have not named DHEC in this litigation which I
3 think is pretty important. In addition to the certificate of
4 need, the City of Conway has given a variance for this
5 location because my Client's property is arguably within the
6 restricted distance of a religious institution.

7 I don't know if Your Honor has ever noticed it as
8 driving to Conway, on the right-hand side, there's a little
9 white building called the Wedding Chapel by the Sea for which
10 the City has deemed a religious institution and a variance
11 has been given as to that.

12 Now, Your Honor, Plaintiff's entire case, based on the
13 erroneous assertion that it is a secondary school and state
14 law does not allow an opioid treatment center within 500 feet
15 of a secondary school. The amended complaint in paragraph
16 one specifically alleges that Plaintiff is a secondary school
17 and that in paragraphs 27 and 33 and the peripheral relief,
18 the Plaintiff asks Your Honor to declare Horry-Georgetown
19 Tech to be a secondary school and, therefore, entitled to the
20 500-foot separation requirement between it and an opioid
21 treatment center.

22 Now, Your Honor, the (inaudible) go against its own
23 marketing. I'm going a little bit outside of the pleadings
24 here, Your Honor, but this is just for background. It's
25 really not relevant to the finding in the case. But Horry-

1 Georgetown's website, Your Honor, specifically says that it's
2 a two-year community and technical college. It also, in the
3 second paragraph, says it provides a post-secondary
4 education. So it's own marketing says it is not a secondary
5 education, whatsoever. It does not hold itself out to be a
6 secondary school. But more importantly, Your Honor, get into
7 the substance of the motion, Horry-Georgetown Tech is not a
8 secondary school under state law.

9 Going back to the top of the document, the regulation
10 and the statute and the City's ordinances I'm going to
11 discuss next, Your Honor. The first is South Carolina
12 Regulation 61-93-2624, and I've cut out all the subsections
13 before that. It specifically states, in subsection D(2),
14 that facilities providing an opioid treatment program shall
15 not operate within 500 feet of, number two is, the property
16 line of a public or private elementary or secondary school.

17 So the question is, then, what is a secondary school
18 under state law? And the General Assembly has specifically
19 defined what a secondary school is under state law. The next
20 page would be the second page in the attachment is code
21 section 59-1-150. Can Your Honor see that?

22 THE COURT: I can see down through subsection 3.

23 MR. ZAYICEK: Yeah, okay. I will scroll down in just a
24 second. As Your Honor will see in the title to the statute
25 it has all the schools in quotes including the fourth one

1 being secondary school. So the General Assembly has, in this
2 statute, defined what a secondary school is and if we scroll
3 down, a secondary school in subsection 4 means either a
4 junior high school or a high school. Obviously, Plaintiff is
5 not a high school but to go a little further, a junior high
6 school is synonymous with a high school in subsection 5 but
7 under 6, a high school is any public school which contains
8 grades no lower than the 7th and, most importantly, no high
9 than the 12th. Obviously, the Plaintiff is a college,
10 obviously it has grades higher than 12th grade.

11 So what the Plaintiff wants you to do is to ignore
12 these words no higher than the 12th. As Your Honor know, the
13 basic rules of statutory construction is to ascertain and
14 give effect of the intent of the legislature. It has to be
15 assumed that the legislature knew the words that it was using
16 and Your Honor has to be -- apply those as to give effect to
17 all of them.

18 So there is no set of facts, Your Honor, that the
19 Plaintiff can show to show that they have no grades no higher
20 than the 12th. So it's a basic rule of statutory
21 construction, under state law, that college is not a
22 secondary school. A secondary school is a junior high or a
23 high school and it can contain grades no higher than 12.
24 Very simple, very straightforward, they're not ambiguous in
25 any way, shape or form. And, again, what the Plaintiff has

1 done, in its complaint, is it just says that it is a
2 secondary school and in its peripheral relief, it asks the
3 Court to order that it is a secondary school regardless of
4 this language.

5 Now, under the City of Conway's ordinances, which also
6 factor into this, Your Honor --

7 THE COURT: Sure.

8 MR. ZAYICEK: -- the college is not an educational
9 facility as well. The City's ordinance, and I don't want to
10 jump in and step on Mr. Sligh's feet, but the City's
11 ordinances and the unified development ordinance, section
12 5.1.32, No. 3, the location. Outpatient treatment facilities
13 for drug and alcohol abuse shall not be located closer than,
14 it's not in A but it's in B. It says 1,000 feet from any
15 religious institution, daycare facility, public or private
16 educational facility.

17 So then the question becomes what is the definition of
18 an education facility under the City of Conway's ordinances
19 and that is very clearly spelled out in section 2.2 of the
20 City's unified zoning ordinance. It says an educational
21 facility is any building or part, thereof, which is designed,
22 constructed or used for educational or instruction in any
23 branch of knowledge and, here's the critical part, and meets
24 the State requirements for elementary and secondary
25 education.

1 So neither under state law or the City of Conway's
2 ordinances is Horry-Georgetown Technical College a professed
3 post-secondary school with college in its name. It is not a
4 high school. It does not provide secondary education. It
5 has grades higher than the 12th grade. So under the basic
6 rules of statutory construction, it is not a secondary
7 school, it is not entitled to be determined to be a secondary
8 school because due to violate the rules of statutory
9 construction and, again, it's presumed that the General
10 Assembly knew what it wanted and what it said when it said a
11 secondary school can contain no grades higher than the 12th.

12 To quote or actually to paraphrase Mr. Sligh, when I
13 talked to him the other day he gave a great example. Just
14 because, I don't know if Your Honor watched TV back in the
15 day, but just because Doogie Houser or Sheldon Cooper took
16 college classes that didn't convert the college into a high
17 school. So they are not a high school. There's no set of
18 facts or circumstances that can show that they are a high
19 school. So their complaint should be dismissed as a matter
20 of law.

21 And, Your Honor, I've got some other arguments but I
22 won't bring them up unless the Plaintiff goes into them. So
23 the Court certainly doesn't need me to go into any kind of
24 lengthy discussion about the needs that the public has for
25 these treatment facilities to help the people that are in

1 desperate need of help and try to get off of substance
2 abuses.

3 My Client owns four of these facilities. They are
4 among the most tightly regulated businesses in South
5 Carolina. They have every intent to be a good neighbor. The
6 church has not complained. I think it's important, Your
7 Honor, to point out Horry County School District is not party
8 to this litigation. For some reason the Horry-Georgetown
9 Technical College is trying to prevent my Client from
10 exercising its rights but in no circumstances is it a
11 secondary school and it's not entitled to protection under
12 the state law.

13 THE COURT: All right.

14 MR. ZAYICEK: Thank you, Your Honor.

15 THE COURT: Thank you. Mr. Sligh, any argument, one
16 way or the other, on this Defendant's motion?

17 MR. SLIGH: Your Honor, we just believe that while this
18 is Mr. Zayicek's motion, that we'll be dispositive of the
19 whole case and we are -- we support his motion and the
20 substance of it.

21 THE COURT: All right. Mr. Boykin, let me hear from
22 you, please.

23 MR. BOYKIN: Yes, Your Honor. Mr. Acre will be making
24 our argument.

25 THE COURT: All right.

1 MR. ACRE: Good morning, Your Honor. So to Mr.
2 Zayicek's first point, it's my understanding that Clayton
3 never actually received a certificate of need. What happened
4 was they were, essentially, approved but then the legislature
5 amended the certificate of need requirement so they were
6 never issued one, but they don't need one. So the
7 certificate of need is, essentially, irrelevant at this
8 point.

9 But they talk about the definition of a secondary
10 school. The definition that they're citing is from the
11 school code which was designed to establish the school
12 districts. It's an organizational statute that it's just to
13 create the school districts and to say how they operate. It
14 doesn't have anything to do with public health. And that
15 statute, the one that he's citing, was enacted in 1978 or it
16 was last revised in 1978.

17 They had never contemplated this idea of dual
18 enrollment at that point. Dual enrollment never began until
19 2005, and they also didn't contemplate the concept that there
20 would be an actual high school on the college campus, which
21 there is, and the regulation -- that definition, regardless
22 of when it was enacted, it doesn't apply to the DHEC
23 regulation. The statute is a statutory definition for the
24 establishment of schools. It's not a statute that enables
25 DHEC to make these regulations regarding where an opioid

1 treatment center can be. So it's not applicable. And when
2 you look at the overall point of or the intent of the statute
3 and of the ordinance that Mr. Zayicek cited, it's very
4 apparent that there's a recognition by the legislature and by
5 the City of Conway that there needs to be a buffer zone
6 between (inaudible) that are regularly occupied children and
7 adolescents and these opioid treatment centers.

8 For instance, in the ordinance it doesn't just say from
9 a -- an opioid or from an educational facility. It says from
10 -- I think it says public or private educational facility,
11 public parks, public library, cemetery or any motion picture
12 establishment which shows G or PG rated movies. This clearly
13 reflects an intention to not expose adolescents to an opioid
14 treatment center and that's why they put the buffer there.

15 Additionally, the definition in the ordinance that Mr.
16 Zayicek cited it says any building -- an educational facility
17 is any building or park, thereof, which is designed,
18 constructed or used for education, et cetera, so -- but it
19 says any building or part, thereof, of a secondary
20 educational facility. There is a state-recognized high
21 school on Horry-Georgetown's campus. That its students
22 attend the building. They go to the advanced manufacturing
23 center for classes. That is a part of that state-recognized
24 high school.

25 THE COURT: What's the high school on the campus?

1 MR. ACRE: It's called HCS, Early College High.

2 THE COURT: Do you get a diploma from Early College
3 High?

4 MR. ACRE: Yes, Your Honor. I believe so.

5 THE COURT: I mean, is that a separate high school --

6 MR. ACRE: Yes, Your Honor.

7 THE COURT: -- located on the Horry-Georgetown -- it's
8 called what? Early --

9 MR. ACRE: HCS, Early College High.

10 THE COURT: Wait. Horry -- spell it.

11 MR. ACRE: Yeah, H-C-S, Early College High.

12 THE COURT: What is the HCS for?

13 MR. ACRE: I have no idea, Your Honor. I looked it up
14 and that was how it was listed on their website and I
15 wondered the same thing.

16 THE COURT: I mean, it -- I mean, is it a high school?

17 MR. ACRE: Yes, Your Honor. I spoke with them and that
18 was actually how I --

19 THE COURT: Who's the principal? I mean, that's the
20 thing. Are they -- is it like Mr. Zayicek says, they're
21 affiliated with other high schools and the students come to
22 the campus to take classes or is this a separate high school
23 located on the campus of Horry-Georgetown Tech? How do they
24 -- I mean, is it a public --

25 MR. ACRE: It's a public high school, Your Honor. It's

1 not -- what Mr. Zayicek's referring to, that's the dual
2 enrollment program. Dual enrollment program is where high
3 schoolers come to Horry-Georgetown to take classes. This is
4 an actual high school on the campus of Horry-Georgetown. It
5 has grades 9 to 12.

6 THE COURT: Is it a public high school or a private
7 high school or --

8 MR. ACRE: Yeah, it's public, Your Honor. I believe
9 it's -- it may be lottery funded in some way. I think it
10 requires a scholarship of some sort or, I guess, tuition.

11 THE COURT: It does -- I mean, does it operate under
12 Horry-Georgetown Tech?

13 MR. ACRE: It operates under the school board, school
14 district, of -- from what I understand, the way that I found
15 more information on it was on, I believe, the school
16 district's website. It was listed as one of the high schools
17 in the area.

18 THE COURT: Well, why hasn't that high school come
19 forward and contested it? How would Horry-Georgetown Tech
20 have standing to assert this right on behalf of the high
21 school if it's a completely separate entity?

22 UNIDENTIFIED MALE: It's the founder and operator of
23 it.

24 MR. ACRE: Well, Horry-Georgetown was the -- they
25 founded the high school and Horry-Georgetown is the party

1 that's really -- they're an aggrieved party here, as well,
2 Your Honor. They may not be the only aggrieved party, but
3 they are the party. They do have something (inaudible).

4 THE COURT: All right. Anything else? All right, Mr.
5 Zayicek, anything in reply?

6 MR. ZAYICEK: Yes, sir. Very briefly Your Honor. I
7 have not seen any allegation in the complaint or heard any
8 facts, whatsoever, to show that this is a separate high
9 school licensed by the State. In fact, as counsel just
10 indicated, he went to the Horry County school website to find
11 out what classes are even offered. I'm not sure how it -- if
12 it's a separate high school run by the college, how the
13 college wouldn't know what the classes are.

14 I had printed off here the early -- this is from the
15 Horry County website, Horry County School website. The ECH
16 programs of study and course descriptions. These are English
17 and math and literature under the -- then there are some
18 sciences and social studies. It's biological sciences,
19 anatomy, anatomy and physiology and college chemistry I and
20 II and I believe those are -- those are the only classes that
21 are offered by Horry County students at Horry-Georgetown Tech
22 through this early college high school program. They get
23 high school credits that can be transferred. They get a
24 degree from their high school. They're bused in from around
25 the county. They are not students at Horry-Georgetown

1 Technical College except for the sole purpose of this dual
2 enrollment program.

3 Your Honor, they -- and I'll point out, specifically,
4 to (inaudible) any fears Your Honor may have. There's no
5 advanced manufacturing classes here. There's no plumbing
6 classes here. There's no welding classes here. They're not
7 letting high school kids near welding torches or anything
8 like that. So the buildings that are being used are, in no
9 way, I don't believe, in any way, shape or form, and, again,
10 I don't think it's necessarily relevant but since counsel
11 brought it up, these are only social studies, math, English
12 classes and some basic anatomy classes. They are not
13 mechanical manufacturing classes or plumbing or welding
14 classes that Horry-Georgetown Tech it has in these buildings.

15 I would also point out, Your Honor, that, again, just
16 because some high school kids attend a college does not
17 convert the college into a high school. A secondary school,
18 by State definition, can contain no grades higher than 12.
19 So -- and it just doesn't. The Plaintiff does not give any
20 other definition, whatsoever, under State law. So I'm not
21 sure how the definition of a secondary school in Title 51,
22 which covers schools in South Carolina, how that is not
23 relevant or appropriate.

24 Now, if the General Assembly wants to change the law,
25 it certainly can, it can certainly change the language in any

1 way, shape or form it wants, but we don't believe that
2 there's any issue, under the rules of statutory construction.
3 Just because some kids go there, it does not convert the
4 college into a high school. I don't believe it's a separate
5 high school, I don't believe it's a separate principal, they
6 don't get a degree from Horry-Georgetown Tech. They get a
7 degree from their high school. These are just classes that
8 they can attend and as we've shown, they're not classes in
9 advanced manufacturing or plumbing or welding that would be
10 in those two buildings that are at issue. They don't allege
11 that there's a problem with the main campus, Your Honor, it's
12 only these two outbuildings in an industrial park.

13 THE COURT: Do what?

14 MR. BOYKIN: Your Honor, this is Boykin.

15 THE COURT: Yes. Only one person is arguing the motion
16 at a time. I've already heard from you all.

17 MR. BOYKIN: Thank you.

18 THE COURT: All right. All right, Mr. Zayicek, if I
19 can get you to prepare an order that grants the motion to
20 dismiss for the reasons that you set forth. Horry-Georgetown
21 Technical College is not, by statutory definition, a
22 secondary school.

23 Now, I don't know if this HCS Early College High School
24 is a separate entity that is a secondary high school or not.
25 If it is and they may be able -- that school might be able to

1 come forward and assert its right. I don't know that Horry-
2 Georgetown Technical College has the right to assert that on
3 behalf of HCS Early College High School. I suspect that,
4 like you argue, Mr. Zayicek, that this is not a separate high
5 school, but it is a program within Horry-Georgetown Technical
6 College that allows high school students to come for some
7 educational courses. But it does not -- it is not a separate
8 high school that gives its own diploma, has its own
9 graduation, has its own administration, its own principal,
10 its own set of teachers and things of that nature. It may be
11 and if it does exist and I've just never heard of it, then
12 HCS Early College High School, I don't know what that does.
13 Whether they can come forward and assert it just like the
14 church has not come forward and contested it.

15 But put in your order that one of Horry-Georgetown
16 Technical College's arguments was that there is a separate
17 high school on the college campus that is called HCS, Early
18 College High School and my decision is that Horry-Georgetown
19 Technical College does not have standing to assert the relief
20 that that high school might have in this case.

21 All right?

22 MR. ZAYICEK: Yes, sir. Thank you.

23 MR. SLIGH: One question, Your Honor.

24 THE COURT: Yes, sir.

25 MR. SLIGH: The dismissal is without prejudice; is that

1 correct?

2 THE COURT: Well, it's with prejudice as to Horry-
3 Georgetown Technical. Now, this is only as to Mr. Zayicek's
4 Client. Mr. Sligh, it sounds like it might be dispositive of
5 your case but since that's not in front of it, I'm just
6 dismissing this complaint as to Mr. Zayicek's Clients. Okay?

7 MR. SLIGH: Let me ask the question this way, Your
8 Honor. We -- Horry-Georgetown has a right to amend?

9 THE COURT: I mean, I'm dismissing the complaint that's
10 in place now.

11 MR. SLIGH: Okay. That's --

12 THE COURT: Is being dismissed as to Mr. Zayicek's
13 Client.

14 MR. SLIGH: Thank you.

15 THE COURT: All right?

16 MR. SLIGH: Thank you, Your Honor.

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24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED

25 AT 2:05 p.m.)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 15, Horry County, South Carolina, on the 26th day of March, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 1, 2024

Lynda Monroe, Transcriber

HGTC CONWAY CAMPUS

2050 Hwy 501 E, Conway, SC 29526

BUILDING 100

Administration
Finance Department
Marketing Department
Payroll Department
President's Office
Procurement Department

BUILDING 200

Advanced Manufacturing
Barnes & Noble College Bookstore
Classrooms
College Grounds
Deans' Office
Human Resources
Print Shop
Science Labs

BUILDING 300

Civil Engineering Technology
Classrooms
Electronics Technology
Golf & Sports Turf Management Technology

BUILDING 500

Cosmetology

BUILDING 700

Classrooms
CSI Labs

BUILDING 800

Early Care & Education

BUILDING 900

Faculty Offices

BUILDING 1000

Classrooms

Computer Technology
General Business Technology
Office Systems Technology
Science Labs

BUILDING 1100A

Admissions & New Student Advising
Financial Aid/Veterans Affairs
Library
Office of Career Services
Registrar
Services for Students with Disabilities
Student Financial Services
Student Information Center - TECH Central
Student Success & Tutoring Center
Testing Center
Upward Bound
VP for Student Affairs

BUILDING 1100B

Burroughs & Chapin Auditorium
Child Care Development Center
Chomp's Hangout
Chomp's Serene Space
Classrooms
Conference Rooms
@ Public Safety Office
Richardson Art Gallery

BUILDING 1400

Automotive Technology

BUILDING 2000

Advanced Manufacturing Center
250 Allied Drive, Conway

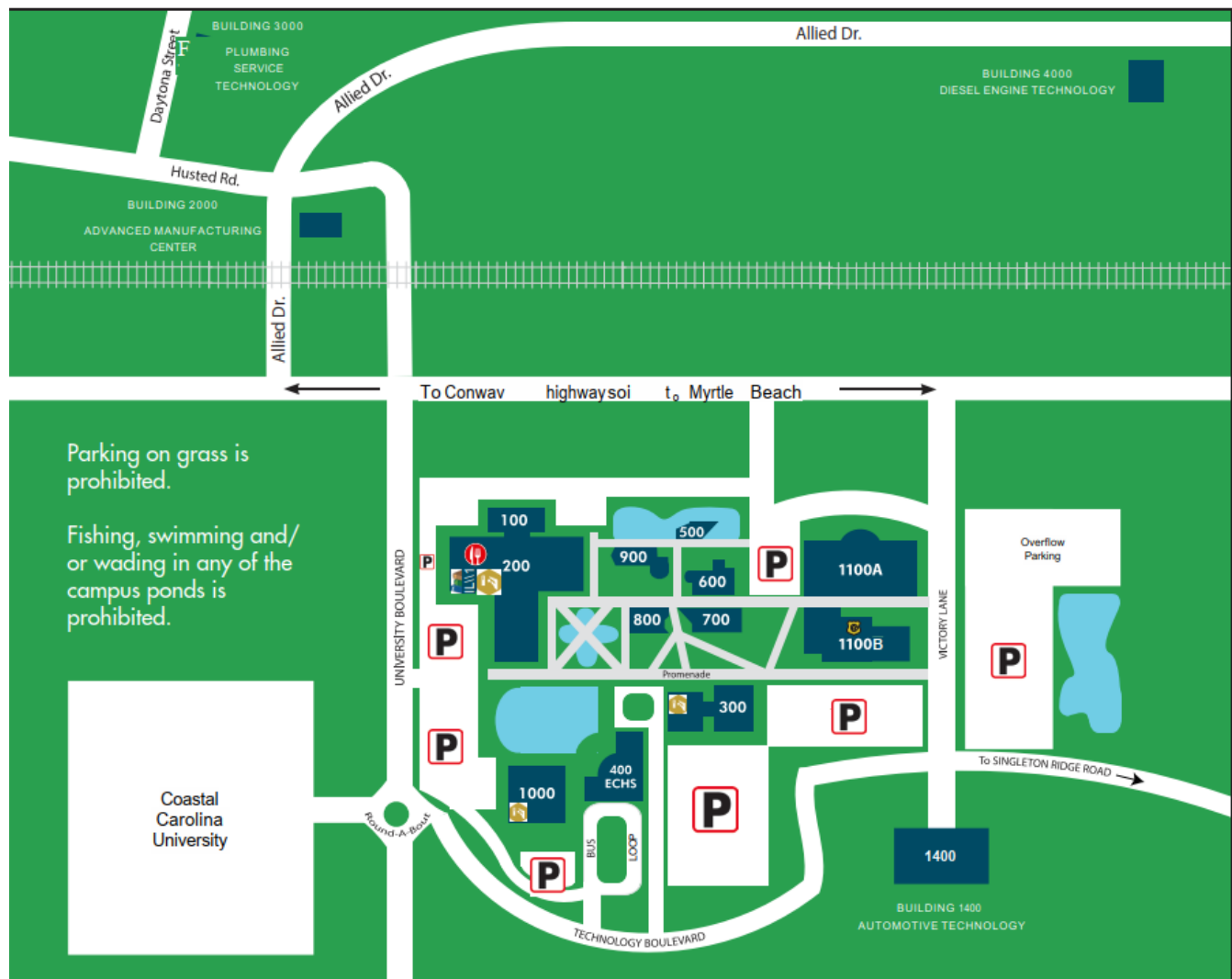
BUILDING 3000

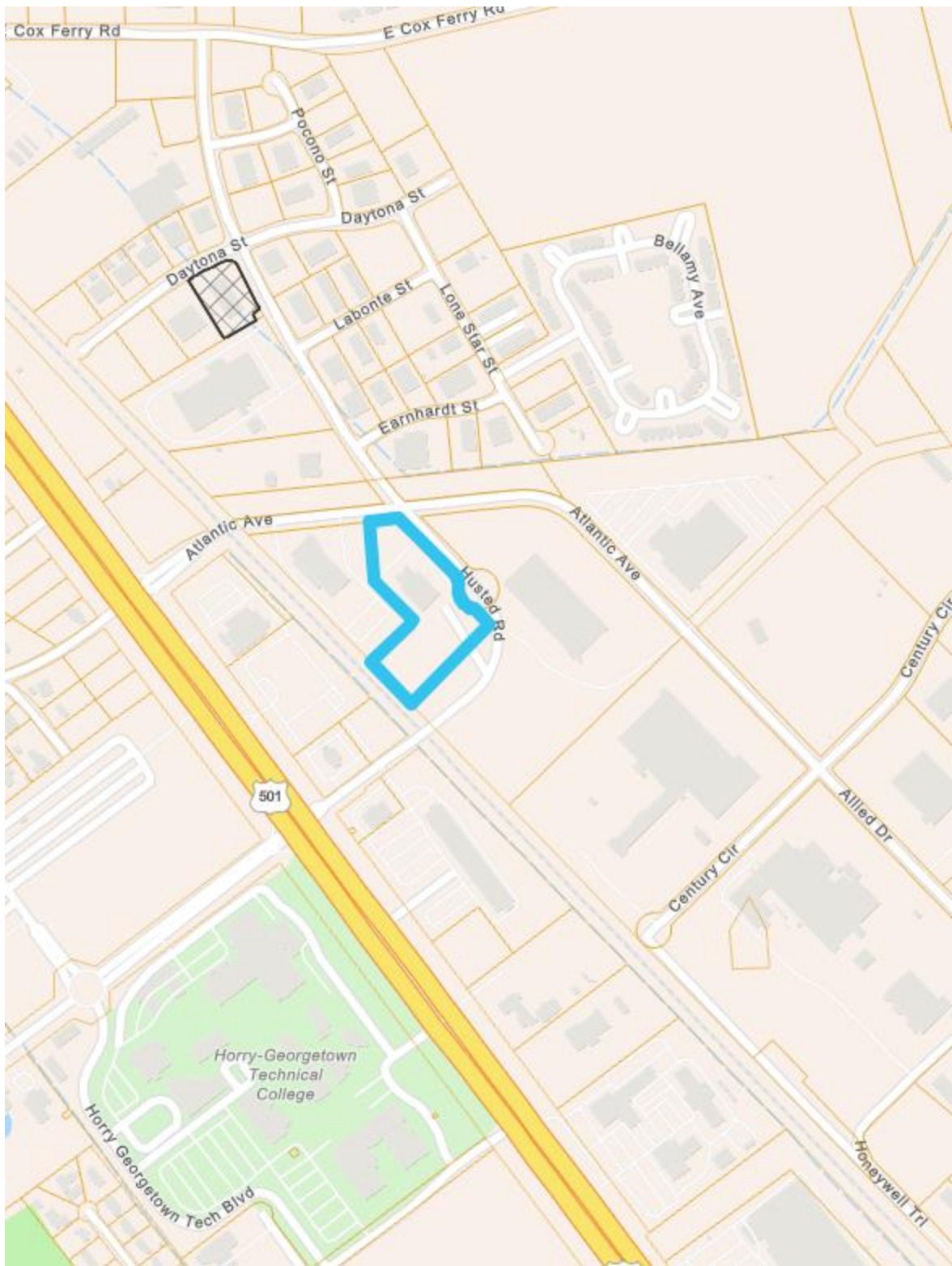
Plumbing Service Technology
209 Daytona Street, Conway

BUILDING 4000

Diesel Engine Technology
470 Allied Drive, Conway

£ Vending (~P) Parking >@! Public Safety





ECH Programs of Study and Course Descriptions

ECH Core Courses		
ENGLISH	ENGLISH	MATHEMATICS
<p>English I College Preparatory 301102CW Prerequisite: None Credit: 1 Unit This course provides a comprehensive study of literature, grammar, composition, vocabulary development, speaking, listening skills, and reference skills. Students must complete a research project. The South Carolina End-of-Course exam will be given to all students.</p> <p>English II College Preparatory 301202CW Prerequisite: English I Credit: 1 Unit This course will continue to build on the skills acquired in English I, with continued focus on literary analysis, interpretation of purpose within a variety of communication formats, extensive reading within different genres, and development of a personal voice in writing.</p> <p>English III College Preparatory 301302CW Prerequisite: English II CP Credit: 1 Unit This course offers an in-depth study of American literature beginning with the Native American period. Students will refine skills in the areas of literary analysis, grammar, composition, research, vocabulary development, and public speaking. In order to receive credit for the course, students must successfully complete a research paper/project.</p> <p>English IV College Preparatory 301402CW Prerequisite: English III Credit: 1 Unit This course offers an in-depth study of British literature. Literary criticism, expository and persuasive writing, critical thinking, vocabulary, and research are emphasized. In order to receive credit for this course students must successfully complete a research paper.</p> <p>ENG 101 English Composition I 3-0-3 Prerequisites: ENG 100 (minimum grade of C) or appropriate placement scores Credit: 1 Unit This course in presents the following topics: a study of composition in conjunction with appropriate literary selections, with frequent theme assignments to reinforce effective writing. A review of standard usage and the basic techniques of research are presented. <i>This course is transferable to public senior institutions as part of the SC Commission on Higher Education Statewide Articulation Agreement.</i></p>	<p>ENG 102 English Composition II Prerequisites: ENG 101 (minimum grade of C) or appropriate placement scores Credit: 1 Unit This course presents the following topics: development of writing skills through logical organization, effective style, literary analysis and research. An introduction to literary genre is also included. <i>This course is transferable to public senior institutions as part of the South Carolina Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>ENG 201 American Literature I 3-0-3 Prerequisites: ENG 102 Credit: 1 Unit This course is a study of American literature from the colonial period to the civil war. <i>This course is transferable to public senior institutions as part of the South Carolina Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>ENG 202 American Literature II 3-0-3 Prerequisites: ENG 102 Credit: 1 Unit This course is a study of American literature from the civil war to the present. <i>This course is transferable to public senior institutions as part of the South Carolina Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>ENG 205 English Literature I 3-0-3 Prerequisites: ENG 102 Credit: 1 Unit This course presents the following topics: the study of English literature from the old English period to the romantic period with emphasis on major writers and periods. <i>This course is transferable to public senior institutions as part of the South Carolina Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>ENG 206 English Literature II 3-0-3 Prerequisites: ENG 102 Credit: 1 Unit This course presents the following topics: the study of English literature from the romantic period to the present, with emphasis on major writers and periods. <i>This course is transferable to public senior institutions as part of the SC Commission on Higher Education Statewide Articulation Agreement.</i></p>	<p>Algebra 1 411104CW Prerequisite: None Credit: 1 Unit This course focuses on the development of your ability to use a variety of representations, tools, and technologies to model mathematical situations in order to solve meaningful problems. The course topics include generalizations, algebraic symbols, matrices, algebraic expressions in problem-solving situations, relationships, equations, in equalities, interpretations, linear functions, systems of linear equations, quadratic functions and data representations. The state Algebra 1 end-of-course test will be given at the completion of the course.</p> <p>Geometry 412102CW Prerequisite: Algebra 1 Credit: 1 Unit This course is the mathematical study of shapes, their properties, and their relationships. Emphasis is placed on student discovery and exploration and on formulating and defending conjectures. Geometry includes an in-depth study of reasoning, polygons, congruence, similarity, right triangles, circles, area, volume, and transformations.</p> <p>Algebra 2 411202CW Prerequisite: Geometry Credit: 1 Unit This course is an in-depth study of functions, patterns, relations, and concepts of number systems. This includes linear, quadratic, exponential, absolute value, radical, and rational functions. Conic sections are also addressed.</p> <p>Algebra 3 Trigonometry 411302CW Prerequisite: Algebra 2 Credit: 1 Unit This course is an extension of concepts taught in earlier courses with emphasis on applications of polynomial, rational, exponential, logarithmic, trigonometric functions. Emphasis is on active participation through modeling, technology lab activities, group activities, and communication in mathematics. This course is a logical choice for students preparing for college level mathematics.</p>

SCIENCES	SOCIAL STUDIES	SOCIAL STUDIES
<p>BIO 102 Biological Science II Prerequisites: Appropriate placement scores Credit: 1 Unit This course is a study of the classification of organisms and structural and functional considerations of all Kingdoms (Particularly major phyla as well as viruses). Vertebrate animals and vascular plants are emphasized. <i>This course is transferable to public senior institutions as part of the South Carolina Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>BIO 112 Basic Anatomy & Physiology Prerequisites: None Credit: 1 Unit This course is a basic integrated study of the structure and function of the human body.</p> <p>BIO 210 Anatomy and Physiology I 3-3-4 Prerequisites: BIO 101 or BIO 102 or BIO 112 or CHM 110 with —C or better Credit: 1 This is the first in a sequence of courses, including intensive coverage of the body as an integrated whole. All body systems are studied. <i>This course is transferable to public senior institutions as part of the SC Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>CHM 110 College Chemistry I Prerequisites: None Credit: 1 Unit This university parallel transfer course is the first course in a sequence which includes the following topics: Study of atomic and molecular structure, nomenclature and equations, properties, reactions and states of matter, stoichiometry, gas laws, solutions and equilibria. <i>This course is transferable to public senior institutions as part of the SC Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>CHM 111 College Chemistry II Prerequisites: CHM 110 (minimum grade of C) Credit: 1 Unit (For students continuing in chemistry) This university parallel course is a continuation of the study of atomic and molecular structure, nomenclature and equations, properties, reactions and states of matter, stoichiometry, gas laws, solutions, and equilibria. Other topics included are kinetics, thermodynamics and electrochemistry. <i>This course is transferable to public senior institutions as part of the SC Commission on Higher Education Statewide Articulation Agreement.</i></p>	<p>Civics for the 21st Century 333502CW Prerequisites: None Credit: 1 Unit The focus of Civics for the 21st Century is to explore the foundations of the American political system and the basic values and principles of American Democracy. Students explore the Civil Rights movement from past to present which will lead into the structure of the federal, state, and local government as outlined by the US Constitution. They will exercise their roles, rights, and responsibilities as citizens by identifying an issue in the community, researching current public policies, writing their own public policy, and creating an action plan to get it passed. Students will study our ever changing economy and learn about the basic principles of money through a financial literary project where they will create budgets, calculate income, and understand the value of insurance, credit cards, student loans, and debt.</p> <p>U.S. History and the Constitution 332002CW Credit: 1 Unit This survey course covers the social, economic and political developments in the United States from the earliest settlement of North America to the present. This span includes the Native Americans, establishment of colonies, creation of a new nation, the U.S. Constitution, territorial expansion to the West, Civil War and Reconstruction, industrialization and immigration of the late nineteenth century, and our nation's role in world affairs in the twentieth and twenty-first centuries. Students will analyze historical documents, understand varying viewpoints, and evaluate the historical interpretation of others. This course is required for graduation. The SC EOC will be given to all students.</p> <p>Government and Economics 3398A2CW Credit: 1 Unit Government and economics is a rigorous course designed. Nine weeks will deal with the U.S. National Government. Students will primarily examine the operation of major American institutions such as the Presidency, the National courts, and Congress. Civil rights, civil liberties and civic responsibilities will also be discussed. The other nine weeks will deal with Economics. Its goal is to increase students' financial literacy and to study the structure of the American economic system. The focus is on economic principles, with an</p>	<p>emphasis on the efficient allocation of resources through the market forces of demand and supply.</p> <p>American Government 333001CH Credit: ½ Unit This course will focus on the Constitution; political beliefs and behaviors; political parties, interest groups, and mass media; the Congress, presidency, bureaucracy, and the federal courts; public policy; and civil rights and liberties.</p> <p>Economics 3350W2CH Credit: ½ Unit This one semester course explores the choices and decisions that people make about how to use the world's limited resources. The goal of this course is to equip the student with knowledge that is strongly rooted in economic principles so that the students will be able to differentiate between economic models, understand issues pertaining to global and national economics, gain insight into choices that businesses must make, and learn the importance of managing personal finances and planning for ones future financial security.</p> <p>HIS 201 American History: Discovery to 1877 Prerequisites: Appropriate placement scores Credit: 1 Unit This course is a survey of U.S. history from discovery to 1877. This course includes political, social, economic and intellectual developments during this period. <i>This course is transferable to public senior institutions as part of the South Carolina Commission on Higher Education Statewide Articulation Agreement.</i></p> <p>HIS 202 American History: 1877-Present Prerequisites: Appropriate placement scores Credit: 1 Unit This course is a survey of U.S. history from 1877 to the present. This course includes political, social, economic and intellectual developments during this period. <i>This course is transferable to public senior institutions as part of the SC Commission on Higher Education Statewide Articulation Agreement.</i></p>

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Sep 30 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court Of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-06249, Circuit Court
Appeals Court Docket No.: 2024-000871

Horry Georgetown Technical College Appellant,

v.

Claycon Pharma RE, LLC, Pathway Treatment Center, LLC,
Pathway Clinic, LLC, and City of Conway Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this **RECORD ON APPEAL** contains no matter which is irrelevant to the appeal.

Dated this 27th day of September 2024.

By: Charles J. Boykin

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PROOF OF SERVICE

I certify that I have served the **RECORD ON APPEAL** on the counsel of record listed below, via electronic mail only on September 27, 2024, addressed to:

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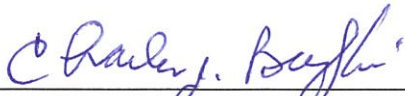
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