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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

Appellate Case No. 2024-000023
Circuit Court Case No. 2022-CP-22-00912

Michael T. Green and Carrie J. Green; Julian P. Rutledge and Melvin L. Rutledge; Patricia S. Grate; Carlethia B. Jenkins; Frances Jo Baker; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc., Plaintiffs

of which Michael T. Green and Carrie J. Green; Julian P. Rutledge and Melvin L. Rutledge; Carlethia B. Jenkins; Frances Jo Baker; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc. are the Appellants,

v.

Georgetown County; Laine CRE, LLC; TriStar Land, LLC; and Samuel J. Nesbit on behalf of the heirs of Will Nesbit, Respondents.

RECORD ON APPEAL

F. Patrick Hubbard (SC Bar #12614)
1525 Senate Street, Room 312
Columbia, SC 29208
(803) 422-6762
ATTORNEY FOR APPELLANTS

Cynthia Ranck Person (SC Bar #105126)
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
ATTORNEY FOR APPELLANTS

H. Thomas Morgan, Jr. (SC Bar #73585)
P.O. Drawer 39, 935 Broad St.
Camden, South Carolina 29021
(803) 432-1992
ATTORNEYS FOR RESPONDENT
GEORGETOWN COUNTY

Matthew E. Pecoy (SC Bar #76657)
28 Broad Street, Suite 204
Charleston, SC 29401
(843) 867-2631
ATTORNEY FOR RESPONDENTS
LAINE CRE, LLC, AND TRISTAR LAND, LLC

September 11, 2024

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Orders/Judgments

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

THIS MATTER came before the Court on June 23, 2023, on two Motions to Dismiss, one filed jointly by Defendants Georgetown County, Defendants Laine CRE, LLC (“**Laine**”), and TriStar Land, LLC, (“**TriStar**”), and one filed by pro se Defendant Samuel J. Nesbit (“**Nesbit**”) on behalf of the heirs of Will Nesbit. Present at the hearing were H. Thomas Morgan, Jr., Esquire, and Sydney J. Douglas, Esquire, appearing on behalf of Defendant Georgetown County, Matthew E. Pecoy, Esquire, appearing on behalf of Defendants Laine and TriStar, and Samuel J. Nesbit, pro se, on behalf of himself as the representative of the heirs of Will Nesbit, and Cynthia Ranck Person, Esquire, appearing on behalf of the Plaintiffs.

After careful consideration of the memoranda submitted by the parties, the arguments raised by counsel, and the relevant authorities, the Court grants Defendant Nesbit’s Motion to Dismiss, and grants Defendants Georgetown County, Laine, and TriStar’s Joint Motion to Dismiss in all actions except as to Plaintiff’s appeal (Cause of Action VII), which may proceed

to the extent allowed by and in accordance with South Carolina law. As the result of this ruling, Defendants Nesbit, Laine, and TriStar are hereby dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

In this case, Plaintiffs seek to invalidate, or in the alternative, appeal, the approval of two site plan proposals for multi-family developments in Georgetown County, South Carolina. Plaintiffs' claims challenge the validity of the ordinances governing the approval process for the applications, the authority of Georgetown County Council to review a decision of the Planning Commission, and the approval of the applications under County and State law.

The two properties that are the subject of the proposed developments are owned by the heirs of Will Nesbit. Compl. ¶ 8. One parcel consists of 6.87 acres of vacant land along Petigru Drive in Georgetown County and the other parcel consists of 13.69 acres of vacant land along Parkerville Road in Georgetown County. Compl. ¶¶ 9–10. On July 19, 2022, the applications were submitted to the Georgetown County Planning Commission for review. Compl. ¶ 40. A public hearing was held on August 18, 2022, at which the Planning Commission voted to deny the applications. Compl. ¶ 2. The recommendation of the Planning Commission to deny the applications was then sent to the Georgetown County Council for review, as is required under Georgetown County Ordinances for these types of developments. Compl. ¶ 4. At a council meeting held September 27, 2022, the County Council voted to approve the applications. Compl. ¶ 5. At a council meeting held September 27, 2022, the County Council voted to approve the applications. Compl. ¶ 5.

On October 24, 2022, Plaintiffs filed this lawsuit against the Defendants. In the Complaint, Plaintiffs seek the following declaratory relief from this Court:

- Declaring that the Planning Commission decisions to deny subdivision applications on August 18, 2022, were valid and final.

- Declaring that County Council had no authority to render the September 27, 2022, decisions approving subdivision applications.
- Declaring that Georgetown County Ordinances requiring site plan review by County Council are void and unenforceable.
- Declaring that the approval of the subdivision applications was a violation of state and county law.
- Declaring that Georgetown County has a statutory mandate to bring zoning ordinances and land use regulations into compliance with the County's Comprehensive Plan.
- Declaring that Georgetown County has a statutory mandate to consider compliance with the County's Comprehensive Plan in decision making processes.

In the alternative, Plaintiffs purport to bring an appeal of County Council's decision to approve the applications. Compl. ¶ 136.

Defendants have made motions to dismiss under Rule 12(b)(5), SCRCP, and Rule 12(b)(6), SCRCP. At oral arguments, Defendants appeared to abandon their insufficiency of service of process arguments and relied solely upon their Rule 12(b)(6) arguments to dispose of this case. The Court need not delve into the intricacies of waiver in this instance, as the motions to dismiss adequately dispose of the declaratory judgment actions against all Defendants through Rule 12(b)(6), SCRCP.

STANDARD OF REVIEW

When evaluating a motion to dismiss for failure to state a claim, the question is “whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003); *see also Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (“The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.”). Dismissal pursuant to Rule 12(b)(6), SCRCP, is appropriate when “the

facts alleged in the complaint do not support relief under any theory of law.” *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 170, 763 S.E.2d 426, 430 (2014) (quoting *Flateau*, at 202, 584 S.E.2d at 416). When deciding a motion to dismiss, a court may consider exhibits attached to a pleading. *See* Rule 10(c), SCRPC (“A copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.”); *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989) (“[B]y virtue of Rule 10(c), SCRPC the attachment became a part and parcel of the complaint.”).

Cases that present legal questions, and do not involve factual disputes, are well-suited for dispositive motions. *See Bi-Lo, Inc.*, 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005) (“When the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues it is proper to decide even novel issues on a motion to dismiss for failure to state a cause of action.”) (citing *Madison v. Am. Home Prods. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004)).

ANALYSIS

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

The Complaint does not allege that the challenged ordinances deprive the Plaintiffs of their constitutional rights. Courts are quite limited in their authority to review and invalidate the zoning ordinances enacted by local governing bodies. Courts may only do so after finding that the ordinance in question has violated constitutional rights.

“Courts have no prerogative to pass upon the wisdom of the municipality’s decision unless such decision is ‘so unreasonable as to impair or destroy a citizen’s constitutional rights.’” *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (quoting *Hampton v. Richland*

Cnty., 292 S.C. 500, 503, 357 S.E.2d 463, 465 (Ct. App. 1987)). “Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of constitutional rights.” *Knowles*, 305 S.C. at 224, 407 S.E.2d at 642. Constitutional rights are violated when a zoning ordinance deprives an individual of their property without due process of law. *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243-44 (2002). “Of course, if the court finds a violation of constitutional rights, it may invalidate the ordinance. A court may not, however, substitute its judgment for that of the local zoning ordinance.” *Bear Enters. v. Cnty. of Greenville*, 319 S.C. 137, 141-42, 459 S.E.2d 883, 886 (Ct. App. 1995).

“It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances or regulations.” *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 300, 37 S.E.2d 601, 611 (2013). “In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives.” *Sloan v. Greenville Cnty.*, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003). “There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application” *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965).

“A municipal ordinance is a legislative enactment and is presumed to be constitutional.” *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1992). Zoning ordinances must be upheld so long as the propriety of the local governing body’s decision is “fairly debatable.” *Knowles*, 305 S.C. at 223, 407 S.E.2d at 642. “The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon [the challenger] to show the arbitrary and capricious character of the ordinance through clear and convincing evidence.”

Dunes, 401 S.C. at 298, 37 S.E.2d at 610 (quoting *Willoughby*, 306 S.C. at 422, 412 S.E.2d at 425) (internal quotations omitted).

In the Complaint, Plaintiffs not only fail to specifically identify which ordinances they are seeking to challenge, but also fail to allege that any of those ordinances work to deprive the Plaintiffs of their constitutional rights. Because these allegations are absent from the Complaint, it fails as a matter of law in its quest to invalidate the ordinances at issue. As to which ordinances are being challenged, Defendant Georgetown County has identified certain provisions of Georgetown County Zoning Ordinance 607 which appear to be the subject of Plaintiffs' claims. *See* Defs.' Joint Mot. Dismiss 5. These provisions direct that certain major developments, such as those being proposed in this case, are to have "a site plan reviewed by the Planning Commission" and then "approved by County Council." Georgetown County Zoning Ordinance § 607.4025 (2011); *see also* § 607.40254 (directing that the Planning Commission is to review the proposed site plan and "to forward its recommendation to County Council for final approval").

In an attempt to invalidate this process, Plaintiffs' Complaint references certain sections of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code § 6-29-310, *et seq.* (the "Planning Act") dealing with land development regulations, which are used to specify requirements of a development such as lot size and street specifications among many others. *See* Compl. ¶¶ 61–62, 124, 134; S.C. Code § 6-29-1120, 1150. Plaintiffs argue that this section of the Planning Act limits the final approval of all development plans to come from the Planning Commission or designated staff. Compl. ¶ 124. Defendants argue that this interpretation is too narrow in that it ignores both the expressed legislative purposes included in Articles Seven and Five of the Planning Act and the determinations of the County's governing body in enacting the procedures for approving development plans in a general residential district.

Defs.' Joint Mot. Dismiss 5.

The creation and regulation of zoning districts is within the purview of the governing body of a county. S.C. Code § 6-29-720(A). First, the plain language of Section 6-29-1120 makes clear that the General Assembly intended to leave the crafting of the procedural process for approving development plans to the governing bodies of counties. *See* S.C. Code § 6-29-1120(A) (“The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff”). The challenged ordinances provide the procedural process for development plans to be approved through submission to the planning commission. *See* Georgetown County Zoning Ordinance 607. Second, the enumerated purpose of Article Seven of the Planning Act is to provide counties with the ability to create regulations with broad authority in order to carry out the stated purposes of the Planning Act, such as the promotion of public health and safety, good order, and “progressive development of land.” S.C. Code § 6-29-1120. The provisions of Article Five of the Planning Act state that zoning ordinances are to serve similar purposes which are to “further the public welfare in any other regard specified by the governing body.” S.C. Code § 6-29-710. These are purposes directly within the purview and responsibility of the governing body of a county. The governing body of Georgetown County is the County Council, not the Planning Commission.

It is within the County Council’s authority to determine the terms of the development regulations and zoning ordinances used to carry out the purposes enumerated in the Planning Act. *See* S.C. Code § 6-29-760, 1130. It is likewise within the authority of County Council to enact zoning ordinances which include additional procedural safeguards, such as a requirement for additional oversight and approval for larger developments, where such safeguards function to protect and promote the intended purposes of the Planning Act and good land use principles within

the County. For these reasons, the Court finds no conflict between the zoning ordinances purportedly complained of and the Planning Act.

Lastly, the law greatly limits the power of the courts to invalidate ordinances. This Court cannot, and will not, substitute its judgment for that of the legislative body of Georgetown County. It is apparent that Plaintiffs disagree with the political decisions made by Georgetown County Council, but political disagreement is an insufficient basis upon which to invalidate an ordinance. As such, Plaintiffs' causes of action I through VI must be dismissed with prejudice as a matter of law.

II. The Georgetown County Comprehensive Plan is not law and the alleged failure of the County Council to adhere to the Comprehensive Plan cannot serve as a basis to invalidate the decision to approve the applications.

Many of Plaintiffs' arguments rest on the misguided assertion that the Comprehensive Plan acts as a binding standard or law that the County must follow when approving a land use decision. Plaintiffs have argued that the developments at issue conflict with Georgetown County's Comprehensive Plan ("Comprehensive Plan") and cannot be approved because the terms of the Comprehensive Plan must be adhered to. Compl. ¶¶ 82, 130. Alternatively, Defendants assert that the Comprehensive Plan is merely "an expression of goals, objectives, and policies for current and future land use in the County." Defs.' Mem. Supp. Joint Mot. Dismiss 12. This Court finds that a county's comprehensive plan exists to supply guiding principles in a county's zoning and land use decisions, but it is not, by itself, an authoritative standard which must be strictly construed and applied.

The Planning Act grants the authority to local governments in South Carolina to create planning commissions within their jurisdiction. S.C. Code § 6-29-320. When created, a planning commission is charged with the responsibility to "develop and maintain a planning process which

will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable, to *guide* the development and redevelopment of its area of jurisdiction.” S.C. Code § 6-29-510(A) (emphasis added). This planning process, when it is created, is a comprehensive plan, consisting of a collection of planning elements, such as a “statement of needs and goals,” a “housing element,” and a “land use element,” among others. S.C. Code § 6-29-510. Once a comprehensive plan has been adopted, the planning commission is permitted to “prepare and recommend *to the governing body* . . . for adoption regulations governing the development of land within the jurisdiction.” S.C. Code § 6-29-1130(A) (emphasis added). The governing body in Georgetown County is the County Council, which has the authority to then enact land development regulations and zoning ordinances. These zoning ordinances and land use regulations, along with South Carolina statutes, set the required standards and procedures for making land use decisions in the County.

The goals and objectives of a county’s comprehensive plan are effectively implemented through the county’s zoning ordinances and land use regulations. *See Sinkler v. County of Charleston*, 387 S.C. 67,75-76, 690 S.E.2d 777, 781 (2010); *see also* S.C. Code § 6-29-720(A). But the comprehensive plan itself does not set the standard by which a planning commission or a county council must make its land use decisions. Approval or denial of an application for a zoning amendment must be made on the basis of the existing zoning ordinances and applicable land use regulations.

Based upon the terms of the Planning Act itself, along with the established practices of the counties in this state and prior treatments by the courts, it is evident that a county’s comprehensive plan exists to guide the land use decisions of a county. The effect of that guidance is to aid and better focus the crafting and adoption of zoning ordinances and land use regulations in a county.

Ultimately, the land use decisions of a county are governed by the adopted zoning ordinances and land use regulations, which are limited only by the terms of the Planning Act and other applicable state statutes. The courts cannot interject authority into a planning process which was never intended by the General Assembly or by Georgetown County. The Comprehensive Plan is a guideline, not binding law. *McClanahan*, 350 S.C. at 441, 567 S.E.2d, at 243.

In sum, because the Comprehensive Plan is not a legally binding standard, a perceived violation of its terms cannot substantiate a legal claim for relief. Accordingly, Plaintiffs' causes of action I through VI must be dismissed with prejudice as a matter of law.

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

All but one of Plaintiffs' underlying claims seek relief under the Uniform Declaratory Judgments Act. *See* Compl. 29–33. The Defendants have argued in their motions and memorandums, as well as at oral arguments, that the Complaint fails to plead facts sufficient to constitute a cause of action. *See, e.g.*, Defs.' Mem. Supp. Joint Mot. Dismiss 13 ("There are no laws, ordinances, or regulations which could reasonably support a cause of action under any of the alleged facts in the Complaint.").

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

Plaintiffs have argued that the entirety of the allegations in the Complaint must be accepted as true and their veracity reviewed in the light most favorable to the Plaintiffs. Pls.' Mem. Opp'n 5. This Court takes no issue with Plaintiffs' characterization of the standard of review in this regard. However, it must be clarified that this presumption of truth cannot be taken so far as to create a presumption as to the sufficiency of legal conclusions used to allege a cause of action. Where the law does not provide for a remedy under a given set of facts, the Court cannot simply create one because the facts may be presumed as true. The authority to create law is the hallmark of legislatures, not the judiciary.

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

The ordinances requiring County Council to review site plan applications for more

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

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

The only remaining claim after disposing of the declaratory judgment actions, is an appeal of County Council's decision to approve the applications. The Court does find that Plaintiffs have the right to appeal the County's decision to the Circuit Court in accordance with South Carolina law. Given that the only remaining cause of action – the appeal – is exclusively against Georgetown County, and there are no remaining declaratory judgment actions requiring all interested parties to be included in this action, the Court hereby dismisses Defendants Laine CRE, LLC, TriStar Land, LLC, and Samuel J. Nesbit on behalf of the heirs of Will Nesbit from this case.

CONCLUSION

For the foregoing reasons, this Court grants Defendant Nesbits' Motion to Dismiss, and grants Defendants Georgetown County, Laine, and TriStar's Joint Motion to Dismiss, except as to

Count VII of the Complaint, inasmuch as Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted. Defendants Nesbit, Laine, and TriStar are dismissed from this case.

The Clerk of Court is hereby directed to amend the caption to reflect the terms of this Order.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

July ____, 2023
Georgetown, South Carolina



Georgetown Common Pleas

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

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-07-18 10:20:00 page 14 of 14

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

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

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

FACTUAL AND PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

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

ANALYSIS

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

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

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

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

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

only fail to specifically identify which ordinances they are seeking to challenge, but also fail to allege that any of those ordinances work to deprive the Plaintiffs of their constitutional rights.”

Order 6. The Court goes on to state, “Because these allegations are absent from the Complaint, it fails as a matter of law in its quest to invalidate the ordinances at issue.” *Id.* The Court finds no reason to disturb its conclusion on this matter.

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

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

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

the Uniform Declaratory Judgments Act. Order 10 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). The Court noted in its Order that for there to be a justiciable controversy, there must be a concrete issue, a definite assertion of legal rights, and a positive legal duty with respect to those rights which are being denied by the defendant. *Power* at 153–54, 177 S.E.2d at 553. Further, the Court correctly analyzed Plaintiffs’ Complaint to ultimately reach the conclusion that, “Because there is an absence of a positive legal duty in this case and no definite assertion of legal rights, there are no legal rights which could even conceivably be denied as the result of Defendants’ conduct.” Order 12. As such, there is no evidence that the Court failed to fully consider or rule upon this issue and, therefore, dismissal is appropriate.

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

Judge Benjamin H. Culbertson
Circuit Court Judge

_____, 2023



Georgetown Common Pleas

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

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-12-11 12:33:15 page 9 of 9

Pleadings

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Michael T. Green and Carrie J. Green,	:	CASE NO.
Julian P. Rutledge and Melvin L.	:	
Rutledge; Patricia S. Grate; Carlethia	:	SUMMONS
B. Jenkins; Frances Jo Baker;	:	
Parkersville Planning & Development	:	Declaratory Judgment
Alliance, Inc.; Keep It Green, Inc.; and	:	Appeal from Georgetown County Council
Preserve Murrells Inlet, Inc.	:	
Plaintiffs	:	Jury Trial Demanded
v.	:	
	:	
Georgetown County, Laine CRE, LLC;	:	
TriStar Land, LLC; and Samuel J.	:	
Nesbit on behalf of the heirs of Will	:	
Nesbit	:	
Defendants	:	
	:	

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

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

Respectfully submitted,

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

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

ATTORNEY FOR PLAINTIFFS

October 24, 2022
Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Michael T. Green and Carrie J. Green,	:	CASE NO.
Julian P. Rutledge and Melvin L.	:	
Rutledge; Patricia S. Grate; Carlethia	:	COMPLAINT
B. Jenkins; Frances Jo Baker;	:	(Civil Action)
Parkersville Planning & Development	:	
Alliance, Inc.; Keep It Green, Inc.; and	:	Declaratory Judgment
Preserve Murrells Inlet, Inc.	:	Appeal from Georgetown County Council
Plaintiffs	:	
v.	:	Jury Trial Demanded
	:	
Georgetown County, Laine CRE, LLC;	:	
TriStar Land, LLC; and Samuel J.	:	
Nesbit on behalf of the heirs of Will	:	
Nesbit	:	
Defendants	:	
	:	

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint seeking Declaratory Judgment against Defendants named herein, and an Appeal from decisions by Georgetown County Council on September 27, 2022, approving two land development subdivision applications as follows:

INTRODUCTION

1. This Complaint involves two land development subdivision applications proposing “high density” multi-family housing on two vacant parcels of heirs’ property land designated as “medium density” by the Georgetown County Comprehensive Land Use Plan and Maps, (hereinafter collectively “comprehensive plan”), and located in the heart of a traditional African American community known as “Parkersville,” one of the oldest and most historically significant neighborhoods of Pawleys Island, Georgetown County, South Carolina.

2. Both subdivision applications were denied by Georgetown County Planning Commission, (hereinafter “Planning Commission”), after public hearing on August 18, 2022, for a variety of reasons including that they conflicted with the comprehensive plan.

3. No appeal was filed from the Planning Commission’s decisions to deny.

4. After denial by Planning Commission, the land development applications were placed on the September 27, 2022, agenda of Georgetown County Council, (hereinafter “Council”), pursuant to Georgetown County ordinance provisions requiring site plan decisions of the Planning Commission to be approved by County Council for proposed developments involving more than 10 multi-family dwelling units with a proposed density of 5 units per acre or greater (high density).

5. At the council meeting on September 27, 2022, County Council reversed the Planning Commission decisions and approved both subdivision applications without further input, review, consideration, or decision by Planning Commission, notwithstanding that the high density development plans violate the medium density comprehensive plan map designation, and no amendment was made to the comprehensive plan or map.

6. Georgetown County has failed and continues to fail to perform statutory duties required by the South Carolina Comprehensive Planning Enabling Act, (hereinafter “Planning Act”), S.C. Code, Section 6-29-310, *et seq.* causing injury and detriment to Plaintiffs and other Georgetown County landowners.

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

- a. County Council was without authority to render decisions on the subdivision site plan applications or to review, hear, or change the August 18, 2022, denial of the applications by Planning Commission.

- b. The September 27, 2022, decisions by County Council to approve the subdivision site plan applications were improper for lack of authority and for other reasons as particularly set forth hereinafter, and are null, void and of no force or effect.
- c. The August 18, 2022, decisions of Planning Commission to deny the subdivision applications are the final decisions from which no appeals to the circuit court were filed, and therefore, are valid and binding decisions.
- d. Georgetown County is required to comply with the South Carolina Planning Act as set forth more particularly hereinafter.

LAND PARCELS AT ISSUE

8. Upon information and belief, both parcels of land upon which the subdivisions were proposed are heirs' property owned by the heirs of Will Nesbit, (hereinafter "Nesbit heirs").

9. The first parcel, identified as Tax Map No. 04-0203-155-00-00, hereinafter "Petigru Parcel," is a long narrow lot that lies along a secondary road known as Petigru Drive, consisting of 6.87 acres of vacant forested land, including wetlands, with 207.6 feet of frontage on the existing Petigru Drive and extending a depth of 1,663 feet, having a width to depth ratio of 8.01.

10. The second parcel, identified as Tax Map No. 04-0416-004-00-00, hereinafter "Parkersville Parcel," lies along a secondary road known as Parkersville Road, consisting of 13.69 acres of vacant forested land which includes 5.79 acres of wetlands to the rear of the parcel. 7.9 acres are proposed for development, which includes 1.56 acres of wetlands. The lot has 427.2 feet of frontage on the existing Parkersville Road and extends a depth of 1,664.3 feet with a width to depth ratio of 3.90.

PARTIES

Plaintiffs

11. Plaintiffs, Michael T. Green and Carrie J. Green, husband and wife, (hereinafter “Greens”), are adult individuals who reside at 533 Parkersville Road, Pawleys Island, Georgetown County, South Carolina, and own and live on land that directly adjoins the Petigru Parcel, identified as Tax Map No. 04-0203-155-01-0, recorded in Deed Book 614, Page 92, in the Office of Recorder of Deeds for Georgetown County on February 13, 1995. The Greens have signed an Affidavit attached hereto as Exhibit “1,” and incorporated herein by reference.

12. Plaintiffs, Julian P. Rutledge and Melvin L. Rutledge, heirs of Annette Rutledge, are adult individuals who reside at 1018 Martin Luther King Road and 1654 Petigru Drive, respectively, and own 8 acres of land that directly adjoins the Petigru Parcel, identified as Tax Map No. 04-0203-156-00-00, recorded in Deed Book E, Page 384, in the Office of Recorder of Deeds for Georgetown County on May 3, 1875. Julian P. Rutledge and Melvin L. Rutledge have signed an Affidavit attached hereto as Exhibit “2,” and incorporated herein by reference.

13. Plaintiff, Patricia S. Grate, is an adult individual who resides at 1724 Petigru Drive, Pawleys Island, Georgetown County, South Carolina, and owns and lives on two parcels of land that directly adjoin the Petigru Parcel, identified as Tax Map No. 04-0203-154-03-00, and 04-0203-154-06-02, recorded in Deed Book 3404, Page 192, in the Office of Recorder of Deeds for Georgetown County on December 18, 2018.

14. Plaintiff, Carlethia B. Jenkins, heir of Frank Jenkins and Vernon Jenkins, is an adult individual who resides at 51 Jenks Court, Pawleys Island, Georgetown County, South Carolina, and owns approximately 13 acres of land that directly adjoins the Parkersville Parcel, identified as Tax Map No. 04-0413-051-01-00, recorded in Deed Book 1181, Page 257, in the

Office of Recorder of Deeds for Georgetown County on May 11, 2001. Carlethia Jenkins has signed an Affidavit attached hereto as Exhibit “3,” and incorporated herein by reference.

15. Plaintiff, Frances Jo Baker, is an adult individual who resides at 729 Parkersville Road, Pawleys Island, Georgetown County, South Carolina, and owns and lives on land that directly adjoins the Parkersville Parcel, identified as Tax Map No. 04-0147-060-01-00, recorded in Deed Book 1339, Page 237, in the Office of Recorder of Deeds for Georgetown County on December 23, 2002. Frances Jo Baker has signed an Affidavit attached hereto as Exhibit “4,” and incorporated herein by reference.

16. Plaintiff, Parkersville Planning & Development Alliance, Inc., (hereinafter “Parkersville PDA”), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address c/o Rev. Johnny A. Ford, President, 511 Petigru Drive, Pawleys Island, Georgetown County, South Carolina. Affidavit signed by Johnny A. Ford, President of Parkersville PDA, and resident of Parkersville, is attached hereto as Exhibit “5,” and incorporated herein by reference.

17. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American community known as Parkersville which is one of the oldest settlements in the Waccamaw Neck area of Georgetown County.

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

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

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

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

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

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

23. KIG and PMI are citizens’ organizations comprised of thousands of residents of the Waccamaw Neck, Georgetown County, South Carolina, who are concerned about the impact of land use decisions, zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life, and other matters of safety and general welfare in the Waccamaw Neck.

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

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

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

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

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

29. Parkersville PDA, KIG, and PMI represent the interests of thousands of citizens of the Waccamaw Neck, hundreds of whom reside in the vicinity of the Petigru and Parkersville Parcels.

30. Parkersville PDA, KIG, and PMI represent the interests of the named Plaintiffs herein as well as other adjoining landowners or landowners who reside in the immediate vicinity of the Petigru and Parkersville Parcels or other areas of the Waccamaw Neck where zoning is not in compliance with the comprehensive plan as set forth hereinafter, and who would have standing to challenge these and other decisions.

Defendants

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

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

33. Defendant, Laine CRE, LLC, a/k/a, Laine Commercial Real Estate, is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 835 Lowcountry Boulevard, Mount Pleasant, SC 29464, and a registered agent address of 1676 Jorrington Street, Mount Pleasant, SC 29464.

34. Defendant, TriStar Land, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, having a registered agent address of 665 Cornerstone Court, Charleston, SC 29464.

35. Defendant, Samuel J. Nesbit, on behalf of the heirs’ of Will Nesbit, owners of the Petigru and Parkersville parcels, is an adult individual residing at 6201 Rosebud Street, Columbia, South Carolina.

36. At all times pertinent hereto, Defendants Laine CRE, LLC and/or Defendant TriStar, LLC, were the authorized agents and representatives of Samuel J. Nesbit and the heirs of Will Nesbit.

BACKGROUND

Major Subdivision Applications

37. Upon information and belief, in or around early 2022, Defendant Laine CRE, LLC, and/or TriStar Land, LLC, hereinafter “Developers” entered into a contract with the Nesbit heirs to purchase both the Petigru and Parkersville Parcels, contingent upon approval of applications for land development projects.

38. Upon information and belief, Developers hired Development Resource Group, LLC, (hereinafter “DRG”), an engineering and development consulting firm, to draw plans on their behalf for projects on the Petigru and Parkersville parcels.

39. A letter of agency dated June 13, 2022, was signed by Samuel J. Nesbit on behalf of the Nesbit heirs authorizing DRG to submit land development applications for each of the two parcels on behalf of Developers.

40. On July 19, 2022, DRG submitted two subdivision applications on behalf of Developers requesting approval for a total of 109 high density multi-family townhouse units on the two parcels.

41. The Petigru application requested 53 two-story, three-bedroom, multi-family townhouse units with streets, driveways, sidewalks, and parking areas on 6.2 acres with a net residential density of 8.55 units per acre, and a proposed name of “Regatta Townhomes.” Said application is attached hereto as Exhibit “8,” and incorporated herein by reference.

42. The Parkersville application requested 56 two-story, three-bedroom, multi-family townhouse units with streets, driveways, sidewalks and parking areas on 7.9 acres with a net residential density of 9.84 units per acre, and a proposed name of “Osprey Townhomes.” Said application is attached hereto as Exhibit “9,” and incorporated herein by reference.

Comprehensive Plan and Maps
Designate Parcels as Medium Density

43. The current version of the Georgetown County Comprehensive Land Use Plan and Future Land Use Maps was enacted by County Council on March 10, 2015, by Georgetown County Ordinance number 2015-05, and the maps specifically designate both the Petigru and the Parkersville parcels as “Medium Density.”

44. The Petigru parcel has eight adjoining parcels of land on three sides, all of which are owned or represented by Plaintiffs herein, designated by the comprehensive plan and maps as “medium density” residential, and consist of single family homes or vacant land.

45. The Parkersville parcel has eleven adjoining parcels of land on two sides, all of which are owned or represented by Plaintiffs herein, designated by the comprehensive plan and maps as “medium density” residential, and consist of single family homes or vacant land. The land directly across Parkersville Road from this parcel is designated as “low density” residential. The far end of this parcel abuts four small lots that lie along the west side of the U.S. Route 17 corridor and are designated by the comprehensive plan as commercial which allows for no residential density.

46. The historical Parkersville residential community is and always has been characterized by single family homes along narrow, often unpaved, tree-lined streets in low to medium density neighborhoods. The residential areas of the traditional Parkersville community are designated by the comprehensive plan and maps as “low density” or “medium density.”

47. The comprehensive plan defines “Medium Density” as a maximum of 5 units per acre, “Low Density” as a maximum of 2 units per acre, and “High Density” as anything above 5 units per acre.

Zoning & Land Development Regulations
Most Restrictive Applies

48. At all times pertinent hereto, both the Petigru and Parkersville parcels were zoned as General Residential (hereinafter “GR”).

49. The GR District (Georgetown County Zoning Ordinance, 607) permits a range of residential uses and a range of residential densities.

50. The GR ordinance specifically states that it is appropriate for both medium or high density projects and that those projects

“should be designed to insure preservation of the critical areas, to be compatible with the existing development and to discourage any encroachment of commercial, industrial or other uses capable of adversely affecting the charm and residential character of this district.”

51. In determining the maximum permissible residential density on a particular parcel within a GR Zoning District, the provisions of all applicable land use regulations should be considered, including but not limited to:

- a. The residential density permitted by the comprehensive plan and land use maps which have been enacted by Georgetown County Ordinance 2015-05;
- b. The conditions and limitations set forth within the GR zoning ordinance itself, including proposed use, design, and setback requirements; and
- c. The requirements of other applicable laws, ordinances, and/or development regulations.

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

53. Section 1800 of the Georgetown County Zoning Ordinance provides:

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

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

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

55. In the present case, the Comprehensive Land Use Plan and maps designate residential density on the Petigru and Parkersville parcels, all adjoining residential land, and all other residential land in this neighborhood as either “low density” or “medium density” which limits density to a maximum of two units per acre or five units per acre, respectively. As the most restrictive regulation, the medium density limitation on the Petigru and Parkersville parcels restricts density on these two parcels to a maximum of 5 units per acre.

56. The current version of the Land Use Element of the Comprehensive Plan was adopted in 2015, and states as follows at Page 23 with respect to residential density and Land Use Goals for the South Waccamaw Neck.

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

South Carolina State Law Requires Zoning & Land Use Regulations to be
Consistent with the Comprehensive Plan

57. The South Carolina Planning Act, Section 6-29-720(A), provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.”

58. Planning Act, Section 6-29-720(B), specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction”

59. Planning Act, Section 6-29-540, requires that no new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.”

South Carolina State Law Requirements for
Land Development Decisions

60. Article 7 of the South Carolina Planning Act, Section 6-29-1110, *et seq.*, governs land development regulations and sets forth definitions as well as procedures for local governments to follow in regulating land development within their jurisdictions.

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

62. Planning Act, Section 6-29-1150, sets forth detailed procedures and requirements for the submission of development plans for approval or disapproval and specifically confers authority for making decisions to approve or disapprove on the Planning Commission or designated staff. Staff decisions are appealable to the Planning Commission and Planning Commission decisions are appealable to the circuit court.

63. The Planning Act grants no authority to County Council to approve or disapprove a land development application, or to review, modify, or reverse a decision of the Planning Commission relative to a land development application.

64. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.

Planning Commission
Denied Subdivision Applications

65. The Georgetown County Planning Commission held a public hearing on the Petigru and Parkersville subdivision applications on August 18, 2022.

66. Prior to the public hearing, the public record included numerous letters of opposition from residents, including a detailed letter dated August 18, 2022, from legal counsel on behalf of Plaintiffs and other citizens, outlining the objections that form the basis of this complaint. A copy of this letter is attached hereto as Exhibit "10," and incorporated herein by reference. There were no letters supporting approval of the applications.

67. Numerous residents and adjoining landowners, including Plaintiffs, attended the Planning Commission public hearing to express their opposition. Legal counsel for adjoining landowners and 19 other citizens spoke on the record. No one spoke in favor of the subdivision applications other than the Developers' agent.

68. After public hearing, the Planning Commission voted to deny both applications, citing a variety of reasons including inconsistency with the comprehensive plan.

69. No appeal of the August 18, 2022, Planning Commission decisions to deny was filed by the applicant Developers.

County Council Improperly
Reviewed and Approved Applications

70. Following denial by Planning Commission, the subdivision applications were placed on the county council agenda for September 27, 2022, under the heading “Reports to Council” as agenda items 14(a) and 14(b), “site plan reviews,” pursuant to Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council. A copy of the September 27, 2022, County Council agenda is attached hereto as Exhibit “11,” and incorporated herein by reference.

71. As set forth hereinabove, County Council did not have authority under the Planning Act to approve or disapprove these land development applications, or to review, modify, or reverse the August 18, 2022, decision of the Planning Commission.

72. The Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council do not articulate any standards by which the County Council should decide to approve or disapprove the decision by Planning Commission.

73. These ordinances are invalid and unreasonable because they reserve to County Council arbitrary power without the guidance of uniform rules and regulations.

74. The ordinances are invalid and unenforceable as violating the Planning Act and other law.

75. The ordinances are invalid and unenforceable because they violate the doctrine of separation of powers.

76. Placing the Petigru and Parkersville subdivision applications on the council agenda pursuant to these ordinances was improper and any decision rendered by Council thereunder is void and of no effect.

77. Prior to the September 27, 2022, council meeting, numerous letters of opposition were received , including a letter dated September 26, 2022, by legal counsel for Plaintiffs and other residents outlining the objections that form the basis of this complaint. A copy of said letter is attached hereto as Exhibit “12,” and incorporated herein by reference. There were no letters in support.

78. Numerous residents attended the meeting to express their opposition, and legal counsel for adjoining landowners along with members of the community spoke in opposition.

79. The Georgetown County Planning Department submitted an “Agenda Request Form” to Council which contained, *inter alia*, “Points to Consider” for each of the two subdivision applications. Said Agenda Request Forms are attached hereto as Exhibits “13,” and “14,” respectively, and incorporated herein by reference.

80. The Planning Department offered oral presentations at the council meeting based on the Agenda Request Forms.

81. Minor modifications had been made to the site plans between the time they were denied by Planning Commission and the September 27, 2022, council meeting; however, both subdivision applications remained “high density” developments proposed on parcels designated as “medium density” by the comprehensive plan.

82. The Planning Department in both the Agenda Request Forms and the oral presentations at the County Council meeting omitted and/or failed to objectively set forth important and relevant facts including, but not limited to, the following:

- a. Failed to note inconsistencies of the proposed developments with the Comprehensive Plan including that these applications requested “High Density” on parcels designated by the comprehensive plan and maps as “Medium Density.”

- b. Failed to note that all 19 adjoining residential parcels are designated by the comprehensive plan and maps as “Medium Density,” and the land across the street from the Parkersville parcel is designated as “Low Density.”
- c. Failed to note that the entire Parkersville residential community is designated by the comprehensive plan and maps as “Medium Density” or “Low Density.”
- d. In calculating permissible density, considered only the requirements of the GR zoning ordinance and failed to consider the requirements of the comprehensive plan and land use maps and other land development regulations, or Zoning Ordinance 1800, or Land Use Regulation Article I, Section 10, which requires application of the most restrictive regulation.
- e. Failed to note that existing infrastructure in the Parkersville community is currently overburdened, beyond design capacity, and grossly inadequate to accommodate additional high density development.
- f. Failed to consider reliable, accurate, up-to-date, traffic data or require impartial independent traffic studies, and instead relied on traffic data that was substantially outdated in an area that has experienced significant increase in population and traffic.
- g. Failed to note serious flooding and stormwater issues that currently exist on neighboring properties and in the Parkersville community in general.
- h. Failed to provide any information on the amount of fill to be brought in and the impacts of that fill on adjacent properties already subject to frequent flooding.
- i. Failed to consider the cumulative negative impact of incremental development approvals on the neighborhood and community.

- j. Failed to provide accurate, reliable, objective and impartial information for consideration by the governing authority and instead provided information based on outdated data and slanted to favor the Developers.

83. After the Planning Department made its presentation to council, one of the six council members noted that the two subdivision applications did not comply with the Comprehensive Plan and map designation as “Medium Density” and suggested that zoning and land development should “mirror the comprehensive plan.” Other council members disagreed and sought advice and direction of the County Attorney and the Planning Director in resolving the issue.

84. Council was advised that the sole consideration was compliance of the applications with the GR zoning ordinance and that the comprehensive plan and maps were not to be considered.

85. The Planning Director specifically represented in response to questions by council that “the site plan, in terms of density ... as it's laid out, meets the requirements of our ordinances.”

86. Neither the Planning Director nor the County Attorney addressed other applicable law, including Georgetown County Zoning Ordinance, Section 1800, or Land Use Regulation, Article I, Section 10, which requires application of the most restrictive land development regulations.

87. Council members clearly did not understand the parameters of the decision they were charged with making. In the course of Council’s discussion based on the advice and representations of the Planning Director and the County Attorney, the Chairman of County Council stated that if a plan has complied with all the regulations that have been set forth by the

County, “why does it come in front of Council?” Another council member remarked on two occasions that, “I don’t think we have a choice, but to approve this plan.” Two council members stated that they believed the developer had “vested rights” that needed to be protected.

88. County Council voted 5 to 1 to approve the Petigru and Parkersville subdivision applications based on the guidance of the County Attorney and Planning Director which Plaintiffs believe to be erroneous as follows:

- a. The comprehensive plan and comprehensive plan map designation of the parcels, which had been put into place by Georgetown County Ordinance 2015-05, were deliberately not taken into consideration.
- b. The sole consideration was compliance of the applications with the GR zoning ordinance, notwithstanding their conflict with the comprehensive plan and maps, and regardless of other applicable law including Georgetown County Zoning Ordinance, Section 1800, and Land Development Regulation, Article I, Section 10, requiring application of the most restrictive land development regulations.
- c. “Vested rights” of the Developers in the GR zoning ordinance was considered as a legitimate factor in this decision notwithstanding that the applicant Developers had not yet purchased the land in question and that neither the owners (Nesbit heirs) nor the Developers had any approved development plan or pre-existing nonconforming use that would trigger a vested right.

89. Even if council had possessed the authority to hear and make decisions on these Subdivision Applications, which is specifically denied, the details, substance, and merits of the plans and their compliance or noncompliance with the GR ordinance and other land development regulations were not addressed or considered by Council in any way.

90. In addition to the failure of the applications to comply with the comprehensive plan, there were numerous substantive areas of noncompliance with the GR ordinance and other ordinances, including but not limited to:

a. GR Zoning Ordinance, 607.3:

"The minimum lot area for a multi-family project shall be at least one acre. The minimum lot frontage shall be at least 150 feet of frontage on an approved street. The lot depth shall be no greater than three (3) times the lot width."

b. GR Zoning Ordinance, 607.4021:

"The front of the buildings shall not form long, unbroken lines of row housing, but shall be staggered at the front building lines;"

c. GR Zoning Ordinance, 607.4022:

"No more than six (6) contiguous townhouses nor fewer than three (3) shall be built on a row;"

d. GR Zoning Ordinance, 607.40255:

"[Multi-family] projects shall also comply with all other applicable ordinances"

e. Land Development Regulations, Article II, Section 2-2(A):

"All required federal, and state permit applications shall be pending prior to submission of the Development Plat to the Planning Commission."

Upon information and belief, there is a federally protected bald eagle's nest on this property that requires no disturbance within a certain radius and requires federal permits that were not requested or received or pending as of the date of this application.

f. Other state and local laws require wise distribution of development to avoid congestion and overcrowding and to protect the public health, safety, and general welfare of the community. This includes stormwater, flooding, traffic, tree protection, safety and other considerations, and assuring compatibility of the proposed development with the character of the neighborhood.

91. The decisions by Council and the underlying instructions which formed the basis of the decisions, are in direct conflict with the plain language of the South Carolina Planning Act, the South Carolina Vested Rights Act, 6-29-1510, *et seq.*, and Georgetown County Land Development Regulations as follows:

- a. New high density development was approved without considering its compatibility with the comprehensive plan in violation of Planning Act, Section 6-29-540, which provides that no new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community,” and Section 6-29-720 which provides that zoning regulations are intended to “implement the comprehensive plan” and that they “must be made in accordance with the comprehensive plan for the jurisdiction.”
- b. South Carolina Vested Rights Act and local law require an approved plan or a pre-existing nonconforming use in order to trigger a vested right, neither of which existed in the present case.
- c. Development was approved as complying with the GR zoning ordinance when details of the plans were not even considered by Council and do not, in fact, comply with the GR zoning ordinance.
- d. Development was approved without applying uniform standards or considering other applicable law.

92. The decisions by Council to approve the subdivision applications were unauthorized, without any basis or justification in law or fact, and in violation of state and local law and procedure.

93. The decisions by council to allow high density development on land designated as medium density by the comprehensive plan and maps that are put in place by Georgetown County Ordinance would set a precedent for allowing high density development on many acres of undeveloped land in Parkersville and other areas of the Waccamaw Neck that is designated medium or low density.

DUTIES OF GEORGETOWN COUNTY WITH RESPECT TO
ZONING AND LAND DEVELOPMENT

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

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

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

96. The duties identified in paragraphs 94 and 95 above, shall collectively be referred to as “required duties.”

97. The “Introduction” to the first Georgetown County Comprehensive Land Use Plan, adopted in August of 1997, by Georgetown County ordinance, which is still apparently in effect, specifically recognized that the Comprehensive Plan forms

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

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

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

Existing Zoning Ordinances Conflict with Comprehensive Plan

99. To the extent that the GR zoning ordinances on the Petigru and Parkersville parcels permit high density land development on land designated by the comprehensive plan and

maps as “Medium Density,” the zoning ordinances are in direct conflict with the comprehensive plan.

100. There are many existing zoning ordinances on parcels of land in the Waccamaw Neck that are in direct conflict with the comprehensive plan as they relate to residential density.

101. Under both state and local law, these conflicting zoning ordinances should have been brought into compliance with the comprehensive plan immediately upon its enactment. Instead, conflicting zoning ordinances have been permitted to exist, in some cases for many decades, despite their inconsistency with the comprehensive plan and maps.

102. The county’s failure to perform its duty to bring residential zoning ordinances into compliance with the comprehensive plan has caused injury to the Plaintiffs herein, and put Plaintiffs and every other land owner in the Waccamaw Neck at risk of imminent harm and serious injury.

103. The county has repeatedly approved development pursuant to these conflicting zoning ordinances notwithstanding their inconsistency with the comprehensive plan density limitations.

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

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

Land Use Approval Process

106. In making zoning and land development decisions, Georgetown County does not consider compatibility with the comprehensive plan as a necessary part of the process.

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

108. Approval of zoning changes and land development that conflicts with the comprehensive plan are more prevalent in minority communities and have had a discriminatory impact on the minority residents of these communities.

Georgetown County Refuses to Comply

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

110. A letter dated September 2, 2022, attached hereto as Exhibit “15,” and incorporated herein by reference, was directed to Georgetown County by legal counsel for Plaintiff organizations and citizens specifically requesting compliance. Georgetown County has neither acknowledged nor responded to the letter.

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

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

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

114. Georgetown County's continued failure and refusal to perform its required duties sets a precedent for allowing development that does not conform to the comprehensive plan and maps.

115. Plaintiffs request that Georgetown County immediately bring the zoning of the Petigru and Parkersville parcels as well as all other non-compliant zoning and decision-making processes into compliance with the comprehensive plan and the South Carolina Planning Act.

JURISDICTION, STANDING AND VENUE

116. Paragraphs 1 through 115, above, are incorporated by reference as though fully set forth herein.

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

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

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

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

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

Plaintiffs' rights and legal relations have been and are substantially affected by the County Council decisions of September 27, 2022, the Planning Commission decisions of August 18, 2022, Georgetown County's Zoning Ordinances, Land

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

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

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

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

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

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

COUNT I

DECLARATORY JUDGMENT

Planning Commission Decisions to Deny Subdivision Applications on August 18, 2022, were Valid and Final

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

124. Pursuant to the provisions of the Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-10, *et seq.*, Plaintiffs seek declaratory judgment from this Court that the August 18, 2022, Planning Commission decisions to deny these subdivision applications are the valid, proper, and final decisions as follows:

- a. The South Carolina Planning Act 6-29-1150 confers final decision-making authority on subdivision applications to Planning Commission whose decisions are appealable to the circuit court.
- b. Planning Commission properly voted to deny the subdivision applications after public hearing on August 18, 2022.
- c. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.
- d. No appeal was taken by the applicant Developers from this decision as provided in the Planning Act, and this decision stands as the final, valid and binding decision.

COUNT II

DECLARATORY JUDGMENT

County Council Had No Authority to Render the September 27, 2022, Decisions Approving Subdivision Applications

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

126. Plaintiffs seek declaratory judgment from this Court that the September 27, 2022, County Council decisions to approve the Petigru and Parkerville subdivision applications are null, void, and of no force or effect as follows:

- a. The Planning Act grants no authority to County Council to approve or disapprove land development applications or to review, modify, or reverse decisions of the Planning Commission relative to land development applications.

- b. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.
- c. County Council's approval of a site specific development plan violates the separation of powers doctrine.

COUNT III

DECLARATORY JUDGMENT

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

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

128. Plaintiffs seek declaratory judgment from this Court that the Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council for proposed developments are null, void, and of no force or effect.

COUNT IV

DECLARATORY JUDGMENT

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

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

130. Plaintiffs seek declaratory judgment from this Court that even if Council had authority to make decisions on the subdivision applications, the September 27, 2022, decisions to approve are null, void, and of no force or effect as follows:

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

COUNT V

DECLARATORY JUDGMENT

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

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

132. Plaintiffs seek declaratory judgment from this Court that Georgetown County has a statutory mandate to bring residential zoning ordinances and land development regulations, including the Petigru and Parkersville parcels, into conformity with the current Georgetown

County Comprehensive Plan as specifically required by Planning Act, Sections 6-29-720 and 6-29-1120.

COUNT VI

DECLARATORY JUDGMENT

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

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

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

COUNT VII

APPEAL OF COUNTY COUNCIL DECISION

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

136. In the event this court finds that County Council had authority to render the September 27, 2022, decisions on the subdivision applications, Plaintiffs appeal these decisions for the reasons set forth hereinabove.

COUNT VII

ATTORNEYS FEES FROM GEORGETOWN COUNTY

137. Paragraphs 1 through 136, above, are incorporated by reference as though fully set forth herein.

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

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

PRAYER FOR RELIEF

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

- a. the September 27, 2022, County Council decision approving the subdivision applications is null, void and of no force or effect;
- b. the Planning Commission decisions of August 18, 2022, denying the subdivision applications are the final, valid and binding decisions;
- c. Georgetown County ordinances requiring approval by County Council of Planning Commission's decisions on land development applications are invalid, unenforceable, and of no force or effect;
- d. Georgetown County has a statutory mandate to bring zoning ordinances into compliance with the comprehensive plan and to consider compliance with the comprehensive plan in its land use decision making processes;

- e. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County;
and
- f. such other relief as the court deems just and appropriate.

Respectfully submitted,

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

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

ATTORNEY FOR PLAINTIFFS

October 24, 2022
Pawleys Island, South Carolina

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

AFFIDAVIT

We, MICHAEL T. GREEN and CARRIE J. GREEN, do hereby swear under oath as follows:

1. We are adult individuals, husband and wife, residing at 533 Parkersville Road, Pawleys Island, Georgetown County, South Carolina.
2. We are Plaintiffs in the Complaint to which this Affidavit is attached. We have read the Complaint and the matters contained therein are true and correct to the best of our knowledge, information, and belief.
3. We own and reside on land that directly adjoins the Petigru Parcel which is the subject matter of the Complaint. Our home and land is in the Parkersville Community of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Petigru Parcel. Our home is a single family residence as are all the other homes in the neighborhood.
4. The rear boundary line of our lot, which according to the county GIS map is approximately 433.5 feet in length, and the side boundary of our lot, which is approximately 433.5 feet in length, are shared boundaries with the Petigru Parcel. The Petigru Parcel contains significant wetlands which creates problems during storms.
5. We received notice that a subdivision has been proposed on the Petigru Parcel for 53 two-story, high density, multi-family townhouse units on 6.2 acres of land that adjoins ours. We attended the Planning Commission meeting on August 18, 2022, and spoke in opposition of this high density development adjoining our medium density property which is designated as medium density. Our legal counsel submitted a letter and spoke on our behalf. Planning Commission denied the subdivision application.
6. Thereafter, we were notified that County Council had to approve the Planning Commission decision at a council meeting on September 27, 2022. We attended and again spoke in opposition along with our legal counsel. County Council reversed the Planning Commission decision and voted to approve the subdivision application. We are challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to this issue.
8. The County's decision to approve the subdivision has caused and will cause us injury as follows:

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

We hereby set our hands and seals this 19th day of October, 2022.

Michael T. Green
MICHAEL T. GREEN

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 19th day of October, 2022

[Signature]
NOTARY PUBLIC

(SEAL)



My commission expires: 6/8/2032

Carrie J. Green
CARRIE J. GREEN

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 19th day of October, 2022

[Signature]
NOTARY PUBLIC

(SEAL)



My commission expires: 6/8/2032

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

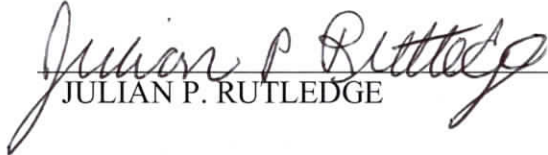
AFFIDAVIT

We, JULIAN P. RUTLEDGE and MELVIN L. RUTLEDGE, do hereby swear under oath as follows:

1. We are adult individuals residing at 1018 Martin Luther King Road and 1654 Petigru Drive, respectively, Pawleys Island, Georgetown County, South Carolina.
2. We are Plaintiffs in the Complaint to which this Affidavit is attached. We have read the Complaint and the matters contained therein are true and correct to the best of our knowledge, information, and belief.
3. We are heirs of Annette Rutledge and we own 8 acres of land that directly adjoins the Petigru Parcel which is the subject matter of the Complaint. Our land is in the Parkersville Community of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Petigru Parcel. Our relatives reside in single family homes on this parcel. Our homes are also in Parkersville and are single family residences as are all the other homes in the neighborhood.
4. The northern boundary line of our lot, which according to the county GIS map is approximately 1,370.7 feet in length is a shared boundary with the Petigru Parcel. The Petigru Parcel contains significant wetlands which creates problems during storms.
5. We received information that a subdivision has been proposed on the Petigru Parcel for 53 two-story, high density, multi-family townhouse units on 6.2 acres of land that adjoins our medium density property. Our legal counsel submitted a letter and spoke on our behalf at the Planning Commission meeting on August 18, 2022. Planning Commission denied the subdivision application.
6. Thereafter, we were notified that County Council had to approve the Planning Commission decision at a council meeting on September 27, 2022. Our legal counsel submitted a letter and spoke in opposition at that meeting. County Council reversed the Planning Commission decision and voted to approve the subdivision application. We are challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to this issue.
8. The County's decision to approve the subdivision has caused and will cause us injury as follows:

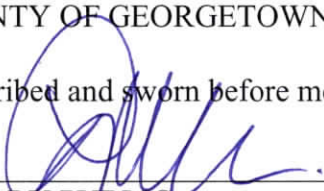
- a. Negative impact on character, aesthetics and enjoyment of our land.
- b. Sets a precedent for future land development near our home that does not comply with the comprehensive plan.
- c. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.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

We hereby set our hands and seals this 19th day of October, 2022.


JULIAN P. RUTLEDGE

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 19th day of October, 2022


NOTARY PUBLIC

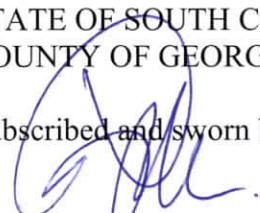


My commission expires: 6/8/2032


MELVIN L. RUTLEDGE

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 19th day of October, 2022


NOTARY PUBLIC



My commission expires: 6/8/2032

ROA 65

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

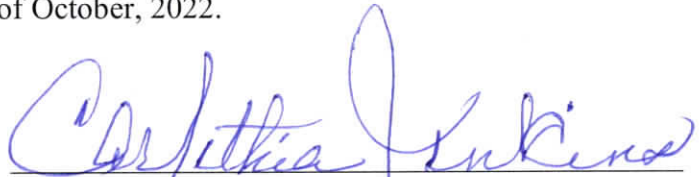
AFFIDAVIT

I, CARLETHIA B. JENKINS, do hereby swear under oath as follows:

1. I am an adult individual residing at 51 Jenks Court, Pawleys Island, Georgetown County, South Carolina.
2. I am a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
3. I own and reside on land that is across the street from the Parkersville Parcel which is the subject matter of the Complaint, and I am the heir of Frank Jenkins and Vernon Jenkins and own approximately 13 acres of land that directly adjoins the Parkersville Parcel. My home and land is in the Parkersville Community of Pawleys Island and is designated as "Low Density" by the Georgetown County Comprehensive Plan and Maps. My land that adjoins the Parkersville Parcel is designated as "Medium Density" as is the Parkersville Parcel. My home is a single family residence as are all the other homes in the neighborhood.
4. The southern boundary line of my land, which according to the county GIS map is approximately 654.4 feet in length is a shared boundary with the Parkersville Parcel. The Parkersville Parcel contains significant wetlands which creates problems during storms.
5. I received notice that a subdivision has been proposed on the Parkersville Parcel for 56 two-story, high density, multi-family townhouse units on 7.9 acres of land. My legal counsel submitted a letter and spoke on our behalf at the Planning Commission meeting on August 18, 2022. Planning Commission denied the subdivision application.
6. Thereafter, I was notified that County Council had to approve the Planning Commission decision at a council meeting on September 27, 2022. My legal counsel submitted a letter and spoke in opposition at the meeting. County Council reversed the Planning Commission decision and voted to approve the subdivision application. I am challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on my behalf and on behalf of other neighboring landowners with respect to this issue.
8. The County's decision to approve the subdivision has caused and will cause me injury as follows:

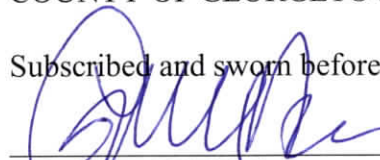
- a. Negative impact on character, aesthetics and enjoyment of my land.
- b. Sets a precedent for future land development near our home that does not comply with the comprehensive plan.
- c. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.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

I hereby set our hand and seal this 19th day of October, 2022.


 CARLETHIA B. JENKINS

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 19th day of October, 2022


 NOTARY PUBLIC



My commission expires: 6/8/2032

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

AFFIDAVIT

I, FRANCES JO BAKER, do hereby swear under oath as follows:

1. I am an adult individual residing at 729 Parkersville Road, Pawleys Island, Georgetown County, South Carolina.
2. I am a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
3. I own and reside on land that directly adjoins the Parkersville Parcel which is the subject matter of the Complaint. My home and land is in the Parkersville Community of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Parkersville Parcel. My home is a single family residence as are all the other homes in the neighborhood.
4. The northern boundary line of my home, which according to the county GIS map is approximately 115 feet in length is a shared boundary with the Parkersville Parcel. The Parkersville Parcel contains significant wetlands which creates problems during storms.
5. I received notice that a subdivision has been proposed on the Parkersville Parcel for 56 two-story, high density, multi-family townhouse units on 7.9 acres of land. I attended the Planning Commission meeting on August 18, 2022, and spoke in opposition of this high density development adjoining my medium density property which is designated as medium density. My legal counsel submitted a letter and spoke on behalf of adjoining landowners. Planning Commission denied the subdivision application.
6. Thereafter, I was notified that County Council had to approve the Planning Commission decision at a council meeting on September 27, 2022. I attended and my legal counsel submitted a letter and spoke in opposition at the meeting. County Council reversed the Planning Commission decision and voted to approve the subdivision application. I am challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on my behalf and on behalf of other neighboring landowners with respect to this issue.
8. The County's decision to approve the subdivision has caused and will cause me injury as follows:

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

I hereby set my hand and seal this 20 day of October, 2022.

Frances Jo Baker
FRANCES JO BAKER

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 20th day of October, 2022.

[Signature] (SEAL)
NOTARY PUBLIC

Cynthia R. Person

My commission expires: June 8, 2032



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

AFFIDAVIT

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

1. I am an adult individual residing in Pawleys Island, Georgetown County, SC.
2. I am the President and a member of the Board of Directors of Parkersville Planning & Development Alliance, Inc., (hereinafter "Parkersville PDA"), a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of 511 Petigru Drive, Pawleys Island, Georgetown County, SC. I am authorized by Parkersville PDA to make this Affidavit.
3. Parkersville PDA is a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American community known as Parkersville which is one of the oldest settlements in the Waccamaw Neck area of Georgetown County.
5. Parkersville PDA represents residents and landowners of Parkersville in the promotion of housing, land use, and economic development that fits within the character, infrastructure and needs of the community. Many landowners in Parkersville are concerned about the impact of zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life and other matters of safety and general welfare.
6. Parkersville PDA was formed to represent and speak for the Parkersville minority community which has been negatively impacted by county land use decisions and zoning ordinances that conflict with the comprehensive plan or otherwise have allowed undesirable and harmful land use. This pattern of decision-making has had permanent detrimental and discriminatory impact on this traditional historical minority neighborhood.
7. There are parcels of land in the Parkersville community that are affected by zoning ordinances and land use decisions that do not comply with the comprehensive plan.
8. On September 2, 2022, legal counsel for Parkersville PDA and other citizens groups directed a letter to Georgetown County, (hereinafter "county"), formally requesting the county to comply with the mandates of the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Planning Act"), S.C. Code Ann., Section 6-29-310, et seq.,

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

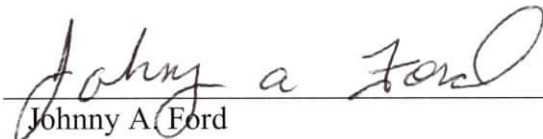
9. Parkersville PDA received notice in August 2022, about two land development subdivision applications proposing "high density" multi-family housing on two vacant parcels of heirs' property land designated as "medium density" by the comprehensive plan, and located in the heart of Parkersville. These applications are representative of the issues outlined in the September 2, 2022, letter to the county.
10. The Petigru parcel proposed 53 two-story, high density, multi-family townhouse units on 6.2 acres of land, designated as "Medium Density" by the comprehensive plan. The Parkersville Parcel proposed 56 two-story, high density, multi-family townhouse units on 7.9 acres of land designated as "Medium Density" by the comprehensive plan.
11. Parkersville PDA attended the Planning Commission meeting on August 18, 2022, and spoke in opposition of these high density developments on medium density parcels on behalf of adjoining landowners and other neighboring landowners.
12. Thereafter, Parkersville PDA was notified that County Council had to approve the Planning Commission decisions at a meeting on September 27, 2022. A representative of Parkersville PDA attended and spoke in opposition. County Council reversed the Planning Commission decision and voted to approve both subdivision applications.
13. Parkersville PDA is challenging those decisions along with other citizens groups and adjoining landowners. The two proposed high density subdivisions at issue in this case threaten to continue a pattern of permanent and detrimental impact to this historical minority community.
14. Parkersville PDA represents the interests of landowners who reside in the immediate vicinity of affected parcels, many of whom would have standing in their own right to challenge the matters in question. Neither the claims asserted nor the relief requested requires the participation of the individual landowners. The interests of these landowners are germane to and fall squarely within Parkersville PDA's purpose and mission.
15. The county's refusal to bring zoning ordinances and land use decisions into compliance with the Planning Act and comprehensive plan and the county's decisions to approve the Petigru and Parkersville subdivision applications has caused injury to the landowners represented by Parkersville PDA as follows:

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

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

I hereby set my hand and seal this 19th day of October, 2022.

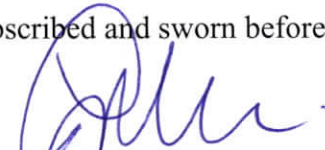
PARKERSVILLE PLANNING &
DEVELOPMENT ALLIANCE, INC.



Johnny A. Ford
President

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 19th day of October, 2022.



NOTARY PUBLIC

(SEAL)



My commission expires: 6/8/2032

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

AFFIDAVIT

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

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

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

9. There are many parcels of land in the Waccamaw Neck that are affected by zoning ordinances and land use decisions that do not comply with the comprehensive plan.
10. KIG received notice in August 2022, about two land development subdivision applications proposing “high density” multi-family housing on two vacant parcels of heirs’ property land designated as “medium density” by the comprehensive plan and maps, and located in the heart of a traditional African American community known as “Parkersville,” one of the oldest and most historically significant neighborhoods of Pawleys Island, Georgetown County, South Carolina. These subdivision applications are representative of the issues outlined in the September 2, 2022, letter to the county.
11. The Petigru Parcel proposed 53 two-story, high density, multi-family townhouse units on 6.2 acres of land, designated as “Medium Density” by the comprehensive plan. The Parkersville Parcel proposed 56 two-story, high density, multi-family townhouse units on 7.9 acres of land designated as “Medium Density” by the comprehensive plan.
12. KIG attended the Planning Commission meeting on August 18, 2022, and spoke in opposition to these high density developments on medium density parcels on behalf of affected landowners. Planning Commission denied the subdivision applications.
13. Thereafter, KIG was notified that County Council had to approve the Planning Commission decisions at a council meeting on September 27, 2022. KIG attended and spoke in opposition on behalf of affected landowners. County Council reversed the Planning Commission decision and voted to approve both subdivision applications. KIG is challenging those decisions along with other citizens groups and adjoining landowners.
14. KIG represents the interests of all landowners affected by these issues, and landowners who reside in the immediate vicinity, many of whom would have standing in their own right to challenge the matters in question.
15. The interests of these landowners are germane to and fall squarely within KIG’s purpose and mission. Neither the claims asserted nor the relief requested requires the participation of the individual landowners.

16. The County's refusal to bring zoning ordinances and land use decisions into compliance with the Planning Act and comprehensive plan and the County's decision to approve the subdivision applications has caused injury to landowners represented by KIG as follows:

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

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

I hereby set my hand and seal this 23rd day of October, 2022.

KEEP IT GREEN, INC.

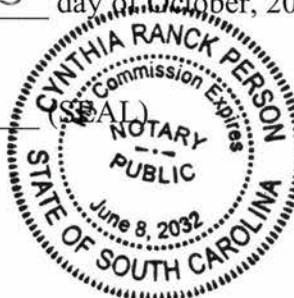
Duane Draper
Chairman

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 23rd day of October, 2022.

NOTARY PUBLIC

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



ROA 75

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

AFFIDAVIT

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

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

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

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

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

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

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

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

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

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

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

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

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

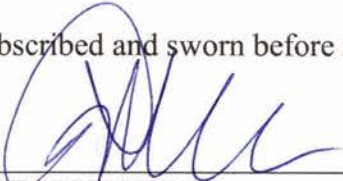
I hereby set my hand and seal this 21st day of October, 2022.

PRESERVE MURRELLS INLET, INC.


 Leon L. Rice, III
 President

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 21st day of October, 2022.


 _____ (SEAL)
 NOTARY PUBLIC

My commission expires:



FOR INTERNAL USE ONLY

Case Number: 00007

Fee Paid: CK# 3014

Date Submitted: 7/19/22

Received By: LMA



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

APPLICATION FOR MAJOR/MINOR SUBDIVISION

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

Name of Proposed Subdivision: Regatta Townhomes

Please check the appropriate box:

☒ Major subdivision: More than 10 lots. ☐ Preliminary Plat

☐ Minor subdivision: 10 lots or less. ☐ Final Plat

Property Information:

TMS Number: 04-0203-155-00-00

Street Address: 1670 Petigru Dr.

City / State / Zip Code: Pawleys Island, SC 29585

Lot / Block / Number: PARKERSVILLE RD & OLL; SLD 788-8

Current Zoning Classification: GR

Existing Use: Vacant

Proposed Use: Multi-Family Townhomes **(53)**

Property Owner of Record:

Name: Samuel J. Nesbit

Address: 6201 Rosebud St.

City/ State/ Zip Code: Columbia, SC 29203

Telephone/Fax: _____

E-mail: _____

Signature of Owner / Date: See Letter of Agency

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

Agent of Owner:

Name: Development Resource Group, LLC

Address: 4703 Oleander Dr.

City / State / Zip Code: Myrtle Beach, SC 29577

Telephone/Fax: 843.839.3350

E-mail: rob@drgp LLC.com

Signature of Agent/ Date:  7/19/22

Signature of Owner /Date: _____

Contact Information:

Name: Robert Wilfong

Address: 4703 Oleander Dr., Myrtle Beach, SC 29577

Phone / E-mail: 843.839.3350, rob@drgp LLC.com

Submittal Requirements for Major Developments:

1. Sketch Plan:

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

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

2. Development Plat / Plan

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

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

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

Submittal Requirements for Minor Developments:

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

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

TYPES OF UTILITIES PROPOSED:

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

TYPE OF ACCESS ROAD:

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

Fee Schedule:

Major Sub-division (11 lots or more)

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

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

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

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

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

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

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

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

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

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

APPENDIX B

LETTER OF AGENCY

To: The Georgetown County Planning Commission

Re: Tax Map Number (s): 04-0203-155-00-00

Property Address: 0 Petigru Drive

Property Location: Pawleys Island, South Carolina

Property Owner(s): Samuel J. Nesbitt, ETAL
(Please Print Full Name)

In connection with the above referenced property, I hereby appoint the person shown below as my agent for the purpose of filing such application for project approval as they shall deem necessary and proper.

Authorized Agent: Robert W. Wilfong
(Please Print Full Name)

Reason for Agency: Client Representation

Business License #: COA #6089

Agent's Address: 4703 Oleander Drive, Myrtle Beach, SC 29577

Agent's Telephone Number: (843)-839-3350

Ci Hagan
Witness

SAMUEL J. NESBITT, ETAL
Property Owner (Please Print Full Name)

POA

Title
Samuel J. Nesbitt
Signature of Property Owner

JUNE 13, 2022
Date

If there is a land contract of sales contract, please supply us with a copy.

FOR INTERNAL USE ONLY

Case Number: 00008

Fee Paid: CK #3060

Date Submitted: 7/19/22

Received By: LMA



MAJOR 2022-00008

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

APPLICATION FOR MAJOR/MINOR SUBDIVISION

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

Name of Proposed Subdivision: Osprey Townhomes

Please check the appropriate box:

☒ Major subdivision: More than 10 lots.

☐ Preliminary Plat

☐ Minor subdivision: 10 lots or less.

☐ Final Plat

Property Information:

04-0416-004-00-00

TMS Number: _____

Street Address: 860 Parkersville Dr.

City / State / Zip Code: Pawleys Island, SC 29585

Lot / Block / Number: _____

Current Zoning Classification: GR

Existing Use: Vacant

Proposed Use: Multi-Family Townhomes (56)

Property Owner of Record:

Name: Samuel J. Nesbit

Address: 6201 Rosebud St.

City/ State/ Zip Code: Columbia, SC 29203

Telephone/Fax: _____

E-mail: _____

Signature of Owner / Date: See Letter of Agency

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

Agent of Owner:

Name: Development Resource Group, LLC

Address: 4703 Oleander Dr.

City / State / Zip Code: Myrtle Beach, SC 29577

Telephone/Fax: 843.839.3350

E-mail: rob@drgpllc.com

Signature of Agent/ Date: *Rob Wilfong* 7/19/22

Signature of Owner /Date: _____

Contact Information:

Name: Robert Wilfong

Address: 4703 Oleander Dr., Myrtle Beach, SC 29577

Phone / E-mail: 843.839.3350, rob@drgpllc.com

Submittal Requirements for Major Developments:

1. Sketch Plan:

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

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

2. Development Plat / Plan

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

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

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

Submittal Requirements for Minor Developments:

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

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

TYPES OF UTILITIES PROPOSED:

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

TYPE OF ACCESS ROAD:

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

Fee Schedule:

Major Sub-division (11 lots or more)

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

Preliminary Review (Commercial)	Base: \$400.00 + \$10.00 per acre
Final Review (Commercial)	Base: \$200.00 + \$10.00 per acre
Required Revisions	Flat Fee: \$50.00
Minor Sub-division (10 lots or less)	Base: \$40.00 + \$10.00 each lot

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

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

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

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

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

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

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

APPENDIX B

LETTER OF AGENCY

To: The Georgetown County Planning Commission

Re: Tax Map Number (s): 04-0416-004-00-00

Property Address: 860 Parkersville Road

Property Location: Pawleys Island, South Carolina

Property Owner(s): Samuel J. Nesbitt, ETAL
(Please Print Full Name)

In connection with the above referenced property, I hereby appoint the person shown below as my agent for the purpose of filing such application for project approval as they shall deem necessary and proper.

Authorized Agent: Robert W. Wilfong
(Please Print Full Name)

Reason for Agency: Client Representation

Business License #: COA #6089

Agent's Address: 4703 Oleander Dr., Myrtle Beach, SC 29577

Agent's Telephone Number: (843) 839-3350

Witness

SAMUEL J. NESBITT, ETAL
Property Owner (Please Print Full Name)

POA

Title


Signature of Property Owner

JUNE 13, 2022

Date

If there is a land contract of sales contract, please supply us with a copy.

KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

August 18, 2022

VIA EMAIL

Georgetown County Planning Commission
129 Screven Street
Georgetown, SC 29442

RE: Robert Wilfong, Agent
Development Resource Group, LLC
Site Plan Review 53 Unit High Density Multi-family Development – Regatta
Site Plan Review 56 Unit High Density Multi-family Development – Osprey
Case Nos. MAJOR 2022-00007 & MAJOR 2022-00008

Dear Planning Commission Members:

I am writing on behalf of residents of the historically and culturally significant Parkersville neighborhoods that lie in the vicinity of the above referenced proposed high density subdivisions that are on your agenda for site plan review. I specifically represent multiple owners of land parcels adjoining these proposed subdivisions.

Traditional minority communities in Pawleys Island and elsewhere in Georgetown County are experiencing attrition at alarming rates due to approval of development on former heirs' property that does not fit into the character of these longstanding neighborhoods and that does not give thoughtful consideration to all factors required to be taken into account by state and county law.

These adjoining landowners and residents of this primarily minority neighborhood, along with the Pawleys Island Civic Club, Keep It Green, and the greater Pawleys Island community wish to respectfully express their vehement opposition to these two high density subdivisions that are proposed on two tracts of heirs' property that is designated as medium density by the Georgetown County Comprehensive Land Use Plan. There are multiple legal bases for their opposition as follows:

1. Planning Commission is Required to Not Approve.

The provisions of Georgetown County Development Regulations require the Planning Commission not to approve these two proposed high density subdivision site plans that are proposed for parcels specifically designated as medium density by the Georgetown County Comprehensive Plan, Future Land Use Map (FLUM), which is enacted by ordinance of the Georgetown County Council.

Section 5 of the Georgetown County Development Regulations specifically states that:

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

In this case, our county council, the governing body and highest public agency of this county, has enacted an ordinance which specifically designates these two parcels as medium density. By virtue of that ordinance, our county council has made the specific determination, as contemplated by Section 5, that “in the best interest of the public, the site is not suitable for” high density development.

Osprey is proposing 9.84 units per acre and Regatta 8.55 units per acre, both high density with nearly twice the maximum density allowed by the FLUM medium density designation which permits no more than 5 units per acre. The FLUM designation is pursuant to a valid county ordinance and in addition to the mandate of Section 5, there is no authority for the Planning Commission to approve something that is inconsistent with a valid existing ordinance.

The language of Section 5 states clearly that the Planning Commission “shall not approve the subdivision” in certain circumstances. The word “shall” is always mandatory according to the definition section of Georgetown County ordinances.

We would submit that the Planning Commission is required to deny these proposals for this reason alone.

2. Compliance with Comprehensive Plan is Mandatory.

State and local law are very clear that following the Comprehensive Land Use Plan is compulsory, not optional. This includes land development situations such as this.

SECTION 6-29-720(B) of the South Carolina Planning Enabling Act specifically states that “[zoning] regulations must be made in accordance with the comprehensive plan for the jurisdiction.”

SECTION 6-29-1120 of that same act, which authorizes and governs county land development regulations, specifically states that “the regulation of land development by ... counties ... is authorized for the following purposes, among others: ... to assure ... the wise and timely development of new areas ... in harmony with the comprehensive plan

3. Subdivisions are Required to Comply with Comprehensive Plan.

Subdivision proposals are required to comply with zoning, land development regulations, and the comprehensive plan.

Georgetown County Development Regulations, Section 4, states that one of the specific purposes of the county development regulations is “to assure that development is compatible with adopted comprehensive plan, zoning ordinance, official map, and capital budget.”

4. General Residential (GR) Zoning can be Compatible with Medium Density.

The Georgetown County GR zoning ordinance states at 607 that “[i]t is the intent of this section that the General Residential District be established for medium-to-high density residential purposes.”

Thus, the GR zoning district does not automatically necessitate high density. It is perfectly appropriate for projects within GR zoning to be medium density. The determination of appropriate density within the GR district depends on the comprehensive plan FLUM designation, compliance with conditions of the GR ordinance itself, and a variety of other factors that state and local law require to be considered.

In this case, the comprehensive plan FLUM designates medium density which means the GR permitted use of multi-family townhouses is limited to a maximum of 5 units per acre.

5. Conflicts Resolved By Applying Most Restrictive Standard.

To the extent there is any doubt about the interplay among the GR zoning ordinance, the comprehensive plan FLUM designation, and other applicable ordinances, the following are state and local provisions that specifically require that when faced with a conflict between or among ordinances in land development or zoning situations, the most restrictive one applies.

Applying these laws to this issue, the more restrictive comprehensive plan FLUM requirement dictates with respect to maximum density over the less restrictive GR zoning parameters.

- Section 1800 of the Georgetown County Zoning Ordinance provides that
“in case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future ordinance of the County of Georgetown, the most restrictive shall in all cases apply.”

- Section 10 of the Georgetown County Development Regulations, states that

“[t]he standards and provisions of this Ordinance shall be interpreted as being the minimum requirements necessary to uphold the purpose of this Ordinance and for the protection of the health, safety, economy, good order, appearance, convenience and welfare of the general public. Whenever this Ordinance imposes a higher standard than that required by other resolutions, ordinances, rules or regulations, easements, covenants or agreements, the provisions of this Ordinance shall govern. When the provisions of any other statute impose higher standards, the provisions of such statute shall govern.”
- SECTION 6-29-960 of the South Carolina Planning Enabling Act states that

“[w]hen the regulations made under authority of this chapter ... 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.”

6. Non-Compliance with Regulations & Other Considerations

Although these issues are moot in light of the above, there are many areas of non-compliance with the requirements of ordinances and regulations. The following are several glaring examples:

- GR Zoning Ordinance, 607.3 requires that:

"The minimum lot frontage [for a multi-family project] shall be at least 150 feet of frontage on an approved street. The lot depth shall be no greater than three (3) times the lot width."
- GR Zoning Ordinance, 607.4021 requires that

“The front of the buildings shall not form long, unbroken lines of row housing, but shall be staggered at the front building lines;”
- GR Zoning Ordinance, 607.4022 requires that:

“No more than six (6) contiguous townhouses nor fewer than three (3) shall be built on a row;”

- GR Zoning Ordinance, 607.40253 requires that:

“Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.”
- GR Zoning Ordinance, 607.40255 requires:

“[Multi-family] projects shall also comply with all other applicable ordinances”
- Both state and local law specifically provide that the purpose and intent of development regulations is to promote wise distribution of development in order to avoid congestion and overcrowding, and protect the public health, safety, and general welfare of the community. This would include consideration of the compatibility of proposed development with the character of the neighborhood, as well as stormwater, flooding, traffic, tree protection, safety and other considerations that affect public health and welfare.

Many of my clients will personally attend the meeting this evening and some will be speaking on behalf of their families and neighbors. Most have lived and owned property in this neighborhood for generations. This is a matter of extreme importance to the residents of this community.

Pastor Johnny and Lynne Ford, lifetime residents of this neighborhood, spoke in opposition to a proposed project in this community at a county council meeting a few months ago. Lynne Ford summed it up perfectly in her remarks to council:

“[People from the minority communities often don’t speak up for themselves because] when they do speak up, nothing happens. There’s never any change. So now is an opportunity for you to hear those voices that are underrepresented, and often unheard and ignored, to actually help them feel that they are not disenfranchised, to help them feel like they matter and to give them value, because their homes are just as valuable as the two million dollar homes. Their land is just as valuable as hundred million dollar land. We’re tired of having all these things coming into our communities.”

This project would permanently change the character and charm of these traditional neighborhoods by cramming as many homes into the smallest space possible in the heart of this community. This is not affordable or workforce housing and the price is beyond the reach of current residents. Approval of these kinds of irresponsible and inappropriate high density projects typically displaces current residents and even if it does not, it causes them serious problems with flooding, stormwater and traffic. Once made, these decisions cannot be undone and they set a devastating precedent.

Georgetown County Planning Commission

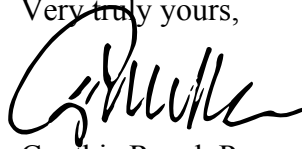
August 18, 2022

Page 6 of 6

For all the reasons set forth above, my clients, this neighborhood, and the greater community respectfully request you to not approve these subdivision site plans.

Thank you for your kind attention and consideration. Please make this letter part of the public record at public hearing in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Ranck Person', written over the closing text.

Cynthia Ranck Person, Esquire

Council Members

District 1: Vacant
District 2: Bob Anderson
District 3: Everett Carolina
District 4: Lillie Jean Johnson, *Vice Chair*
District 5: Raymond L. Newton
District 6: Steve Goggans
District 7: Louis R. Morant, *Chairman*

**County Administrator**

Angela Christian

Clerk to Council

Theresa E. Floyd

September 27, 2022

5:30 PM

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

AGENDA

- 1. INVOCATION**
- 2. PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF AGENDA**
- 4. SPECIAL PRESENTATIONS**
 - 4.a Nonprofit Spotlight - Center for Heirs Property Preservation**
 - 4.b Innovation Award Presentation**
 - 4.c Presentation of Proclamation No. 22-27 - Designating October 2022 as "Fire Prevention Month" in Georgetown County.**
- 5. PUBLIC COMMENTS**
- 6. CONSENT AGENDA**
 - 6.a Contract #19-034, Task Order #19 for Landfill Drive Resurfacing**
 - 6.b Procurement #22-027, Court Construction & Resurfacing**
 - 6.c RFQu #22-049, C-Fund Civil Engineering Services, 2-Yr. Term**
- 7. PUBLIC HEARINGS**
 - 7.a Ordinance No. 22-29 - An amendment to the Future Land Use Map for 58 acres located in the 2200 block Browns Ferry Road, TMS No. 02-1009-004-00-00, from Low Density Residential to Public/Semi-public**
- 8. APPOINTMENTS TO BOARDS AND COMMISSIONS**
- 9. RESOLUTIONS / PROCLAMATIONS**
- 10. THIRD READING OF ORDINANCES**
 - 10.a Ordinance No. 22-29 - An amendment to the Future Land Use**

ROA 97

Map for 58 acres located in the 2200 block Browns Ferry Road, TMS No. 02-1009-004-00-00, from Low Density Residential to Public/Semi-public

- 10.b Ordinance No. 22-30 - To rezone approximately 58 acres in the 2200 block of Browns Ferry Road, identified as TMS No. 02-1009-004-00-00, from the Crown Pointe Planned Development (PD) to Limited Industrial (LI).

11. SECOND READING OF ORDINANCES

- 11.a Ordinance No. 22-31 - To rezone one (1) parcel totaling approximately 8.796 acres located on the northern corner of Martin Luther King Road and Petigru Drive, TMS No. 04-0413-047-00-00, from One Half Acre Residential (R 1/2 Ac) to Flexible Design District (FDD).
- 11.b Ordinance No. 22-32 - To amend the Woodside Village Planned Development, located on the west side of Hwy 17 Bypass at the southwest intersection of Bellamy Road, further identified as TMS #41-0119-003-06-00, to add Car Wash Facilities to the list of permitted uses.
- 11.c Ordinance No. 22-33 - To rezone two parcels located on Highway 17 Bypass at its intersection with Coquina Avenue in Murrells Inlet, TMS No. 41-0119-032-02-02 and 41-0119-032-02-03, from a Flexible Design District (FDD) to General Commercial (GC).

12. FIRST READING OF ORDINANCES

- 12.a Ordinance No. 22-34 - Amendment of the FY 2022/2023 Budget Ordinance

13. BIDS

14. REPORTS TO COUNCIL

- 14.a Site Plan Review - 41 Unit Multifamily Development located east of Petigru Drive approximately 877 feet south of its intersection with Martin Luther King Road in Pawleys Island (TMS No. 04-0203-155-00-00).
- 14.b Site Plan Review - 47 Unit Multifamily Development located east of Parkersville Road approximately 425 north of its intersection with Martin Luther King Road in Pawleys Island (TMS 04-0416-004-00-00)

15. APPROVAL OF MINUTES

- 15.a Regular Council Meeting - September 13, 2022

16. DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

- 16.a PUBLIC HEARING - Ordinance No. 22-27 - To amend the Future Land Use Map for a 2,061 acre parcel located on Saints Delight Road, further identified as TMS No.1-0442-026-07-00, from Low Density Residential to Public/Semi-public - TO BE DEFERRED
- 16.b THIRD READING - Ordinance No. 22-19 - Authorizing

Georgetown County, South Carolina, to Enter a Base Lease and Conveyance Agreement and an Installment Purchase and Use Agreement Each Between the County and SCAGO Public Facilities Corporation for Georgetown County; Approving the Form and Terms of a Trust Agreement Between SCAGO Public Facilities Corporation for Georgetown County and Regions Bank, as Trustee, in Connection with the Issuance of Not Exceeding \$55,000,000 Principal Amount of Certain Installment Purchase Revenue Bonds (Georgetown County Project), in One or More Series; Consenting to the Issuance of Such Installment Purchase Revenue Bonds; Approving the Form of a Preliminary Official Statement With Respect to Such Installment Purchase Revenue Bonds; Providing For an Exemption From The County's Procurement Code; Delegating Authority to the Chair of County Council, and the County Administrator, or Either of Them Acting Alone, to Approve and Determine Certain Matters; and Other Matters Relating Thereto.

16.c SECOND READING - Ordinance No. 22-27 - To amend the Future Land Use Map for a 2,061 acre parcel located on Saints Delight Road, further identified as TMS No.1-0442-026-07-00, from Low Density Residential to Public/Semi-public - TO BE DEFERRED

16.d SECOND READING - Ordinance No. 22-28 - To rezone an approximately 2,061.4 acre tract located off of Saints Delight Road, identified as TMS No. 01-0442-026-07-00, to add a Solar Energy Facility Floating District (SEFFD) to the currently zoned Forest Agriculture (FA) tract. - TO BE DEFERRED

17. LEGAL BRIEFING / EXECUTIVE SESSION

17.a Legal Briefing regarding Contractual Matter pursuant to S.C. Code Ann. § 30-4-70(a)(2)

18. OPEN SESSION

19. ADJOURNMENT

KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

September 26, 2022

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29442

RE: Robert Wilfong, Agent
Development Resource Group, LLC
Site Plan Review 53 Unit High Density Multi-family Development – Regatta
Site Plan Review 56 Unit High Density Multi-family Development – Osprey
Case Nos. MAJOR 2022-00007 & MAJOR 2022-00008

Dear County Council Members:

I am writing on behalf of adjoining landowners including the Grate family, Jenkins heirs, Rutledge heirs, Michael Green and family, Baker family, Pawleys Island Civic Club (Vincent Davis, President), Parkersville Planning & Development Alliance (Rev. Johnny Ford, President), and many other residents of the historically and culturally significant minority neighborhoods in the Parkersville community of Pawleys Island. Most of these people have lived and owned land in this neighborhood for their entire lives as did their parents and grandparents before them.

Our position is summarized as follows:

1. Approval of these high density site plans would violate existing County Ordinance 2015-05 which designates these parcels as medium density.
2. Georgetown County ordinances provide that in the event of conflicting zoning or land development regulations, the most restrictive applies, i.e., medium density.

Detrimental to Minority Community of Parkersville

These two high density projects are proposed for the traditional African American community of Parkersville. Minority communities in Pawleys Island and elsewhere in Georgetown County are experiencing attrition at alarming rates due, in part, to approval of development that does not fit into the character of these longstanding neighborhoods or give thoughtful consideration to all factors required to be taken into account by state and county laws.

Please understand that we are not opposed to development. We support smart development that (1) complies with the law, (2) is consistent with natural character and supported by sufficient infrastructure, and (3) meets the needs of the community. We are asking you to please follow the comprehensive plan and work together with citizens. No one knows better about a neighborhood than the people who live there.

These projects would permanently change the character and charm of this beautiful historical community, and cause additional traffic, stormwater, and flooding problems. These multi-family townhouses are not affordable or workforce housing and the price is beyond the reach of current residents. Approval of these kinds of developments typically ultimately displace those who live in the neighborhood. Once made, these decisions cannot be undone and they set a devastating precedent.

This is a matter of extreme importance to the residents of Parkersville. Pastor Johnny Ford and other members of the Parkersville community are so concerned that they formed a nonprofit corporation called the Parkersville Planning & Development Alliance, Inc., whose mission is to protect and preserve the history, culture and heritage of this valuable neighborhood.

Pastor Johnny & Lynne Bessellieu Ford, whose families have lived in this community for generations, spoke in opposition to a proposed project in this community a few months ago. Lynne made the following remarks to council:

“[People from the minority communities often don’t speak up for themselves because] when they do speak up, nothing happens. There’s never any change. So now is an opportunity for you to hear those voices that are underrepresented, and often unheard and ignored, to actually help them feel that they are not disenfranchised, to help them feel like they matter and to give them value, because their homes are just as valuable as the two million dollar homes. Their land is just as valuable as hundred million dollar land. We’re tired of having all these things coming into our communities.”

Details

The bases upon which these landowners, residents, and groups respectfully oppose these two high density projects are as follows:

1. Planning Commission Denied These Plans

The Georgetown County Planning Commission denied these plans after public hearing on August 18, 2022, and we request you to follow that decision.

2. Approval Would Violate County Ordinance 2015-05

County Council enacted ordinance 2015-05, the Comprehensive Plan Land Use Element along with the related Future Land Use (FLU) Maps. This ordinance specifically designates the two parcels at issue as medium density which is defined by the ordinance as a maximum of 5 units per acre.

Osprey was originally proposing 9.84 units per acre and has revised its plan to 8.25 units per acre. Regatta was proposing 8.55 units per acre and has revised its plan to 6.81 units per acre. Both remain high density with proposals substantially above the maximum density allowed by the comprehensive plan. There is no authority for County Council to approve plans that are inconsistent with valid existing ordinances.

3. General Residential Does Not Require High Density

The General Residential (GR) zoning district does not automatically necessitate high density. The GR ordinance states at 607 “[i]t is the intent of this section that the General Residential District be established for medium-to-high density residential purposes.” Thus, it is appropriate for projects within GR zoning to be medium density.

The determination of appropriate density within the GR district should depend on the comprehensive plan designation, compliance with conditions of the GR ordinance itself, and a variety of other factors that state and local law require to be considered.

In this case, the comprehensive plan designates medium density which means the GR permitted use of multi-family townhouses is limited to a maximum of 5 units per acre.

4. Conflicts Resolved By Applying Most Restrictive Standard.

Where there is a conflict between or among zoning or land development ordinances, the most restrictive one applies. In this case, the more restrictive comprehensive plan density requirement takes precedence over the less restrictive GR zoning parameters.

- Section 1800 of the Georgetown County Zoning Ordinance provides
“in case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future ordinance of the County of Georgetown, the most restrictive shall *in all cases* apply.”
- Section 10 of the Georgetown County Development Regulations, states
“Whenever this Ordinance imposes a higher standard than that required by other resolutions, ordinances, rules or regulations, easements, covenants or agreements,

the provisions of this Ordinance shall govern. When the provisions of any other statute impose higher standards, the provisions of such statute shall govern.

5. Compliance with Comprehensive Plan is Mandatory.

As set forth in our letter to the county dated September 2, 2022, state and local law are clear that following the Comprehensive Land Use Plan is compulsory in both zoning and land development situations.

SECTION 6-29-720(B) of the South Carolina Planning Act specifically states that “[zoning] regulations must be made in accordance with the comprehensive plan for the jurisdiction.”

6. Stormwater Study Results

As the President of the Pawleys Island Civic Club pointed out in recent remarks at Planning Commission hearings, the county has invested substantial funds to have a county-wide stormwater study completed. High density, multi-family developments such as these, in a neighborhood that is already experiencing serious problems with stormwater and flooding, should not be considered until the results of that study have been received, reviewed and analyzed.

7. Non-Compliance with Regulations & Other Considerations

In addition to the above, there are many areas of the plans’ non-compliance with the requirements of ordinances and regulations. The following are several examples:

- GR Zoning Ordinance, 607.3:

"The minimum lot area for a multi-family project shall be at least one acre. The minimum lot frontage shall be at least 150 feet of frontage on an approved street. The lot depth shall be no greater than three (3) times the lot width."

The two lots on which these multi-family development projects are being proposed violate this ordinance. The Regatta development proposed for Petigru is particularly egregious.

At the Planning Commission hearing in August, the developer and the planning staff indicated that in order to get around the requirement of this ordinance, calculations were made based on two separate development phases within the proposed development. The lot dimensions were measured based on these proposed phases and a new proposed street within the proposed development rather than calculating the dimensions of the current lot and current streets as they actually exist.

The plain language of the ordinance speaks to the dimensions of the lot upon which a multi-family project is being proposed, not an artificial division or phase of the proposed

development and its relationship to a proposed street within that development. The proposed street is not a currently approved street. It does not exist and would not exist until the proposed development is built. The clear intent and logical application of the ordinance is for evaluation of the lot that is being considered for multi-family development before the development is approved. The ordinance would otherwise be rendered meaningless.

- GR Zoning Ordinance, 607.4021:

“The front of the buildings shall not form long, unbroken lines of row housing, but shall be staggered at the front building lines;”

- GR Zoning Ordinance, 607.4022:

“No more than six (6) contiguous townhouses nor fewer than three (3) shall be built on a row;”

- GR Zoning Ordinance, 607.40255:

“[Multi-family] projects shall also comply with all other applicable ordinances”

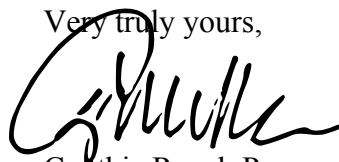
- State and local law specifically provide that the purpose and intent of development regulations is to promote wise distribution of development in order to avoid congestion and overcrowding, and protect the public health, safety, and general welfare of the community.

This includes the compatibility of the proposed development with the character of the neighborhood, as well as stormwater, flooding, traffic, tree protection, safety and other considerations that affect public health and welfare.

For all the reasons set forth above, we respectfully request you to follow the decision of the Planning Commission and deny these two proposed subdivisions.

Thank you for your kind attention and consideration.

Very truly yours,



Cynthia Ranck Person

Item Number:	14.a
Meeting Date:	9/27/2022
Item Type:	REPORTS TO COUNCIL

AGENDA REQUEST FORM
GEORGETOWN COUNTY COUNCIL



DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

Site Plan Review - 41 Unit Multifamily Development located east of Petigru Drive approximately 877 feet south of its intersection with Martin Luther King Road in Pawleys Island (TMS No. 04-0203-155-00-00).

A request from Robert Wilfong, Development Resource Group, LLC as agent for Samuel J. Nesbit, ETAL for site plan review of a 41 unit multifamily development located east of Petigru Drive approximately 877 feet south of its intersection with Martin Luther King Road in Pawleys Island. TMS # 04-0203-155-00-00. Case # MAJOR 2022-00007.

CURRENT STATUS:

The site contains approximately 6.87 acres and is zoned General Residential (GR).

POINTS TO CONSIDER:

1. The property is located east of Petigru Drive approximately 877 feet south of its intersection with Martin Luther King Road. Tracts to the north, east, south and west are zoned General Residential.
2. Single family and multifamily uses are both permitted in the General Residential Zoning District. Section 607.306 of the GR section requires a site plan review by the Planning Commission and County Council for all multi-family developments containing more than ten (10) dwelling units with a net density of five units or more per acre. Adjacent property owner notices were sent out and the property was advertised as required in this section of the ordinance. The review by the Planning Commission and County Council is limited to compliance with the land use regulations of the County as the use has already been properly designated by establishment of the zoning district.
3. The applicant is proposing a two phase multi-family development consisting of two 2-story 4-unit multifamily buildings in phase 1 and nine 2-story multifamily buildings in phase 2 for a total of 53 three bedroom units. The proposed name for the development is the Regatta Townhomes.
4. The maximum density allowed in the GR zoning district is based on both the number of bedrooms in each unit and the number of stories in each building. All buildings are proposed as 3-bedroom two stories townhomes. The entire tract contains a total of 6.87 acres or 299,257 square feet. After subtracting the 28,314 SF for the 24' drive area and the 871 sf for the wetlands, the net lot area is 270,072 SF which is more than the required 227,900 SF. The number of units shown meets the minimum lot area per unit requirements. The total net density for the multi-family development is 8.55 units per acre.
5. The proposed plan complies with the 30 foot front yard setback requirement for multifamily developments as well as the 10' side and 20' rear yard setback. All eleven buildings will have a building separation of 20 feet. Phase 1 indicates a pervious/impervious ratio of 72%/28% and Phase 2 indicates a pervious/impervious ratio of 57%/43% which exceeds the 50%/50% requirement.
6. The proposed plan includes .02 acres of isolated Non-Jurisdictional wetlands which will remain undisturbed.
7. The Zoning Ordinance requires two parking spaces for each three bedroom unit. One Hundred and Six (106) parking spaces are required. Each unit will have a one car garage and 2 additional spaces in the driveway for a total of 159 spaces.
8. Section 1201.9 of the Zoning Ordinance requires buffers between differing land use types. Multi-family developments are required to install a Level 2 buffer against existing single family development. A Level 2 buffer will be required along the northern property line and southeastern property line adjacent to existing single family dwellings.
9. The site contains protected trees. Staff has reviewed an initial tree removal plan; however, the applicant will need to submit a final tree removal and replacement plan once Stormwater and GCWSD has given their approvals. No trees over 24" shall be removed and the applicant will be required to retain 69 trees or 687 inches of DBH on the site after development. According to the Land Survey, 799.5 inches of DBH will remain after development.
10. The applicant will need to meet Midway Fire, Georgetown County Stormwater, Georgetown County Public Works and GCWSD requirements prior to obtaining final approval for this project. According to GCWSD, they are aware of the proposed project and both water and sewer are available. Midway Fire has reviewed the conceptual site plan and has indicated that additional hydrants may be needed. Other comments will be addressed once initial civil plans have been submitted for review. After concerns regarding the turnarounds and drive aisle, it was verified with Midway Fire, that both the cul-de-sac and hammerhead turnaround meets the requirements of fire code; however, the drive aisle would have to be revised to 26' if

additional fire hydrants are needed. The engineer indicated that stormwater will be collected and treated on-site by the proposed retention pond. Georgetown County stormwater has completed a cursory review of the project and states that the proposed concept depicts the intent of meeting the minimum requirements of the Georgetown County Stormwater Management Ordinance. Please see the attached Letter of Coordination.

11. The proposed project is expected to generate 318 (53 units X 6 trips per day) ADT's per day, this project alone does not meet the threshold of a Traffic Impact Analysis; however, the applicant is proposing another multi-family development less than one-mile from this project. This project is expected to generate 336 (56 units X 6 trips per day) ADT's per day. A traffic impact assessment was conducted by Development Resource Group, LLC. The study included assessment of the intersection of MLK Road and Hwy 17. They have concluded that no significant adverse impacts are anticipated from site generated traffic at this intersection. The engineer is in the process of updating the traffic assessment to include the intersection of MLK Road and Petigru Road. The Engineer has completed the traffic counts for the intersection of MLK Road and Petigru Road. The study determined that this intersection operates at an acceptable LOS and the proposed project will have no adverse impacts on traffic in the area.

12. Access for phase one of the development will be provided via a 50' right-of-way off of Petigru Road. Petigru Road is a 66' public right-of-way and is maintained by the State. The proposed new 50' private right-of-way will be an all-weather surface and will require a street name. In addition, the applicant will need to obtain an encroachment permit from SCDOT for a curb cut off of Petigru. Access for phase two of the development will be provided via a 24' drive aisle/easement off of the new 50' private right-of-way. The proposed new 24' drive aisle/easement will also require a street name.

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

14. According to the existing flood maps, the tract is located in flood zone X. The proposed flood maps indicate that the property will remain in flood zone X. The buildings are not required to be elevated.

15. Staff recommended approval of the preliminary plat conditional on the following:

- Final approvals from Midway Fire, Georgetown County Stormwater, Georgetown County Public Works and GCWSD.
- A tree removal and replacement plan will need to be submitted for review and approval.
- Approval of a street name for the proposed 50' private ROW and the 24' drive aisle/easement.
- Approval of the revised traffic impact assessment.

16. Planning Commission held a public hearing at their August meeting. Fourteen people spoke opposing the project. Major issues that were presented by the public were:

- Traffic
- Stormwater and Drainage
- High Density
- Compatibility
- Lack of Infrastructure, ie. sidewalks
- Tree canopies not shown
- No dumpster pads
- No guest parking
- No mailbox kiosk

After significant discussion regarding high density, traffic, loss of trees and stormwater, a motion was made to deny the project. The motion to deny the plan passed with a vote of 3-2.

Based on the comments from the meeting, the developer has revised the site plan to include a 26' drive aisle per Midway Fire, the location of 2 mailbox clusters, 2 dumpster pads, 10 guest parking spaces and tree canopies. In addition, he has decrease the total number of buildings from 11 to 8. This brings the total number of units down from 53 units to 41 units and the net density is reduced from 8.55 units per acre to 6.81 units per acre. The pervious/imperious ratio is 60%/40%.

Existing vegetative buffer along the front will remain per the plans. Elevations for the proposed buildings are attached.

FINANCIAL IMPACT:

Not Applicable

OPTIONS:

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

ROA 106

STAFF RECOMMENDATIONS:

This project is a site plan review. Review is limited to the requirements of the County ordinances.

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description		Type
☐	Application and Attachments	Backup Material
☐	Army Corp of Eng.	Backup Material
☐	Endangered Species Survey	Backup Material
☐	Traffic Assessment	Backup Material
☐	Location	Backup Material
☐	Zoning	Backup Material
☐	FLU Map	Backup Material
☐	Aerial	Backup Material
☐	Current Flood Zone	Backup Material
☐	Proposed Flood Zone	Backup Material
☐	Site Plans	Cover Memo
☐	Correspondence 2	Backup Material
☐	Correspondence 3	Backup Material

Item Number:	14.b
Meeting Date:	9/27/2022
Item Type:	REPORTS TO COUNCIL

AGENDA REQUEST FORM
GEORGETOWN COUNTY COUNCIL



DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

Site Plan Review - 47 Unit Multifamily Development located east of Parkersville Road approximately 425 north of its intersection with Martin Luther King Road in Pawleys Island (TMS 04-0416-004-00-00)

A request from Robert Wilfong, Development Resource Group, LLC as agent for Samuel J. Nesbit, ETAL for site plan review of a 47 unit multifamily development located east of Parkersville Road approximately 425 feet north of its intersection with Martin Luther King Road in Pawleys Island. TMS # 04-0416-004-00-00. Case # MAJOR 2022-00008

CURRENT STATUS:

The site contains approximately 13.69 acres and is zoned General Residential (GR) with a small area on the rear zoned Neighborhood Commercial (NC). A 50' power line easement runs through the back section of the tract

POINTS TO CONSIDER:

1. The property is located east of Parkersville Road approximately 425 feet south of its intersection with Martin Luther King Road. Tracts to the north, south and west are zoned General Residential. Tracts to the east fronting Hwy 17 are zoned Neighborhood Commercial.
2. Single family and multifamily uses are both permitted in the General Residential Zoning District. Section 607.306 of the GR section requires a site plan review by the Planning Commission and County Council for all multi-family developments containing more than ten (10) dwelling units with a net density of five units or more per acre. Adjacent property owner notices were sent out and the property was advertised as required in this section of the ordinance. The review by the Planning Commission and County Council is limited to compliance with the land use regulations of the County as the use has already been properly designated by establishment of the zoning district.
3. The applicant proposed to subdivide approximately 7.9 acres fronting Parkersville Road in order to construct a total of twelve 2-story townhouse buildings containing of 56 three bedroom units. The entire tract contains approximately 13.69 acres. The rear of the tract closest to Hwy 17 contains approximately 5.79 acres of wetlands and will not be developed. This 5.79 acres will be accessed off of Geney Lane. Geney Lane is an existing 30' public right-of-way maintained by the County. The proposed name for the development is the Osprey Townhomes
4. The maximum density allowed in the GR zoning district is based on both the number of bedrooms in each unit and the number of stories in each building. All buildings are proposed as 3-bedroom two-story townhomes. The tract proposed for development contains a total of 7.9 acres or 344,124 square feet. After subtracting the 30,056 SF for the 24' drive area and the 68,174 sf for the wetlands, the net lot area is 245,894 SF which is more than the required 240,800 SF. The number of units shown meets the minimum lot area per unit requirements. The total net density for the multi-family development was proposed at 9.84 units per acre.
5. The proposed plan complies with the 30 foot front yard setback requirement for multifamily developments as well as the 10' side and 20' rear yard setback. All twelve buildings will have a building separation of 20 feet. The plan indicates a pervious/impervious ratio of 67%/33% which exceeds the 50%/50% requirement.
6. The 7.9 acre tract proposed for development includes 1.56 acres of isolated Non-Jurisdictional wetlands which will remain undisturbed.
7. The Zoning Ordinance requires two parking spaces for each three bedroom unit. One Hundred and Twelve (112) parking spaces are required. Each unit will have a one car garage and two additional spaces in the driveway for a total of 168 spaces.
8. Section 1201.9 of the Zoning Ordinance requires buffers between differing land use types. Multi-family developments are required to install a Level 2 buffer against existing single family development. A Level 2 buffer will be required along the southern boundary adjacent to existing single family dwellings.
9. The site contains protected trees. Staff has reviewed an initial tree removal plan; however, the applicant will need to submit a final tree removal and replacement plan once Stormwater and GCWSD give their approvals. No trees over 24" shall be removed and the applicant will be required to retain 63 trees or 634 inches of DBH on the site after development. According to the conceptual site, 860" inches of DBH will be retained after development.

ROA 108

10. The applicant will need to meet Midway Fire, Georgetown County Stormwater, Georgetown County Public Works and GCWSD requirements prior to obtaining final approval for this project. According to GCWSD, they are aware of the proposed project and both water and sewer are available. Midway Fire has reviewed the conceptual site plan and has indicated that additional hydrants may be needed. Other comments will be addressed once initial civil plans have been submitted for review. After further discussion with Midway Fire, the drive aisle would have to be increased to 26' if additional fire hydrants are needed. The engineer indicated that stormwater will be collected and treated on-site by the proposed retention pond. Georgetown County stormwater has completed a cursory review of the project and states that the proposed concept depicts the intent of meeting the minimum requirements of the Georgetown County Stormwater Management Ordinance. Please see the attached Letter of Coordination.

11. The proposed project was expected to generate 336 (56 units X 6 trips per day) ADT's per day, this project alone does not meet the threshold of a Traffic Impact Analysis; however, the applicant is proposing another multi-family development less than one-mile from this project. This project was expected to generate 318 (53 units X 6 trips per day) ADT's per day. A traffic impact assessment was conducted by Development Resource Group, LLC. The study included assessment of this intersection. They have concluded that no significant adverse impacts are anticipated from site generated traffic at the intersection of Martin Luther King Road and US 17. The engineer is in the process of updating the traffic assessment to include the intersection of MLK Road and Parkersville Road. The Engineer has completed the traffic counts for the intersection of MLK Road and Parkersville Road. The study indicated that this intersection operates at an acceptable LOS and the proposed project will have no adverse impacts on traffic in the area.

12. Access for the development will be provided via a 24' drive aisle/easement off of Parkersville Road. Parkersville Road is a 50' public right-of-way and is maintained by the County. The applicant will need to obtain an encroachment permit from the County for the two proposed curb cuts off of Parkersville Road. The proposed new 24' drive aisle/easement will also require a street name.

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

14. According to the existing flood maps, the tract is located in flood zone X. The proposed flood maps indicate that the property will be located in flood zones AE-14 and AE-13 in the rear of the property and AE-12 and X in the front portion of the property (to be developed).

15. There have been concerns regarding a bald eagle's nest in the area. Staff has confirmed with Amy Trager at DNR that an eagle's nest is in the area; however, the coordinates show the eagle's nest is located on the rear of the property approximately 330' from the tract to be subdivided. This area contains wetlands and will not be developed. According to Ms. Trager, this does not mean the front tract can not be developed; however, the developer will need to obtain a permit from US Fish and Wildlife.

16. Staff recommended approval of the preliminary plat conditional on the following:

- Final approvals from Midway Fire, Georgetown County Stormwater, Georgetown County Public Works and GCWSD.
- A tree removal and replacement plan will need to be submitted for review and approval.
- Approval of a street name for the 24' drive aisle/easement.
- Approval of the revised traffic assessment.

17. Planning commission held a public hearing at their August 18th meeting. Twelve people spoke opposing the project. Major issues that were presented by the public were:

- Compatibility
- Traffic
- Stormwater and Drainage
- High Density
- Buffers
- Lack of Infrastructure
- Tree canopies
- No mail box kiosk
- No dumpster pads
- No guest parking

After significant discussion regarding loss of trees, traffic assessment, density, stormwater and drainage, a vote to deny the project passed with a vote of 3-2.

Based on the comments from the meeting, the developer has revised the site plan to include a 26' drive aisle per Midway Fire, the location of one mailbox cluster, one dumpster pad, 15 guest parking spaces and tree canopies. In addition, he has decreased the total number of buildings from 12 to 10. This brings the total number of units down from 56 to 47 and the net density is reduced from 9.84 units per acre to 8.25 units per acre. The new ADT calculation for is reduced from 336 trips to 282 trips. The new total ADT's for both projects is 528.

The pervious/impervious ratio is 72%/28%. Elevations for the proposed buildings are attached.

ROA 109

FINANCIAL IMPACT:

Not Applicable

OPTIONS:

STAFF RECOMMENDATIONS:

This project is a site plan review. Review is limited to the requirements of the County ordinances.

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description	Type
☐ Location	Backup Material
☐ Zoning	Backup Material
☐ FLU	Backup Material
☐ Aerial	Backup Material
☐ Current Flood Zone	Backup Material
☐ Proposed Flood Zone	Backup Material
☐ Application and Attachments	Backup Material
☐ Traffic Assessment	Backup Material
☐ Utilities Letters	Backup Material
☐ Wetland Delineation	Backup Material
☐ Endangered Species Survey	Backup Material
☐ Site Plans	Cover Memo
☐ Correspondence 2	Backup Material
☐ Correspondence 3	Backup Material

KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

September 2, 2022

VIA EMAIL AND CERTIFIED MAIL

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

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

RE: REQUEST FOR COMPLIANCE WITH SOUTH CAROLINA PLANNING ACT

Dear Ms. Krauss & Mr. Morant:

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

Background

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

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

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

ROA 111

Request

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

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

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

South Carolina State Law

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

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

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

Georgetown County Law

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

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

Effect of Failure to Comply

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

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

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

Impact on Minority Communities

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

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

Discussion

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

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

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

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

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

Proposed Resolution

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

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

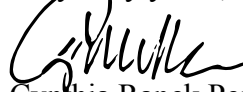
Please advise me within the next week whether or not the county is willing to consider these requests. I am available to meet with any representative of the county at the earliest available date. We request the county to defer all land use decisions until provisions are in place that bring the zoning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

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

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

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

Very truly yours,



Cynthia Ranck Person, Esquire

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

ROA 115

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

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

PLEASE TAKE NOTICE that Defendants Georgetown County, Laine CRE, LLC, and TriStar Land, LLC (collectively hereinafter the “Defendants”), by and through their undersigned attorneys, will move before this Honorable Court at such time and place as the court may direct, for an Order granting Dismissal as to these Defendants. This Motion is made pursuant to Rules 4 and 12 of the South Carolina Rules of Civil Procedure, but is not limited to, the following grounds:

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

Defendants’ Motion will further be based on the pleadings herein, memorandums to be

submitted as part of this Motion, rules of court, statutes and ordinances as judicially noticed by the Court as being the law of the case, and any such other evidence as may be accepted by the Court.

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

RESPECTFULLY SUBMITTED,

SMITH|ROBINSON

By: s/H. Thomas Morgan, Jr.
H. Thomas Morgan, Jr., SC Bar #73585
Assistant Georgetown County Attorney
Sydney Douglas, SC Bar #105744
Smith Robinson Holler DuBose and
Morgan, LLC
PO Drawer 39
935 Broad St.
Camden, South Carolina 29021
(803) 432-1992
tommy@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com
ATTORNEYS FOR DEFENDANT
GEORGETOWN COUNTY

DARROWEVERETT LLP

By: s/Matthew E. Pecoy
Matthew E. Pecoy, SC Bar # 76657
DarrowEverett LLP
28 Broad Street, Suite 204
Charleston, SC 29401
(864) 915-3717
ATTORNEY FOR DEFENDANTS
LAINE CRE, LLC AND TRISTAR
LAND, LLC

December 21, 2022

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-22-00912

MOTION AND ORDER INFORMATION

Michael T. Green and Carrie J. Green;
Julian P. Rutledge and Melvin L. Rutledge;
Patricia S. Grate; Carlethia B. Jenkins;
Frances Jo Baker; Parkersville Planning &
Development Alliance, Inc.; Keep It Green,
Inc.; and Preserve Murrells Inlet, Inc.,

Plaintiff,

vs.

Georgetown County; Laine CRE, LLC;
TriStar Land, LLC; and Samuel J. Nesbit
On behalf of the heirs of Will Nesbit,

Defendant.

FORM AND COVERSHEET

ALMA Y. WHITE
CLERK OF COURT
2023 MAR 27 AM 10:57
GEORGETOWN COUNTY, SC

Plaintiff's Attorney:

Cynthia Ranck Person, Bar No. 105126

Address:

P.O. Box 1922, Pawleys Island, SC 29585

Phone: 570-971-8636 Fax

E-mail: Kig.advocacy@gmail.com Other:

Defendant's Attorney:

Samuel J. Nesbit, Heir, Pro Se and On Behalf of

Nesbit, Heir, Pro Se, Bar No.

Address:

9412 Lake Spring Avenue, Charlotte, NC 28216

Phone: 704-236-6207 Fax

E-mail: ccn1bid@yahoo.com Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

March 20, 2023

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

JUDGE CODE

ROA 118

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: <u>AMC</u> Date Filed: <u>3/27/23</u>	
☒ MOTION FEE COLLECTED: \$ <u>25.00</u>	
☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Michael T. Green and Carrie J. Green;
Julian P. Rutledge and Melvin L. Rutledge;
Patricia S. Grate; Carlethia B. Jenkins;
Frances Jo Baker; Parkersville Planning &
Development Alliance, Inc.; Keep It Green,
Inc.; and Preserve Murrells Inlet, Inc.,

Plaintiffs,

vs.

Georgetown County; Laine CRE, LLC;
TriStar Land, LLC; and Samuel J. Nesbit
On behalf of the heirs of Will Nesbit,

Defendants.

IN THE COURT OF COMMON PLEAS
Civil Action No. 2022-CP-22-00912

**JOINT MOTION TO DISMISS
SAMUEL J. NESBIT ON BEHALF OF
THE HEIRS OF WILL NESBIT AND
CLIFFORD NESBIT AN HEIR OF
WILL NESBIT AS DEFENDANTS**

ALMA Y. WHITE
CLERK OF COURT

2023 MAR 27 AM 10:27

GEORGETOWN COUNTY

**TO: CINDY RANCK PERSON, ATTORNEY FOR PLAINTIFFS, AND
PLAINTIFFS:**

PLEASE TAKE NOTICE that Defendants Samuel J. Nesbit, Heir, Pro Se, and Clifford Nesbit, Heir, Pro Se ("legal heirs and descendants of Will Nesbit" and on behalf of the heirs of Will Nesbit) move before this Honorable Court at such time and place as the court may direct, for an Order granting Dismissal as to the Nesbit heirs as Defendants. This Motion is made pursuant to Rules 4 and 12 of the South Carolina Rules of Civil Procedure, but is not limited to, the following grounds:

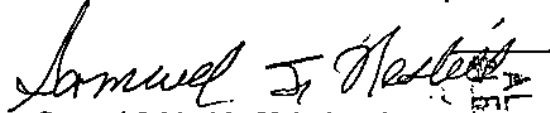
Plaintiffs' Complaint incorrectly and erroneously cites the laws of both the State of South Carolina and Georgetown County as it relates to the underlying allegations of Plaintiffs' Complaint such that any requested relief is impossible, impractical as a matter of law, and outside of the laws of the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

Defendants motion will further be based on the pleadings herein, applicable South Carolina Rules of Civil Procedure, rules of court, statutes and ordinances as judicially noticed by the Court as being the law of the case, and any such other evidence as may be accepted by the Court.

For the reasons herein, these Defendants ask the Court to dismiss Plaintiffs' Complaint in its entirety and forever end this action against the Defendants, Samuel J. Nesbit on behalf of the heirs of Will Nesbit, Clifford Nesbit and any of the Nesbit heirs.

Date: March 20, 2023

RESPECTFULLY SUBMITTED,



Samuel J. Nesbit, Heir, Pro Se
On Behalf of the Heirs of Will
Nesbit

Phone: 803-754-0485

6201 Rosebud Street

Columbia, SC 29203

Email: snesbitt6201@att.net

ALMA T. WHITE
CLERK OF COURT

2023 MAR 27 AM 10:27

CLERK OF COURT



Clifford Nesbit, Heir, Pro Se
On Behalf of the Heirs of Will
Nesbitt

Phone: 704-236-6207

9412 Lake Spring Avenue,

Charlotte, NC 28216

Email: ccnlbid@yahoo.com

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Michael T. Green <i>et al.</i>	:	CASE NO.
	:	
Plaintiffs	:	PLAINTIFFS' MOTION TO STRIKE
	:	
v.	:	
	:	
Georgetown County, Laine CRE, LLC;	:	Declaratory Judgment
TriStar Land, LLC; and Samuel J.	:	Appeal from Georgetown County Council
Nesbit on behalf of the heirs of Will	:	
Nesbit	:	Jury Trial Demanded
	:	
Defendants	:	
	:	

PLAINTIFFS' MOTION TO STRIKE

AND NOW come Plaintiffs pursuant to Rule 12(f), SCRCP, and file this Motion to Strike the Joint Motion to Dismiss of Defendants Georgetown County, Laine CRE, LLC, and TriStar Land, LLC. Plaintiffs' counsel affirms that in accordance with Rule 11(a), SCRCP, prior to filing this Motion, she communicated in writing with opposing counsel on January 10, 2023, and again on January 25, 2023, and attempted in good faith to resolve the matters contained herein. The email communications and responses are attached hereto.

1. Plaintiffs' Complaint was filed on October 24, 2022, seeking Declaratory Judgment and an Appeal from decisions by Georgetown County Council on September 27, 2022. The Complaint consists of eight counts supported by 122 paragraphs of detailed factual and legal averments incorporating fifteen exhibits.

2. On December 21, 2022, Defendants filed a Joint Motion to Dismiss stating that it is "made pursuant to Rules 4 and 12 of the South Carolina Rules of Civil Procedure, but is not limited to, the following grounds:"

"Plaintiffs' Complaint incorrectly and erroneously cites the laws of both the State of South Carolina and Georgetown County as it relates to the underlying allegations of Plaintiffs' Complaint such that any requested relief is impossible, impractical as a matter of law, and outside of the laws

of the State of South Carolina such that dismissal with prejudice is the only proper action by the Court.”

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

3. Rule 7(b)(1) of the South Carolina Rules of Civil Procedure requires that motions “shall state with particularity the grounds therefor.”
4. Defendants’ Motion to Dismiss does not state grounds with particularity sufficient to advise Plaintiffs of the basis for the motion or to allow Plaintiffs to file a meaningful response.
5. Defendants fail to set forth the grounds for their Motion to Dismiss as follows:
 - a. Defendants claim that their Motion to Dismiss is based on Rule 4, SCRPC; however, they do not cite any subsection of Rule 4 or explain in what way Rule 4, which governs process and service, is a basis for dismissal.
 - b. Defendants claim that their Motion is based on Rule 12, SCRPC. Rule 12 is a very broad rule that covers a great deal of legal territory and a multitude of different defenses and objections. Defendants do not cite any subsection of Rule 12 or explain in what way Rule 12 is a basis for dismissal.
 - c. Defendants’ Motion baldly asserts that “Plaintiffs’ Complaint incorrectly and erroneously cites the laws of both the State of South Carolina and Georgetown County;” however, does not contain even a single reference to any law that is allegedly “erroneously cited” nor does it explain how this unspecified “erroneous citation” of law makes the requested relief “impossible or impractical” such that it requires dismissal of the Complaint.

d. Defendants' Motion states that it "will further be based" on "memorandums to be submitted as part of this Motion," and other items either in the present or future that are not specified. This Motion to Dismiss has been scheduled for hearing by the court on February 9, 2023, and no memoranda or other materials have been submitted by Defendants in support of their Motion.

6. Plaintiffs should not be expected to guess the basis for Defendants' Motion, nor should they be put in the position of unfair surprise at or shortly before a scheduled hearing by learning for the first time the grounds for Defendants' Motion, and not having adequate time to investigate the underlying facts, research applicable law, and prepare a meaningful response.

7. Plaintiffs are prejudiced by this lack of particularity in that they do not have sufficient information upon which to respond or defend against a Motion to Dismiss their claims which is a very serious matter of constitutional significance.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Honorable Court to grant their Motion to Strike Defendants' Joint Motion to Dismiss Plaintiffs' Complaint for failure to conform to the requirements of Rule 7(b)(1).

Respectfully submitted,

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

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

January 26, 2023
Pawleys Island, South Carolina

**Green v. Georgetown County et al.**

1 message

KIG Advocacy <kig.advocacy@gmail.com>

Tue, Jan 10, 2023 at 11:45 AM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>, Matthew Pecoy <mpecoy@darroweverett.com>

Good morning, Tommy & Matthew:

I hope you are both well and had a nice holiday.

I am in receipt of your Joint Motion to Dismiss in the above matter. The motion does not state with particularity the grounds upon which you are seeking dismissal. I was happy to provide you both with whatever additional time you needed to respond to our Complaint, so I was a bit surprised by the vague nature of the motion. I am willing to provide you with whatever additional time you may need to withdraw this Motion and file a Motion that sets forth a basis sufficient for me to know your grounds and respond. Otherwise, I will have no choice but to file a Motion to Strike and I would prefer not to get involved in unnecessary procedural issues. Please let me your thoughts about this as soon as possible.

On another note, some of the Plaintiffs in this matter received the attached "anonymous" flyer which was sent by US mail and enclosed with a copy of your Motion to Dismiss. I thought you should be aware of this since it initially appeared to be an attachment to your motion. We are fairly certain we know where this originated, and I assured my clients it was not from your offices or your clients. If you want to discuss this further, please do not hesitate to call me.

I have received an Entry of Appearance from Tommy on behalf of the county, but have not received an Entry of Appearance by Matthew on behalf of his clients. Will Matthew be entering his appearance of record?

Thanks and I look forward to hearing from you.

Best regards,
Cindy

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

KEEP IT GREEN ADVOCACY, INC.

P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795

KIG.Advocacy@gmail.comwww.keepitgreeninsc.com/kiga**Osprey-Regatta Flyer.pdf**

1421K

**RE: Green v. Georgetown County et al.**

1 message

Matthew Pecoy <mpecoy@darroweverett.com>

Thu, Jan 12, 2023 at 8:11 PM

To: KIG Advocacy <kig.advocacy@gmail.com>, Tommy Morgan <tommy@smithrobinsonlaw.com>

Cc: Karen Hamlin <khamlin@darroweverett.com>

Cindy:

Thank you for your email. At least in Charleston County, the Clerk no longer accepts an independent notice of appearance, and the appearance is entered in the docket when a responsive pleading is filed to your Complaint. As Tommy was the filer here, I can only conclude that is why only his appearance was entered. I did not see a .pdf of any independent appearance filed by Tommy the last time I looked. I believe the Court's docketing system will enter my appearance if/when I file an Answer and my clients' behalf. Please let me know if you disagree here.

As for your request to withdraw, I believe the Motion to Dismiss complies with our rules and do not intend on withdrawing our joinder of the same. The Motion directly cites Rules 4 and 12 as the grounds to dismiss your suit.

Thank you, and happy to discuss further by phone.

Matthew E. Pecoy

Partner

Rhode Island | Massachusetts | New York | Tennessee | Florida | North Carolina | [South Carolina*](#)[28 Broad Street](#)[Suite 204](#)[Charleston, SC 29401](#)

P: (401) 453-1200 Ext. 227

D: (843) 867-2801

F: (843) 781-8013

E: mpecoy@darroweverett.comwww.darroweverett.com

*Admitted to practice law in South Carolina.

ROA 126

**Re: Green v. Georgetown County et al.**

1 message

KIG Advocacy <kig.advocacy@gmail.com>

Wed, Jan 25, 2023 at 4:58 PM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>

Cc: Karen Hamlin <khamlin@darroweverett.com>, Matthew Pecoy <mpecoy@darroweverett.com>

Hey Tommy:

I hope you are well. I haven't heard from you in response to my email of 1/10/2023, about your Motion to Dismiss in the Green case. I imagine you have been very busy lately. I know you have a lot going on. In the interest of professional courtesy, I just want to be sure that you got the email and that I didn't miss a response from you before I file our motion tomorrow. I did receive a response from Matthew, but I did not understand that he was speaking on your behalf as well.

Thanks,
Cindy

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

KEEP IT GREEN ADVOCACY, INC.

P.O. Box 1922

Pawleys Island, SC 29585

(843) 325-7795

KIG.Advocacy@gmail.comwww.KeepItGreenInSC.com/kiga

On Tue, Jan 17, 2023 at 11:51 AM KIG Advocacy <kig.advocacy@gmail.com> wrote:

Thanks, Matthew.

Cindy

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

KEEP IT GREEN ADVOCACY, INC.

P.O. Box 1922

Pawleys Island, SC 29585

(843) 325-7795

KIG.Advocacy@gmail.comwww.KeepItGreenInSC.com/kiga

On Thu, Jan 12, 2023 at 8:11 PM Matthew Pecoy <mpecoy@darroweverett.com> wrote:

Cindy:

Thank you for your email. At least in Charleston County, the Clerk no longer accepts an independent notice of appearance, and the appearance is entered in the docket when a responsive pleading is filed to your Complaint. As Tommy was the filer hear, I can only conclude that is why only his appearance was entered. I did not see a .pdf of any independent appearance filed by Tommy the last time I looked. I believe the Court's docketing system will enter my appearance if/when I file an Answer and my clients' behalf. Please let me know if you disagree here.

As for your request to withdraw, I believe the Motion to Dismiss complies with our rules and do not intend on withdrawing our joinder of the same. The Motion directly cites Rules 4 and 12 as the grounds to dismiss your suit.

Thank you, and happy to discuss further by phone.

ROA 127



KIG Advocacy <kig.advocacy@gmail.com>

RE: Green v. Georgetown County et al.

1 message

Tommy Morgan <tommy@smithrobinsonlaw.com>

Wed, Jan 25, 2023 at 5:30 PM

To: KIG Advocacy <kig.advocacy@gmail.com>, Tommy Morgan <tommy@smithrobinsonlaw.com>, Sydney Douglas <Sydney.Douglas@smithrobinsonlaw.com>, Sherry Roth <Sherry.Roth@smithrobinsonlaw.com>

Cc: Karen Hamlin <khamlin@darroverett.com>, Matthew Pecoy <mpecoy@darroverett.com>

Cindy,

I apologize for not responding inasmuch as I understood Matthew's response to be, in essence, speaking for both of our clients' respective position.

That being said, I will respond on behalf of the County (and echo Matt's position) and indicate we believe the Motion complies with the South Carolina Rules of Civil Procedure and, therefore, will not be withdrawing the Motion.

However, I do have a request to make as it pertains to the hearing on our Motion set for February 9th at 1:30. I have a conflict as I will be presiding over a jury trial in my role as Municipal Judge for the City of Camden that day. As such, I submitted a proposed Order of Protection for the Court's approval on Monday. If it becomes necessary, will you consent to a continuance of that hearing?

I *believe* Matt has arbitration that day as well and will likely need a continuance as well but I am not 100% certain.

Thanks,

Tommy



H. Thomas Morgan, Jr.
Assistant Georgetown County Attorney

E: tommy@smithrobinsonlaw.com
P: 803.432.1992
F: 803.432.0784

Camden Office
935 Broad Street
Camden, SC 29020

CONFIDENTIALITY NOTICE: The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

From: KIG Advocacy <kig.advocacy@gmail.com>

Sent: Wednesday, January 25, 2023 4:58 PM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>

Cc: Karen Hamlin <khamlin@darroverett.com>; Matthew Pecoy <mpecoy@darroverett.com>

Subject: Re: Green v. Georgetown County et al.

Hey Tommy:

I hope you are well. I haven't heard from you in response to my email of 1/10/2023, about your Motion to Dismiss in the Green case. I imagine you have been very busy lately. I know you have a lot going on. In the interest of professional courtesy, I just want to be sure that you got the email and that I didn't miss a response from you

ELECTRONICALLY FILED - 2023 Jan 26 10:24 AM - GEORGETOWN - COMMON PLEAS - CASE#2022CP2200912

ROA 128

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Michael T. Green <i>et al.</i>	:	CASE NO. 2022 CP 22-00912
	:	
Plaintiffs	:	PLAINTIFFS' PRELIMINARY
v.	:	MEMORANDUM IN OPPOSITION TO
	:	DEFENDANTS' MOTIONS TO DISMISS
Georgetown County, Laine CRE, LLC;	:	
TriStar Land, LLC; and Samuel J.	:	
Nesbit on behalf of the heirs of Will	:	Declaratory Judgment
Nesbit	:	Appeal from Georgetown County Council
Defendants	:	
	:	Jury Trial Demanded
	:	

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

Plaintiffs submit this Preliminary Memorandum in opposition to the Joint Motion to Dismiss filed by Defendants Georgetown County, Laine CRE, LLC, and TriStar Land, LLC, hereinafter collectively referred to as "County/Developer," and the Motion to Dismiss filed by *pro se* Defendant Samuel J. Nesbit on behalf of the heirs of Will Nesbit, hereinafter "Nesbit." Hearing is scheduled for tomorrow, June 23, 2023, at 9:30 am, and Plaintiffs are unaware of the specific bases for Defendants' motions.

I. PROCEDURAL HISTORY

Plaintiffs' Complaint was filed on October 24, 2022, seeking Declaratory Judgment and an Appeal from decisions by Georgetown County Council on September 27, 2022, approving two land development subdivision applications for high density development in Parkersville, an important historical African American community in Pawleys Island, on land designated as medium density by the Comprehensive Plan maps. The Complaint consists of eight counts supported by 139 paragraphs of detailed factual and legal averments incorporating 15 exhibits, challenging the decisions on the bases that (1) the underlying ordinance provision upon which

they are based is invalid; (2) the proposed subdivisions themselves violate state law and local ordinances, and (3) the procedure followed and the facts considered by Georgetown County Council in making its decision violate state law and local ordinances.

Defendants County/Developer and Nesbit filed separate but identical Motions to Dismiss on December 21, 2022, and March 27, 2023, respectively, consisting of 1-1/2 pages stating they are “made pursuant to Rules 4 and 12 of the South Carolina Rules of Civil Procedure.”

A. Motions to Dismiss Deficient

Rule 7(b)(1), SCRCP, requires that motions “shall state with particularity the grounds therefor.” Defendants’ Motions to Dismiss do not state grounds with particularity sufficient to advise Plaintiffs of the basis for the motions or to allow Plaintiffs to file a meaningful response.

Defendants' Motions state that

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

Defendants' motions do not reference any law that is “erroneously cited” nor do they explain how this “erroneous citation” of law makes the requested relief “impossible or impractical” such that it requires dismissal of the Amended Complaint.

Defendants’ Motions further state that they

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

No pleadings, memoranda, rules of court, statutes, ordinances, proposed "law of the case," evidence, or other materials have been cited or submitted by Defendants in support of their Motions.

Plaintiffs should not be expected to guess the basis for Defendants' Motions, nor should they be put in the position of unfair surprise at or shortly before a scheduled hearing by learning for the first time the grounds for Defendants' Motions, without adequate time to investigate the underlying facts, research applicable law, and prepare a meaningful response.

Plaintiffs are prejudiced in that they do not have sufficient information upon which to respond, or defend against the motions which are serious matters of constitutional significance.

B. Plaintiffs' Motion to Strike

On January 10, 2023, undersigned counsel for Plaintiffs emailed opposing counsel and offered to provide them with whatever additional time they might need to file Motions to Dismiss that were sufficiently specific for Plaintiffs to understand the grounds and respond. On January 12, 2023, opposing counsel responded that they did not intend to file a more specific Motion to Dismiss. Accordingly, on January 29, 2023, counsel for Plaintiffs filed a Motion to Strike Defendants' Joint Motion to Dismiss for failure to state grounds with sufficient specificity as set forth above.

II. BACKGROUND

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

Georgetown County, like all other counties in South Carolina, is obligated to follow the provisions of the South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann.,

Section 6-29-310, *et seq.*, (hereinafter “Planning Act”). Georgetown County, unlike most other counties in South Carolina, has zoning ordinances on its books that were never updated to be in compliance with the Planning Act. To the extent that these ordinances conflict with state law, they are void.

Many of these noncompliant zoning ordinances have resulted in approval of development in Georgetown County that is not in accordance with the Planning Act either substantively or procedurally. The land development approval in the present case is an example of this.

Plaintiffs' Complaint challenges the decisions on the bases that: (1) the underlying ordinance provision upon which they are based is invalid; (2) the proposed subdivisions themselves violate state law and local ordinances; and (3) the procedure followed and the facts considered by Georgetown County Council in making its decision violate state law and local ordinances. These are factual issues to be determined by the fact-finder after evidence is presented.

III. SUMMARY OF ARGUMENT

The narrow issue before the court is the sufficiency of Plaintiffs' Complaint, and examination is limited to the four corners of the Complaint itself. Plaintiffs respectfully submit that their Complaint constitutes a well-organized pleading sufficient to notify Defendants of Plaintiffs' claims, establishes standing for all Plaintiffs, sets forth a cause of action for Declaratory Judgment and an Appeal, *i.e.*, a justiciable controversy, and names all necessary and indispensable parties.

IV. ARGUMENT

A. STANDARD OF REVIEW

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

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

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

B. SUFFICIENCY OF PLEADING

According to the South Carolina Supreme Court in Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 574-575, 743 S.E.2d 778, 785 (2013), “Pleadings are to be liberally construed ... ” Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (quoting Rule 8(f), SCRPC). ‘It is elementary that the principal purpose of pleadings

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

Shirley's Iron Works, *supra*, involved a pleading that lacked precision and detail.

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

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

C. STANDING

"In its most basic sense, standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right ... and may be acquired (1) by statute, (2) under the principle of constitutional standing, or (3) via the public importance exception to general standing requirements." Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (S.C. Supreme Ct. 2020) (citations omitted).

1. Statutory Standing

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

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

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

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

The following statutes confer standing upon Plaintiffs in this case:

(a) Standing Under Declaratory Judgments Act

Statutory standing has been established under the South Carolina Uniform Declaratory Judgments Act (hereinafter “Declaratory Judgments Act”), S.C. Code Ann., Section 15-53-30, which states “[a]ny person ... whose rights ... are affected by a ... municipal ordinance ... may

have determined any question of ... validity arising under the ... ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.”

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

Plaintiffs’ rights and legal relations have been and are substantially affected by the County Council decision of February 14, 2023, the Planning Commission decisions of January 19, 2023, Georgetown County’s Zoning Ordinances, Land Development Regulations and Comprehensive Plan, and the South Carolina Planning Act. Plaintiffs have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions. Plaintiffs have specifically set forth in the Complaint and supporting Affidavits that they and those they represent have been and will be “affected” in the following ways: decrease in property values; increase in stormwater and flooding problems; negative impact on character, aesthetics and enjoyment of land; increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic; precedent for future land development in the immediate neighborhood that does not comply with state law or the Comprehensive Plan; increased burden on severely over-burdened infrastructure that is operating beyond capacity creating a serious safety hazard – streets and highways, fire, police, and

emergency services personnel and equipment, evacuation routes; detrimental and discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this important historical African American neighborhood. (Complaint and supporting Affidavits).

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

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

(b) Standing Under Planning Act

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

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

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

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

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

2. Associational Standing

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

[A]n organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

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

In addition to and independent of statutory standing, Plaintiffs Parkersville PDA, KIG, and PMI have met the criteria for associational standing as follows: (1) at least one of its

members is an affected person who has standing in his or her own right (Complaint and supporting Affidavits); (2) the interests at stake fall squarely within Plaintiff Associations' purposes of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck by monitoring county land use decisions, zoning change requests and proposed development for compliance with proper law and procedure (Complaint and supporting Affidavits); and (3) neither the claim asserted nor the relief requested requires the participation of individual landowners as monetary damages are not being requested (Complaint and supporting Affidavits).

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

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

C. Constitutional Standing

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

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

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

Id. at 210, 486 (citations omitted).

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

D. Public Importance Standing

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

[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for

future guidance. In cases falling within the ambit of important public interest, standing is conferred without requiring the plaintiff to show he has an interest greater than other potential plaintiffs For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.

Freemantle, *supra*. at 44, 193.

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

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

D. JUSTICIABILITY

Plaintiffs Complaint establishes a cause of action. "A cause of action under the Declaratory Judgment Act is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character."

Farmer v. CAGC Insurance Company, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. of App. 2018) (citations omitted). See also Jowers v. South Carolina Department of Health and Environmental Control, 423 S.C. 343, 354 815 S.E.2d 446, 452(S.C. Supreme Ct. 2018). "The Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal

relations.” Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (S.C. Supreme Ct. 2013) (citations omitted).

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

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

V. REQUEST FOR ADDITIONAL TIME

Plaintiffs' have done their best to anticipate the grounds and oppose Defendants' Motions to Dismiss that were filed without stating the grounds with particularity sufficient to advise Plaintiffs of the basis for the motions or to allow Plaintiffs to file a meaningful response, contrary to Rule 7(b)(1), SCRCP.

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

VI. CONCLUSION

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

(signature page to follow)

Respectfully submitted,

/s/ Cynthia Ranck Person

Cynthia Ranck Person, Esquire (SC Bar #105126)

KEEP IT GREEN ADVOCACY, INC.

P.O. Box 1922

Pawleys Island, SC 29585

(843) 325-7795, (570) 971-8636

kig.advocacy@gmail.com

ATTORNEY FOR PLAINTIFFS

June 22, 2023
Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No. 2022-CP-22-00912
COUNTY OF GEORGETOWN	)	
	)	
Michael T. Green and Carrie J. Green;	)	
Julian P. Rutledge and Melvin L. Rutledge;	)	
Patricia S. Grate; Carlethia B. Jenkins;	)	
Frances Jo Baker; Parkersville Planning &	)	
Development Alliance, Inc.; Keep It Green,	)	
Inc.; and Preserve Murrells Inlet, Inc.,	)	
	)	MEMORANDUM OF LAW IN SUPPORT
	)	OF DEFENDANTS GEORGETOWN
Plaintiffs,	)	COUNTY, LAINE CRE, LLC, AND
vs.	)	TRISTAR LAND, LLC'S MOTION
	)	MOTION TO DISMISS
	)	
Georgetown County; Laine CRE, LLC;	)	
TriStar Land, LLC; and Samuel J. Nesbit	)	
On behalf of the heirs of Will Nesbit,	)	
	)	
Defendants.	)	
	)	

Defendants Georgetown County, Laine CRE, LLC ("Laine"), and TriStar Land, LLC ("TriStar") (collectively hereinafter, the "Defendants") have moved for dismissal in the above-captioned matter pursuant to Rules 4 and 12 of the South Carolina Rules of Civil Procedure and submit this Memorandum of Law in support of that motion.

STATEMENT OF THE CASE

Plaintiffs, a collection of individuals whose properties adjoin the property at issue in this case, along with several activist organizations whose goals are to quash growth in certain parts of Georgetown County, filed the above-captioned matter on October 24, 2022. Process was served on (a) Ollie Lewis, an employee of Defendant Georgetown County, on October 26, 2022 (*See* Affidavit of Service (filed Nov. 9, 2022)), (b) Matthew Chapdelaine, registered agent for Defendant Laine (*See* Affidavit of Service (filed on Nov. 9, 2022)), and (c) Christopher Haynes, registered agent for Defendant TriStar, on October 25, 2022 (*See* Affidavit of Service (filed Nov. 9, 2022)).

This case arises out of the approval of two site plan proposals for multi-family developments in Georgetown County, South Carolina. Compl. at 1. The developments were proposed to be constructed on two different parcels. Compl. ¶ 1. Parcel one is approximately 6.87 acres, and Parcel 2 is approximately 13.69 acres. Compl. ¶¶ 9–10.

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

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

As to Defendant Laine, only 3 of the 139 paragraphs in Plaintiffs' thirty-five (35) page Complaint even mention Defendant Laine: (i) Paragraph 33 identifies Defendant Laine as a defendant in this case, (ii) Paragraph 36 alleges only that Defendant Laine is an authorized agent of Defendant Samuel J. Nesbit, and (iii) Paragraph 37 alleges "[u]pon information and belief, in or around early 2022, Defendant Laine CRE, LLC, and/or TriStar Land, LLC, hereinafter "Developers" entered into a contract with the Nesbit heirs to purchase both the Petigru and Parkersville Parcels, contingent upon approval of applications for land development projects." Compl. ¶¶ 33, 36, 36.

As to Defendant TriStar, again only 3 of the 139 paragraphs in Plaintiffs' thirty-five (35) page Complaint even mention Defendant TriStar: (i) Paragraph 34 identifies Defendant TriStar as a defendant in this case, (ii) Paragraph 36 alleges only that Defendant TriStar is an authorized agent of Defendant Samuel J. Nesbit, and (iii) Paragraph 37 which is summarized above. Compl. ¶¶ 34, 36, 36. Of particular import to Defendants Laine and TriStar, not one (1) of the six (6) aforementioned declarations sought by the Plaintiffs name, are directed at, or are related to any decision, power, or authority of either Defendant Laine or Defendant TriStar.

In response to the Complaint, Defendant Georgetown County, along with Defendants Laine and Tristar, moved to have this case dismissed. *See* Defs.' Joint Mot. to Dismiss. For the reasons contained herein, Defendants assert that Defendants' Motion to Dismiss must be granted.

ANALYSIS

I. Georgetown County ordinances requiring County Council's approval of certain site plan reviews are valid, and Plaintiff's challenges as to the validity of those ordinances are statutorily barred.

The long-practiced principle in South Carolina is that courts should exercise a policy of judicial restraint in reviewing the zoning decisions of a governing body. "Courts have no

prerogative to pass upon the wisdom of the municipality’s decision unless such decision is ‘so unreasonable as to impair or destroy a citizen’s constitutional rights.’” *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (quoting *Hampton v. Richland County*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965)); *McMaster v. Columbia Bd. Of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 663 (2011) (stating that courts may only find a municipal ordinance unconstitutional “when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.”) (internal quotations omitted); *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010) (“This State’s constitution provides that the powers of local governments should be liberally construed.”) (citing S.C. Const. art. VIII, § 17); *Historic Charleston Foundation v. City of Charleston*, 400 S.C. 181, 185, 734 S.E.2d 306, 308 (2012) (“Zoning ordinances are presumed valid.”).

In reviewing an ordinance’s validity, a court “must make every presumption in favor of the constitutionality of a legislative enactment.” *See Ani Creation, Inc. v. City of Myrtle Beach Board of Zoning Appeals*, No. 2021-001074, 2023 WL 2996979, at *3 (S.C. Apr. 19, 2023). A court cannot overturn the decision of a county’s governing body if the decision is “fairly debatable” because the county’s decision is presumed to be a “valid exercise of power and it is not the prerogative of the Court to pass upon the wisdom of the decision.” *Id.*; *see also Knowles*, 305 S.C. at 223, 143 S.E.2d at 642. A decision is fairly debatable when it is “not so unreasonable as to impair or destroy [a] citizen’s constitutional rights.” *Knowles*, at 224, 143 S.E.2d at 643 (internal quotations omitted). A zoning decision does not infringe upon or destroy a citizen’s constitutional rights where there is no deprivation of property without due process of law. *See McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002).

The ordinances seemingly complained of are certain subsections of Georgetown County Zoning Ordinance 607.¹ More specifically, Plaintiffs complain of the process for approving townhome developments consisting of more than ten units. *See* Compl. ¶¶ 4, 128. These types of major developments are required to have “a site plan reviewed by the Planning Commission” and then “approved by County Council.” Georgetown County Zoning Ordinance § 607.4025 (2011); *see also* § 607.40254 (directing that the Planning Commission is to review the proposed site plan and “to forward its recommendation to County Council for final approval”).

The creation and regulation of zoning districts is within the purview of the governing body of a county. S.C. Code § 6-29-720(A). Plaintiffs reference certain sections of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Planning Act”) dealing with land development regulations, which are used to specify requirements of a development such as lot size and street specifications among many others. *See* Compl. ¶¶ 61–62, 124, 134; S.C. Code § 6-29-1120, 1150. Plaintiffs assert that this section of the Planning Act limits the final approval of *all* development plans to come from the Planning Commission or designated staff. Compl. ¶ 124. This interpretation is overly narrow and ignores both the legislative purposes of both Article Seven and Five of the Planning Act and the determinations of the County’s governing body in enacting the procedures for approving development plans in a general residential district.

First, it is apparent from the plain language of Section 6-29-1120 that the General Assembly intended to leave the crafting of the procedural process for approving development plans

¹ The Complaint does not specifically identify which ordinances Plaintiffs are attempting to challenge, only that Plaintiffs are seeking declaratory judgment that the “Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council for proposed developments are null, void, and of no force and effect.” Compl. ¶ 128. For that reason alone, Plaintiffs Complaint must be denied inasmuch as the Court is not presented a concrete cause of action upon which it can rule and make a final determination.

to the governing bodies of counties. *See* S.C. Code § 6-29-1120(A) (“The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff”). The challenged ordinances provide the procedural process for development plans to be approved through submission to the planning commission. *See* Georgetown County Zoning Ordinance 607. Second, the enumerated purpose of Article Seven of the Planning Act is to provide counties with the ability to create regulations with broad authority in order to carry out the stated purposes of the Planning Act, such as the promotion of public health and safety, good order, and “progressive development of land.” S.C. Code § 6-29-1120. The provisions of Article Five of the Planning Act state that zoning ordinances are to serve similar purposes which are to “further the public welfare in any other regard *specified by the governing body.*” S.C. Code § 6-29-710 (emphasis added). These are purposes directly within the purview and responsibility of the governing body of a county. The governing body of Georgetown County is the County Council, not the Planning Commission.

County Council ultimately determines the terms of the land use regulations and zoning ordinances to be used in Georgetown County to carry out the purposes enumerated in the Planning Act. *See* S.C. Code § 6-29-760, 1130. Although County Council may permit the Planning Commission to review and approve a development plan, it is also within the authority of the County Council to enact zoning ordinances which include procedural safeguards, such as additional approval for larger developments, in order to protect and promote the intended purposes of the Planning Act and good land use principles of the County. Ordinance 607 allows medium-to-high density residential uses in a General Residential district, where the properties at issue are located. Under Ordinance 607, Section 607.4 sets out specific requirements for townhouses within

a general residential zoning district. It is apparent from the ordinance itself that County Council was to be vested with final approval authority over larger and/or more densely populated development proposals, including larger scale townhouse developments. This procedural process is not prevented by the terms of the Planning Act – rather, the opposite is true. Such a procedure is in keeping with good zoning practices to better ensure the purposes of the Planning Act are being promoted by allowing the County’s governing body appropriate discretion in furthering the welfare of its citizens in their housing.

As for Plaintiffs’ argument that the allowance of high-density developments in a general residential district is void as a matter of law (*see* Compl. ¶¶ 82, 93, 99) that conclusion is patently false and based upon incorrect assumptions and interpretations of South Carolina law. It is argued, albeit in an indirect way, that Ordinance 607, which permits medium-to-high density housing in areas zoned general residential, is in conflict with the County’s Comprehensive Plan and is therefore invalid. First and foremost, as will be discussed in Section II.a., *infra*, the Comprehensive Plan is not the law, and its terms are not required to be strictly adhered to. Just because the future land use maps recommend the area as medium density, does not strictly limit it to medium density where the County’s zoning maps designate that same land as general residential and allow for use as high density residential. The County has authority to create zoning districts as it determines necessary and has legislative discretion in doing so. It would not be appropriate for the courts to now pass judgment upon that discretion where there has been no constitutional violation. Plaintiffs have not plead any specific constitutional violation, and no such violation can reasonably be inferred from the pleading. As such, the ordinances at issue fall well within the fairly debatable standard and cannot be disturbed by this Court.

Furthermore, even if the providence of the challenged ordinances were to be in question, the “validity of a regulation or map, or amendment to it” cannot be challenged after sixty days from the date of the decision of the governing body, granted there has been compliance with the notice requirements of the Planning Act or “with the established procedures of the governing authority or the planning commission.” S.C. Code § 6-29-760(D).² The specific ordinance provisions seeming to be challenged in this case are Georgetown County Zoning Ordinances 607.4025 and 607.40254. Those ordinances were last amended in 2011 as is indicated in the zoning ordinances themselves as part of the public record. The validity of those ordinances cannot be challenged by Plaintiffs at this juncture and their claims that those provisions are invalid must be dismissed as they are statutorily barred.

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

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a plaintiff’s complaint based on its failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). In determining whether to grant a motion to dismiss, the Court should “consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). To view the complaint in the light most favorable to the plaintiff, however, does not mean that every single word of a complaint must be blindly accepted as truth.

First, “[a]ll pleadings must be construed to do substantial justice to *all* parties.” Rule 8(f), SCRPC. This is to say that a favorable reading of a complaint should not be so strictly applied as

² Plaintiffs have not stated any facts nor made any arguments relating to the procedural process used to enact the zoning ordinances being challenged.

to facilitate a miscarriage of justice against a defendant. While the factual basis for a cause of action such as this one should be presumed as true in a motion to dismiss, this does not justify a presumption of sufficiency of legal conclusions alleged to establish a cause of action. To establish a cause of action under the Uniform Declaratory Judgments Act, the pleadings must establish the existence of a justiciable controversy. *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 553 (1970). For there to be a justiciable controversy, there must be a concrete issue, a definite assertion of legal rights, and a positive legal duty with respect to those rights which are being denied by the defendant. *Id.* at 153–54, 177 S.E.2d at 553. The crux of Plaintiffs’ entire suit is that the Comprehensive Plan is to be adhered to in making land use decisions and may be used as justification to deny development applications. This legal duty attempted to be placed upon the County is one of fiction as it relies on inaccurate interpretations of the Planning Act.³

There has been no definite⁴ assertion of any actual legal right in this case and there are certainly no positive legal duties with respect to those alleged rights being denied. Therefore, there is no justiciable controversy to be reviewed by the Court in this case. Moreover, because the claims for relief are based upon misinterpretations and misapplications of law, the facts alleged are not sufficient to constitute a cause of action.

- a. Plaintiffs’ Complaint incorrectly and erroneously cites and misinterprets the laws of both the State of South Carolina and Georgetown County such that the relief sought is impractical and cannot be granted.**

³ Plaintiffs allege that Defendant Georgetown County “has failed...to perform statutory duties required” by the Planning Act. Compl. ¶ 6. These duties alleged are not what Plaintiffs paint them to be and Defendant Georgetown County asserts that there is no “definite right” in the form Plaintiffs allege and therefore there is no justiciable controversy.

⁴ To be “definite,” it must be certain, established, and unambiguous. *See Definite*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/definite> (last visited June 19, 2023). The rights and duties alleged here are clearly none of those things.

Generally, when ruling on a motion to dismiss, the decision should rely on an evaluation of the “allegations set forth on the face of [the] complaint.” *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). However, “[w]hen the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss.” *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005) (internal quotations omitted). No further development of the record is needed to resolve the issues asserted in the Complaint. The resolution of this case is entirely dependent on the interpretation of the law, and it is proper for the court to review the legal disputes in deciding whether to grant Defendants’ Motion to Dismiss.

The long-practiced principle in South Carolina is that courts should exercise a policy of judicial restraint in reviewing the land use decisions of a governing body. “Courts have no prerogative to pass upon the wisdom of the municipality’s decision unless such decision is ‘so unreasonable as to impair or destroy a citizen’s constitutional rights.’” *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (*quoting Hampton v. Richland County*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965)). A decision of a county’s governing body should not be overturned by a court if the propriety of that decision is at least “fairly debatable.” *Id.* at 223, 143 S.E.2d at 642. A decision of a county’s governing body is “fairly debatable,” when it is “not so unreasonable as to impair or destroy citizen’s [*sic*] constitutional rights.” *Id.* at 224, 143 S.E.2d at 643 (internal quotations omitted).

While this case does not involve the adoption of an ordinance, it does involve a land use decision by the governing body of a county and the exercising of its powers under the Planning Act and local zoning ordinances. Georgetown County Council’s decision to approve the site plan applications complied with the zoning ordinances of Georgetown County as well as South Carolina

law; thus, Plaintiffs' constitutional rights have not been impaired. In fact, Plaintiffs do not allege with any specificity any constitutional infringements in their Complaint, other than a glancing reference to Article III standing under the United States Constitution. *See* Compl. ¶ 120. While Plaintiffs claim that Article III affords them alternative and additional grounds to establish their standing, they have failed to allege any concrete injuries in fact which would provide them with constitutional standing in this case. The Complaint references "an injury" Plaintiffs have allegedly suffered or will imminently suffer, but that is essentially the extent of specificity provided. *See* Compl. ¶ 102, 107, 112, 120. It seems Plaintiffs are attempting to assert that these injuries may relate to their property rights, yet the references to any such harm are abstractly asserted and not pleaded with any inkling of causal connection to the specific conduct complained of. *See* Compl. ¶ 104, 107. In short, Plaintiffs have failed to produce sufficient claims which would constitute an injury in fact, let alone one which would amount to an impairment or destruction of their constitutional rights. Therefore, the decision of County Council to approve the Applications is well within the fairly debatable standard and should not be interfered with by this Court.

Additionally, and more substantially, the Complaint's thirty-five pages of accusations ultimately amount to a collection of bald and repetitive conclusory allegations which include cherry picked sections of state statutes and ordinances which are not properly taken in the full context of their actual meaning or practiced application. This compilation of conclusions can largely be summarized as the following: the Comprehensive Plan is controlling in all land use decisions in Georgetown County. Plaintiffs assert this conclusion is supported by certain provisions of the Planning Act. However, a careful examination of these provisions in their entirety does not lead to that conclusion. For instance, Plaintiffs set out the terms of Section 6-29-540 to strictly limit all new development unless "submitted to the planning commission for review

and comment as to the compatibility of the proposal with the comprehensive plan of the community.” Compl. ¶ 91. While the quoted material is included in Section 6-29-540, a complete reading of that section leads to a different conclusion of statutory guidance than Plaintiffs allege. First, the very terms included in Plaintiffs’ Complaint make it clear that the planning commission’s duty in site plan applications is to “*review and comment*,” that is all. *See* S.C. Ann. § 6-29-540. Nowhere in this statute does it deem the planning commission’s findings as binding or final in any manner. Even if a planning commission were to determine a new development plan was not compatible with the comprehensive plan, that would not prevent the plan from continuing. *See id.*

It is manifestly clear in South Carolina law that the terms of a comprehensive plan are ones of guidance, not requirements, as the comprehensive plan “is only a guideline.” *McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002). The Georgetown County Ordinances and land use regulations are the controlling rules enacted by the County Council. *See* Georgetown County Dev. Regs. art. 1, § 3 (“The standards contained herein shall hereafter govern all land development with the development jurisdiction of the County of Georgetown as now or hereafter established.”). In fact, the views of commentators have stated that a comprehensive plan serves as a framework for future growth and is not meant to be treated as controlling law:

A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions The “in accordance with” language of [the zoning enabling legislation] does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan ...

Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Development Regulation Law* 283 (2007). As such, the Comprehensive Plan is merely an expression of goals, objectives, and policies for current and future land use in the County, which are to be implemented

by the zoning ordinances and land use regulations which are the law.⁵ Conformity with the zoning ordinances and state law is what is required here, and the zoning ordinances grant the County Council the authority to review these types of applications. *See* Georgetown County, S.C. Zoning Ordinance 607.306, 4025. In addition, a provision of the Planning Act directs that applications such as those at issue in this case are ultimately required to be submitted to the local governing body, which is the County Council. *See* S.C. Ann. § 6-29-1520(9).

As such, Plaintiffs' allegations that County Council was without authority to review and approve the Applications is patently unfounded, just as the claims that Council's review should have treated the terms of the Comprehensive Plan as requirements is without merit. There are no laws, ordinances, or regulations which could reasonably support a cause of action under any of the alleged facts in the Complaint. Therefore, Plaintiffs have failed to state facts sufficient to constitute a cause of action and this case should be dismissed pursuant to Rule 12(b)(6), SCRCF.

b. Because Plaintiffs' Complaint fails to allege any cause of action against Defendants Laine and/or TriStar, Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)6.

The face of the Plaintiff's Complaint fails to include a single cause of action that names, is directed at, or is related to any decision, power, or authority of either Defendant Laine or Defendant TriStar. *See Toussaint*, 292 S.C. at 415, 357 S.E.2d at 8. Rather, all of Plaintiffs' causes of action are alleged against Defendant Georgetown County. All the Plaintiffs' causes of action ask this Court to interpret the power and authority of either the South Carolina Legislature or Georgetown County and do not relate to any power or authority of Defendant Laine and/or Defendant TriStar. The resolution of this case is entirely dependent on the interpretation of the law. Accordingly,

⁵ The General Assembly provided the authority to adopt zoning ordinances and land use regulations to the governing bodies of counties, not planning commissions. *See* S.C. Code 6-29-710, 1130.

Defendants Laine and TriStar have no place in this lawsuit, and Plaintiff's Complaint should be dismissed against these Defendants pursuant to Rule 12(b)(6) for these reasons.

III. Plaintiffs have failed to abide by the procedural requirements under Rule 4(d)(6) for serving process on Defendant Georgetown County.

The South Carolina Rules of Civil Procedure require that service of process upon a governmental subdivision, such as a county, must be made "by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof." Rule 4(d)(6), SCRCP. The Affidavit of Service filed by Plaintiff on November 9, 2022, confirms that service was effectuated upon Ollie Lewis, who works as an executive assistant. Aff. of Service (filed Nov. 9, 2022). While Ms. Lewis is an employee of the defendant, she is neither the chief executive officer nor the clerk thereof. Therefore, the Summons and Complaint was not properly served upon Defendant Georgetown County.

Even if viewed in the light of the broader circumstances of corporate service, the service of process here would still be deficient. "Without specific authorization to receive process, service is not effective when made upon an employee of the defendant." *Moore v. Simpson*, 322 S.C. 518, 523–24, 473 S.E.2d 64, 67 (Ct. App. 1996). The named defendant to be served is Georgetown County. Nowhere in the Proof of Service, Affidavit of Service, or any other recorded document is it insinuated that Ms. Lewis had the authority to accept service on behalf of Georgetown County. Therefore, service was insufficient, and this case should be dismissed pursuant to Rule 12(b)(5), SCRCP.

CONCLUSION

Wherefore, based on the forgoing, Defendants assert that Plaintiffs have failed to state facts sufficient to constitute a cause of action and failed to abide by the procedures for personal service of process on a governmental subdivision. Therefore, Defendants ask this Honorable Court to

dismiss this case in its entirety pursuant to Rules 4(d)(6), 12(b)(5), and 12(b)(6) of the South Carolina Rules of Civil Procedure.

RESPECTFULLY SUBMITTED,

SMITH|ROBINSON

By: s/H. Thomas Morgan, Jr.
H. Thomas Morgan, Jr., SC Bar #73585
Assistant Georgetown County Attorney
Sydney J. Douglas, SC Bar #105744
Smith Robinson Holler DuBose and
Morgan, LLC
PO Drawer 39
935 Broad St.
Camden, South Carolina 29021
(803) 432-1992
tommy@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com
ATTORNEYS FOR DEFENDANT
GEORGETOWN COUNTY

DARROWEVERETT LLP

By: s/Matthew E. Pecoy
Matthew E. Pecoy, SC Bar # 76657
DarrowEverett LLP
28 Broad Street, Suite 204
Charleston, SC 29401
(864) 915-3717
ATTORNEY FOR DEFENDANTS
LAINE CRE, LLC AND TRISTAR
LAND, LLC

June 22, 2023

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Michael T. Green <i>et al.</i>	:	CASE NO. 2022 CP 22-00912
	:	
Plaintiffs	:	PLAINTIFFS' MOTION TO ALTER OR
v.	:	AMEND JUDGMENT PURSUANT TO
	:	SCRCP, RULE 59(e)
Georgetown County, Laine CRE, LLC;	:	
TriStar Land, LLC; and Samuel J.	:	Declaratory Judgment
Nesbit on behalf of the heirs of Will	:	Appeal from Georgetown County Council
Nesbit	:	
Defendants	:	Jury Trial Demanded
	:	

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

Pursuant to SCRCP, Rule 59(e), Plaintiffs respectfully request this court to alter and/or amend its Order of July 18, 2023, granting the Motions to Dismiss of Defendants Laine, Tristar and Nesbit in their entirety and the Motion to Dismiss of Georgetown County with respect to all Declaratory Judgment claims.

The Order filed in this case granting the Defendants' Motions to Dismiss does not address the following issues:

- (1) The role of the South Carolina Comprehensive Planning Enabling Act
- (2) The denial of due process resulting from the adoption of the 2011 amendments to Section 607 of Georgetown County's "General Residential District" (GRD) provisions,
- (3) The interpretation and application of the Enabling Act provision that "regulations must be made in accordance with the comprehensive plan for the jurisdiction,"
- (4) The elements that constitute a cause of action for Declaratory Judgment, and

- (5) Statutory standing and public importance standing for all parties and all causes of action, and associational standing for the nonprofit entity parties.

I. Georgetown County Council denied Plaintiffs' rights to procedures set forth in Sections 6-29-1150 and 6-29-1155 of the South Carolina Comprehensive Planning Enabling Act (hereinafter "Enabling Act").

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

Sections 6-29-1150 and 6-29-1155 provide a framework for plan approvals and disapprovals by the Planning Commission and its staff and for the judicial appeals from the grant or denial of an application.

The first sentence of 6-29-1150(A) states: "The land development regulations adopted by the governing authority *must* include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff." (emphasis added). The remainder of this subsection and subsection (B) grant important rights to applicants for plan approval. Subsection (C) grants a right of appeal to the Planning Commission "by any party in interest." Subsection 6-29-1150(D) and Section 6-29-1155 address appeals to the circuit court. *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission*, 426 S.C. 97, 825 S.E.2d 721 (S.C. Ct. App. 2019) held that subsections 6-29-1150(C) and 6-29-1150(D) (1) granted "any party in interest" a right to appeal a decision by the Planning Commission.

B. Role of Enabling Act

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

General Assembly and, therefore, is void.” *Hardy v. Zoning Board of Review of the Town of Coventry*, 321 A.2d 289, 290-29 (R.I. 1974).

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

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

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

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

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

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

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

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

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

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

C. Amendments to the Zoning Ordinance

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

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

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

D. The 2011 Amendments are ultra vires

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

II. The 2011 Amendments Deny Plaintiffs' Right to Due Process

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

Because the ordinance at issue was sufficiently specific, the decision at issue in *Restaurant Row Associates* was upheld.

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

The ordinance before us is in no sense a zoning ordinance as provided in Sections 7390-7398, Code 1932, nor does it prescribe rules or conditions for the issuance of permits for the erection of billboards to which all persons similarly situated may conform. *It does not profess to prescribe regulations for their location, construction, or maintenance, but it commits to the unrestrained will of the city authorities, for any reason deemed satisfactory to them, the right and power to absolutely prohibit the use of property for the erection of billboards.*

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

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

The scheme adopted in the 2011 amendments contains the same lack of due process as the ordinance involved in *Schloss Poster Advertising Co.* Consequently, it is invalid.

III. Role of requirement in the Enabling Act that zoning “regulations *must be made in accordance with the comprehensive plan* for the jurisdiction.” (emphasis added)

The Order of Dismissal interprets the requirement that zoning “regulations must be made in accordance with the comprehensive plan” as follows: “[B]ecause the Comprehensive Plan is not a legally binding standard, a perceived violation of its terms cannot substantiate a legal claim for relief.” (Order, p. 10)

The concern for requiring that zoning “regulations be made in accordance with a comprehensive plan” has been in the South Carolina Enabling Act since the original Act was adopted in 1926.¹ The requirement was in the two predecessor acts in effect before the current Enabling Act was adopted.² A similar requirement is contained in the land development regulations.³

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

¹ S.C. CODE §1924 (33) 1066.

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

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

(S.C. 1979) (“Full effect must be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away.”)

The Order does not cite any authority to support its refusal to grant any legal effect to the “made in accordance with a comprehensive plan.” The Order cites *McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002) as support for the following interpretation: “The Comprehensive Plan is a guideline, not binding law.” (Order, p. 10) However, *McClanahan* does not address the issue of the role of the comprehensive plan.

McClanahan actually supports the Plaintiff’s position. The case states: “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” 350 S.E.2d at 242. One basic purpose of the Enabling Act is to guide regulation by planning. The purpose of the “in accordance with” language is to align zoning regulations with that planning creating the language.

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

IV. The Complaint states facts sufficient to constitute a cause of action for Declaratory Judgment.

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

“[a]ny person ... whose rights, status or 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.” (emphasis added).

"A cause of action under the Declaratory Judgments Act is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” *Farmer v. CAGC Insurance Company*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. of App. 2018) (citations omitted). See also *Jowers v. South Carolina Department of Health and Environmental Control*, 423 S.C. 343, 354 815 S.E.2d 446, 452(S.C. Supreme Ct. 2018). "The Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (S.C. Supreme Ct. 2013) (citations omitted).

Plaintiffs' Complaint specifically sets forth an actual controversy involving statutes and municipal ordinances and is neither hypothetical nor abstract in character. The Complaint plainly sets forth that: (1) the ordinance requiring county council to decide site plan reviews is invalid for conflicting with the South Carolina Enabling Act; (2) Georgetown County Council exceeded its authority under the Enabling Act; (3) the actions of Georgetown County Council violated the Enabling Act; (4) the Planning Commission is the final authority under the Enabling Act and the decision of Planning Commission was not appealed; and (5) density provisions of the Georgetown County zoning ordinance applicable to the parcel in question are invalid to the extent they are not in accordance with the comprehensive plan as required by the Enabling Act.

According to the South Carolina Supreme Court, in considering a Motion to Dismiss, “[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” *Doe v. Marion*, 373 S.C. 390, 398, 645 S.E.2d 245, 247-248 (S.C. Supreme Ct. 2007) (citations omitted). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (S.C. Supreme Court 2019). (emphasis added).

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

"The purpose of pleadings is to place the adversary on notice as to what the issues are." *Langston v. Niles*, 265 S.C. 445, 455, 219 S.E.2d 829, 833 (1975). "The principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial." *S.C. Nat'l Bank v. Joyner*, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct.App.1986). "Pleadings are to be liberally construed" *Shirley's Iron Works, Inc. v. City of*

Union, 403 S.C. 560, 574-575, 743 S.E.2d 778, 785 (2013), see also *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (quoting Rule 8(f), SCRCP).

Plaintiffs' Complaint identifies an actual controversy regarding municipal ordinances and state statutes. The questions whether or not the actions of the governing body exceeded its authority under the Planning Act, whether or not the actions of Georgetown County Council violate the Planning Act or other applicable law, and whether or not the underlying zoning ordinance complies with the Planning Act requirement that zoning be "in accordance with" the comprehensive plan are all factual determinations to be made after evidence has been presented, and not in the context of a 12(b)(6) Motion to Dismiss.

The court order improperly applies an evidentiary presumption without giving Plaintiffs an opportunity to present evidence to rebut that presumption. In finding that Georgetown County Zoning Ordinance 607 does not violate the Enabling Act, the court order states that

A municipal ordinance is a legislative enactment and is presumed to be constitutional ... [z]oning ordinances must be upheld so long as the propriety of the local governing body's decision is "fairly debatable." It is incumbent upon [the challenger] to show the arbitrary and capricious character of the ordinance through clear and convincing evidence.

A claim cannot be properly dismissed for failure to overcome an evidentiary presumption before Plaintiffs have been given the opportunity to present evidence to rebut the presumption. The question whether the ordinance is "fairly debatable," or "arbitrary and capricious" is an issue of fact to be determined after evidence is presented and weighed. These evidentiary standards are relevant to the merits of Plaintiffs' claims, not the sufficiency of the Complaint.

V. The Complaint fails to address statutory standing and public importance standing for all parties, and associational standing for the nonprofit parties.

A. Statutory Standing under the Declaratory Judgments Act

South Carolina law is well settled that if statutory standing has been established for all parties and all causes of action, it is not necessary to inquire into constitutional standing. "[I]t is unnecessary to address constitutional standing ... when the basis for the independent concept of statutory standing exists." *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control*, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (S.C. Supreme Ct. 2020) (citations omitted). "The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute." *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (S.C. Supreme Ct. 2012). The Supreme Court specifically noted that once the criteria of statutory standing have been met, "[n]othing more is required" for standing. *Id.* at 195, 45. In other words, "the appellant did not have to show that he had a personal stake in the outcome of the matter." *Preservation Society of Charleston* at 210, 486.

The Declaratory Judgments Act, Section 15-53-30, states "[a]ny person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, ..." (emphasis added). Statutory standing under the Declaratory Judgments Act is very broad and extends to any person whose rights are "affected."

South Carolina courts have interpreted this provision and the word "affected" very liberally to include residents in the vicinity of a land use issue who are impacted by traffic, enjoyment, recreational uses, and aesthetics, as well as organizations whose members are affected in these ways. *Citizens for Quality Rural Living, Inc.*, supra at 113, 731 and *Preservation Society of Charleston*, supra.

The Complaint alleges that Plaintiffs and those they represent have been and will be “affected” by this site plan approval in the following ways: decrease in property values; increase in stormwater and flooding problems; negative impact on character, aesthetics and enjoyment of land; increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic; precedent for future land development in the immediate neighborhood that does not comply with state law or the Comprehensive Plan; increased burden on severely over-burdened infrastructure that is operating beyond capacity creating a serious safety hazard – streets and highways, fire, police, and emergency services personnel and equipment, evacuation routes; and detrimental and discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this important historical African American neighborhood.

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

Accordingly, all parties have statutory standing under the Declaratory Judgments Act.

B. Associational Standing

The court order fails to consider associational standing as adopted by the South Carolina Supreme Court in *Preservation Society of Charleston*, supra. at 211, 487, set forth by the United States Supreme Court in *Friends of the Earth, Inc.*, supra. at 170, 697 as follows:

[A]n organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing

(statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

The following allegations of the Complaint support associational standing on the part of the nonprofit Plaintiffs Parkersville PDA, KIG, and PMI: at least one of its members is an affected person who has standing in his or her own right; the interests at stake fall squarely within Plaintiff Associations' purposes of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck by monitoring county land use decisions, zoning change requests and proposed development for compliance with proper law and procedure; and neither the claim asserted nor the relief requested requires the participation of individual landowners as monetary damages are not being requested.

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

C. Public Importance Standing

The court order fails to address public importance standing as set forth in the *Freemantle* case which states that when a matter is of public importance, standing may be conferred by that fact alone.

[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for

future guidance. In cases falling within the ambit of important public interest, standing is conferred without requiring the plaintiff to show he has an interest greater than other potential plaintiffs For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.

Freemantle, supra. at 44, 193.

The Complaint alleges in Paragraph 121 (set forth below) that future guidance by the court is necessary to determine the validity of these two ordinances and that the issues have potentially far-reaching impact:

121. Alternatively and in addition, Plaintiffs have standing to challenge these ordinances pursuant to the public importance doctrine inasmuch as the decision in this case has potentially far-reaching, widespread, devastating and irreversible negative impact on the public welfare by serving as a precedent for similar rezoning and land development decisions that would impact many acres in the Waccamaw Neck, and future guidance by this court is necessary to determine the validity of Georgetown County's repeated disregard of the requirements of the South Carolina Planning Act and the Comprehensive Plan in the Waccamaw Neck.

D. Constitutional Standing

The court order states that "Plaintiffs ... fail to allege that any of those ordinances work to deprive the Plaintiffs of their constitutional rights," and that "[b]ecause these allegations are

absent from the Complaint, it fails as a matter of law in its quest to invalidate the ordinances at issue." (Court Order, p. 6)

As set forth above, it is not necessary to allege constitutional standing when statutory or other standing has been established. Notwithstanding that, however, in addition to the due process violations referenced herein, Plaintiffs' Complaint alleges that Plaintiffs have been deprived of their constitutional rights as follows:

- a. Each of the seven individual Plaintiffs submitted Affidavits attached as Exhibits to the Complaint alleging that they "own and reside on land that directly adjoins" the parcel "which is the subject matter of the Complaint," and that "[t]he County's decision to approve the subdivision has caused and will cause us injury as follows:"
 - i. Negative impact on character, aesthetics and enjoyment of our land.
 - ii. Decrease in the value of our property.
 - iii. Increase in existing stormwater and flooding problems.
 - iv. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.
 - v. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - vi. Sets a precedent for other medium density land in immediate neighborhood to be approved for high density development.

vii. Sets a precedent for future land development that does not comply with the comprehensive plan.

(Complaint Pars. 11, 12, 14, 15; Affidavits, Exhibits 1-4.)

- b. The nonprofit Plaintiffs, Parkersville Planning & Development Alliance and Keep It Green each submitted signed Affidavits as Exhibits to the Complaint alleging that they represent the individual Plaintiffs as well as other adjoining landowners and landowners in the vicinity, and that the County's decision to approve this development has caused and will cause injury in the same manner set forth in the preceding paragraph. (Complaint Par. 16, Rev. Johnny A. Ford, President, signed Affidavit, Exhibit "5"; Complaint Par. 21, Duane Draper, Chairman, signed Affidavit, Exhibit "6"; Complaint Par. 22, Leon Rice, President of Preserve Murrells Inlet, signed Affidavit, Exhibit "7.")
- c. Paragraph 120 of the Complaint states:
- Plaintiffs have constitutional standing to challenge these ordinances pursuant to Article III of the United States Constitution inasmuch as (a) they have suffered an injury by virtue of land use decisions with respect to property that directly adjoins land owned by them or someone they represent; (b) the injury was caused by the improper approval of subdivision applications; and (c) the injury is redressable by a favorable decision of this court declaring that the approval of the subdivision applications by County Council is improper, null and void, and requiring Georgetown County to perform its required duties.

d. Paragraph 20 of the Complaint alleges:

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

e. Paragraph 105 of the Complaint alleges:

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

f. Paragraph 108 of the Amended Complaint alleges:

Approval of zoning changes and land development that conflicts with the comprehensive plan are more prevalent in minority communities and have had a discriminatory impact on the minority residents of these communities.

The court in *Preservation Society of Charleston*, supra, at 210, 486 (citations omitted), quoting the United States Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), stated that the elements of constitutional standing are (1) an “injury in fact,” i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury may be redressed by a favorable decision.

These elements have been properly pleaded in Plaintiffs' Complaint and the constitutional deprivation becomes a question of fact to be determined by the fact-finder after evidence has been presented.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to alter or amend the Court Order dated July 18, 2023, as set forth above, and allow this case to proceed on the merits.

Respectfully submitted,

/s/ F. Patrick Hubbard
F. Patrick Hubbard, Esquire (SC Bar #12614)

1525 Senate Street
Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR PLAINTIFFS

July 28, 2023
Columbia, South Carolina

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

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

July 28, 2023
Pawleys Island, South Carolina

607. **General Residential District (GR)**

Intent. It is the intent of this section that the General Residential District be established for medium-to-high density residential purposes. These areas need to be served with public water and sewer and have direct access to collector or arterial streets. Medium to high density projects should be designed to insure preservation of the critical areas, to be compatible with the existing development and to discourage any encroachment of commercial, industrial or other uses capable of adversely affecting the charm and residential character of this district.

607.1 **Permitted Uses.** The following uses shall be permitted in any General Residential District:

- 607.101 Single-family dwellings;
- 607.102 Two-family dwellings;
- 607.103 Multi-family dwellings (including assisted living facilities),
- 607.104 Public buildings, facility or land; and,
- 607.105 Accessory uses, including telephone booths associated with non-residential uses.

607.2 **Single Family and Two Family (including garage apartments) Dwelling Requirements.** Unless otherwise specified in this Ordinance, single family and two family dwellings shall meet the following requirements:

- 607.201 Front yard setback - twenty-five (25) feet;
- 607.202 Side yard setback - see Article VII, footnote 6;
- 607.203 Rear yard setback - twenty (20) feet;
- 607.204 Minimum lot area:
 - Single family - six thousand (6,000) sq.ft.
 - Two family - eight thousand (8,000) sq.ft.
- 607.205 Minimum lot width at building line - sixty (60) feet; and,
- 607.206 Building coverage shall not exceed thirty- five (35%) percent of the lot.

607.207 A development of more than five (5) two-family buildings with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council and comply with the following. *(Amended Ord. 2011-41)*

607.2071 The applicant shall submit to the Planning Commission, as part of the application, letters addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to develop, and when and where a public hearing will be held by the Planning Commission. Such letters shall be placed in unsealed, stamped and addressed envelopes, ready for mailing by the Planning Commission. The Planning Commission's address shall appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed shall accompany the application.

607.2072 The required letters of notification shall be mailed to the affected property owners by the Planning Commission at least 21 days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in this section shall not render the rezoning of the property invalid.

607.2073 Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.

607.2074 Before taking any action, the Planning Commission shall hold a public hearing thereon, notice of the time and place of which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the scheduled public hearing date. The Commission will then forward its recommendation to County Council for final approval.

607.2075 Such project shall also comply with all other applicable ordinances including, but not limited to signage, access management, parking and buffering requirements.

607.208 Planning staff shall review any request for a development which contains more than one two-family dwelling unit *(Amended Ord. 2008-48)*.

607.3 Multi-Family Requirements. The minimum lot area for a multi-family project shall be at least one acre. The minimum lot frontage shall be at least 150 feet of frontage on an approved street. The lot depth shall be no greater than three (3)

times the lot width. Unless otherwise specified in this Ordinance, multi-family dwellings shall meet the following requirements:

- 607.301 Front yard setback - thirty (30) feet;
- 607.302 Side yard setback - see Article VII, footnote 6;
- 607.303 Rear yard setback shall be twenty (20) feet except where the property adjoins the marsh or ocean, in which case the rear yard setback shall be thirty (30) feet;
- 607.304 There shall be a minimum of twenty (20) feet separation between structures;
- 607.305 At least fifty (50) percent of the lot shall be pervious surface; and,
- 607.306 A multi-family development of more than ten (10) dwelling units with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council and comply with the following: *(Amended Ord. 2011-41)*

607.3061 The applicant shall submit to the Planning Commission, as part of the application, letters addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to develop, and when and where a public hearing will be held by the Planning Commission. Such letters shall be placed in unsealed stamped and addressed envelopes, ready for mailing by the Planning Commission. The Planning Commission's address shall appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed shall accompany the application.

607.3062 The required letters of notification shall be mailed to the affected property owners by the Planning Commission at least twenty-one (21) days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in this section shall not render the rezoning of the property invalid.

607.3063 Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.

607.3064 Before taking any action the Planning Commission shall hold a public hearing thereon, notice of the time and place of

ARTICLE VI**REQUIREMENTS BY DISTRICT**

which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the public hearing date. The Commission will then forward its recommendation to County Council for final approval.

607.3065 Such projects shall also comply with all other applicable ordinances including, but not limited to signage, access management, parking and buffering requirements.

607.307 A development of ten (10) multi-family dwelling units or less will be reviewed by Planning staff (*Amended Ord. 2008-48*).

607.4 Townhouses-Special Requirements.

607.401 The regulations, as contained in this subsection, shall be applied to townhouses where permitted in any district in addition to the multi-family requirements.

607.402 Site Plans and Design Criteria:

607.4021 The front of the buildings shall not form long, unbroken lines of row housing, but shall be staggered at the front building lines;

607.4022 No more than six (6) contiguous townhouses nor fewer than three (3) shall be built on a row;

607.4023 No portion of a townhouse or accessory structure in or related to one group of contiguous townhouses shall be closer than twenty (20) feet to any portion of a townhouse or accessory structure related to another group, or to any building outside the townhouse area; and,

607.4024 Insofar as practicable, off street parking facilities shall be grouped in bays either adjacent to streets or in the interior of blocks.

607.4025 A development of more than ten townhouses with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council and comply with the following: (*Amended Ord. 2011-41*)

607.40251 The applicant shall submit to the Planning Commission, as part of the

ARTICLE VI**REQUIREMENTS BY DISTRICT**

application, letter addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to develop, and when and where a public hearing will be held by the Planning Commission. Such letters shall be placed unsealed, stamped and addressed envelopes, ready for mailing by the Planning Commission. The Planning Commission's address shall appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed shall accompany the application.

- 607.40252 The required letters of notification shall be mailed to the affected property owners by the Planning Commission at least twenty-one (21) days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in this section shall not render the rezoning of the property invalid.
- 607.40253 Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.
- 607.40254 Before taking any action, the Planning Commission shall hold a public hearing thereon, notice of the time and place of which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the

ARTICLE VI**REQUIREMENTS BY DISTRICT**

scheduled public hearing date. The Commission will then forward its recommendation to County Council for final approval.

607.40255 Such projects shall also comply with all other applicable ordinances including, but not limited to signage, access management, parking and buffering requirements.

607.4026 A development of ten (10) townhouses or less will be reviewed by Planning Staff (*Amended Ord. 2008-48*).

607.5 Net Density Limits For Multi-Family Developments (Excludes Streets)

MINIMUM LOT AREA PER UNIT

<u>Dwelling Unit Type</u>	<u>1 Story Sq.ft</u>	<u># Units Per AC</u>	<u>2 Story Sq.ft</u>	<u># Units Per AC</u>	<u>3 Story Sq.ft</u>	<u># Units Per AC</u>
Efficiency	3,000	14	2,700	16	2,700	16
1 Bedroom	3,600	12	3,000	14	2,700	16
2 Bedroom	4,300	10	3,600	12	3,000	14
3 Bedroom	5,400	8	4,300	10	3,600	12
4 Bedroom	7,200	6	5,400	8	4,300	10

607.6 Conditional Uses. The following uses may be allowed in any General Residential District subject to the provisions set forth:

607.601 Boarding homes, provided that:

607.6011 There shall be a minimum of 1,000 square feet of land area for each rental room;

607.6012 Food service facilities shall accommodate only boarders of the establishment and their guests. Where food service is provided there shall be a minimum of fifty (50) square feet of dining area for each rental room; and,

ARTICLE VI**REQUIREMENTS BY DISTRICT**

- 607.6013 There shall be at least one (1) off street parking space per rental room, plus one for each employee.
- 607.602 Utility substations or subinstallations including water towers, provided that:
- 607.6021 Such use is enclosed by a fence or wall at least six (6) feet in height above finished grade;
- 607.6022 There is neither office nor commercial operation nor storage of vehicles or equipment on the premises and,
- 607.6023 A landscaped strip not less than five (5) feet in width is planted and suitably maintained around the facility.
- 607.603 Amenity, subdivision provided that: *(Amended Ord. 2007-03)*
- 607.6031 Parking shall be provided at a rate of one half that required in Article XI of the Zoning Ordinance.
- 607.6032 Adjacent residential properties must be buffered from any recreational amenity other than a passive park which contains no structures. Such buffer shall, at a minimum, be a Type 2 as identified in Article XII of the Zoning Ordinance.
- 607.6033 The amenity must be owned and maintained by a homeowners association, similar entity or developer and be primarily used by the residents of the subdivision.
- 607.7 Other Requirements.
- 607.701 All allowed uses shall be required to conform to the standards set forth in Article VII.
- 607.702 Uses allowed in this district shall meet all standards set forth in Article XI, pertaining to off-street parking, loading and other requirements.
- 607.703 Signs allowed in General Residential Districts, including the conditions under which they may be located, are set forth in Article X.

- 607.704 In all multi-family developments, the developer is responsible for providing adequate solid waste storage areas and collection service. The location for these facilities shall be shown on the site plan and approval is required as stated in Subsection 607.306.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No. 2022-CP-22-00912
COUNTY OF GEORGETOWN	)	
	)	
Michael T. Green and Carrie J. Green;	)	
Julian P. Rutledge and Melvin L. Rutledge;	)	
Patricia S. Grate; Carlethia B. Jenkins;	)	
Frances Jo Baker; Parkersville Planning &	)	
Development Alliance, Inc.; Keep It Green,	)	
Inc.; and Preserve Murrells Inlet, Inc.,	)	DEFENDANT GEORGETOWN COUNTY'S
	)	RESPONSE IN OPPOSITION TO
Plaintiffs,	)	PLAINTIFFS' MOTION TO ALTER OR
vs.	)	AMEND JUDGMENT PURSUANT TO
	)	SCRCP, RULE 59(e)
Georgetown County; Laine CRE, LLC;	)	
TriStar Land, LLC; and Samuel J. Nesbit	)	
On behalf of the heirs of Will Nesbit,	)	
	)	
Defendants.	)	
	)	

Defendant Georgetown County, by and through the undersigned counsel, hereby submits its Response in Opposition to Plaintiffs' Motion to Alter or Amend this Court's Order issued June 23, 2023. The Court's Order is thorough, well-reasoned, and does not warrant reconsideration. Thus, the Court should accordingly deny Plaintiffs' Motion to Alter or Amend made pursuant to Rule 59(e), SCRCP.

BACKGROUND

Plaintiffs filed their Complaint on October 24, 2022, seeking Declaratory Judgment against Georgetown County, Laine CRE, LLC, TriStar Land, LLC, and Samuel J. Nesbit on behalf of the heirs of Will Nesbit. In early 2022, Defendant Laine CRE, LLC, and TriStar Land, LLC, entered into a contract with the Nesbit heirs to purchase both parcels, contingent upon approval of applications for land development of two site plan proposals for multi-family developments in Georgetown County, South Carolina. The developments were proposed to be constructed on two different parcels. Parcel one is approximately 6.87 acres and Parcel 2 is approximately 13.69 acres.

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

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

In response, Defendant Georgetown County, along with Defendants Laine CRE, LLC and Tristar Land, LLC, filed their motion to dismiss on December 21, 2022. Defendant Samuel J. Nesbit (“Nesbit”), on behalf of the heirs of Will Nesbit, filed a motion to dismiss on March 27, 2023. On June 23, 2023, the Court heard lengthy arguments on the two Motions to Dismiss. The Court issued its ruling on July 18, 2023, dismissing Defendants Laine CRE, LLC and Tristar Land,

LLC, and Defendant Nesbit, and granting Defendant Georgetown County’s Motion to Dismiss on all of Plaintiff’s causes of action except as to Count VII of the Complaint (finding “Plaintiffs have the right to appeal the County’s decision to the Circuit Court in accordance with South Carolina law.”).

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

For the reasons contained herein, as well as those previously presented to the Court in Defendant’s Motion to Dismiss, Memorandum in Support, and oral argument (which are incorporated herein verbatim), Plaintiff’s Motion to Alter or Amend pursuant to Rule 59(e), SCRCPP, must be dismissed in its entirety.

STANDARD OF REVIEW

“A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A party may file such a motion “when [he or 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.” *Id.* at 24, 602 S.E.2d at 780 (emphasis added).

“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.* (emphasis in original).

ANALYSIS

The *Elam* Court noted a party may file a Rule 59(e) motion when it 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.” *Elam*, 361 S.C. at 24, 602 S.E.2d at 780. In the instant case, it is manifestly clear the last two (2) elements by the *Elam* court were met here. While Plaintiffs purport the court failed to address five issues raised in its opposition to Defendant’s Motion to Dismiss, a clear reading of the Court’s Order undeniably shows the Court did, in fact, address and cogently analyze all issues.

The role of the South Carolina Local Government Comprehensive Planning Enabling Act (“the Planning Act”) is squarely and exhaustively addressed in the Order. The Court discusses at length the interplay between the Planning Act and Georgetown County ordinances beginning at page 6 of the Order and cites not only the statutes but caselaw interpreting the application of the statutes. Thus, Plaintiffs’ Motion fails as to Issue (1) as the Court fully considered and ruled upon the Planning Act’s role.

Turning to Issue (2), it is clear the Court reviewed the issues of due process as the Order specifically notes, “Plaintiffs not only fail to specifically identify which ordinances they are seeking to challenge, but also fail to allege that any of those ordinances work to deprive the Plaintiffs of their constitutional rights.” The Court goes on to state, “Because these allegations are absent from the Complaint, it fails as a matter of law in its quest to invalidate the ordinances at issue.” Again, Plaintiff’s Motion fails as to Issue (2) as it is clear the Court fully considered it and ruled upon those arguments.

Looking at Plaintiff's Issue (3), the crux of Defendants' Motion to Dismiss, and the Court's subsequent grant of that motion, focused on the interplay and applicability of the County's Comprehensive Plan and the County's enacted Planning Ordinances. The Court's Order devoted an entire section of its Order to discuss and analyze this very issue. *See* Order, Section II. The Court's Order noted, "The goals and objectives of a county's comprehensive plan are effectively implemented through the county's zoning ordinances and land use regulations." *See Sinkler v. County of Charleston*, 387 S.C. 67,75-76, 690 S.E.2d 777, 781 (2010). The Court went on to cite the law from the South Carolina Supreme Court in the *McClanahan* case, "The Comprehensive Plan is a guideline, not binding law." *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243-44 (2002). There is no way it can reasonably be concluded that the Court's Order failed to fully consider or rule upon this issue and, as such, the Court's Order of Dismissal must stand as a matter of law.

Upon review of Plaintiffs' allegations pertaining to Issue (4), it again is clear that the Court's order exhaustively and fully considered the issue of the sufficiency of the pleadings yet noted they did not present a justiciable controversy under the South Carolina Uniform Declaratory Judgments Act. The Court noted that for there to be a justiciable controversy, there must be a concrete issue, a definite assertion of legal rights, and a positive legal duty with respect to those rights which are being denied by the defendant. *Id.* at 153-54, 177 S.E.2d at 553. And the Court correctly analyzed Plaintiffs' Complaint to ultimately reach the conclusion that, "Because there is an absence of a positive legal duty in this case and no definite assertion of legal rights, there are no legal rights which could even conceivably be denied as the result of Defendants' conduct." As such, there is no evidence that the Court failed to fully consider or rule upon Issue (4) and, therefore, dismissal is appropriate.

To summarize, Plaintiffs' Rule 59(e) Motion clearly fails the last two *Elam* elements when compared to the Court's Order granting Defendant's Motion to Dismiss, as it pertains to Issues (1) through (4). Thus, the only way it is proper would be if the Court misunderstood any of Plaintiffs' prior arguments. And yet again Plaintiffs completely fail to show in what way or how the Court's Order misunderstood the legal positions and issues. The Order cites numerous statutes and cases that all point to the legal conclusion that the Complaint must be dismissed for Plaintiffs' failure to state a cause of action pursuant to Rule 12(b)(6), SCRCP. Plaintiffs' Motion in this instance is nothing more than a recycling of its earlier Opposition to Defendant's Motion to Dismiss. The Court granted Plaintiffs ample time to argue the motion and took the matter under advisement before issuing its well-reasoned order. Thus, Plaintiffs' Motion to Alter or Amend must be denied.

Finally, turning to Plaintiffs' alleged Issue (5) pertaining to standing, Defendant would point out that the resolution of any issue regarding standing is not dispositive as it pertains to the Court's decision to grant Defendant's Motion to Dismiss. Standing did not form the basis for the dismissal and, therefore, any reconsideration of such an issue would not alter the reason to dismiss the Complaint except for Count VII. Thus, this issue is not germane, and the dismissal is proper.

CONCLUSION

Wherefore, based on the forgoing, Defendants assert that Plaintiffs have failed to present sufficient justification for this Court to grant Plaintiffs' Motion to Alter or Amend the prior Order dismissing Plaintiffs' Complaint except for Count VII as to Defendant Georgetown County. Therefore, Defendants ask this Honorable Court to deny Plaintiffs' Motion.

{Signature page to follow}

RESPECTFULLY SUBMITTED,

SMITH|ROBINSON

By: s/H. Thomas Morgan, Jr.

H. Thomas Morgan, Jr., SC Bar #73585

Assistant Georgetown County Attorney

Sydney J. Douglas, SC Bar #105744

Smith Robinson Holler DuBose and

Morgan, LLC

PO Drawer 39

935 Broad St.

Camden, South Carolina 29021

(803) 432-1992

tommy@smithrobinsonlaw.com

sydney.douglas@smithrobinsonlaw.com

ATTORNEYS FOR DEFENDANT

GEORGETOWN COUNTY

November 6, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

Circuit Court Case No. 2022-CP-22-00912

Michael T. Green and Carrie J. Green, Julian P. Rutledge and Melvin L. Rutledge; Carlethia B. Jenkins; Frances Jo Baker; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc.

Appellants,

v.

Georgetown County, Laine CRE, LLC; TriStar Land, LLC; and Samuel J. Nesbit on behalf of the heirs of Will Nesbit

Respondents.

NOTICE OF APPEAL

Michael T. Green and Carrie J. Green, Julian P. Rutledge and Melvin L. Rutledge; Carlethia B. Jenkins; Frances Jo Baker; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc., appeal the final order and judgment of the Honorable Benjamin H. Culbertson dated December 11, 2023, attached. Appellants received written notice of entry of final order and judgment on December 11, 2023.

/s/ F. Patrick Hubbard
F. Patrick Hubbard (SC Bar #12614)
1525 Senate Street
Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR APPELLANTS

/s/ Cynthia Ranck Person
Cynthia Ranck Person (SC Bar #105126)
KEEP IT GREEN ADVOCACY, INC.
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
kig.advocacy@gmail.com
ATTORNEY FOR APPELLANTS

January 5, 2024

Other Counsel of Record:

H. Thomas Morgan, Jr. (SC Bar #73585)
Sydney Douglas (SC Bar #105744)
Smith Robinson Holler DuBose and Morgan, LLC
P.O. Drawer 39
935 Broad St.
Camden, South Carolina 29021
(803) 432-1992
tommy@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com
ATTORNEYS FOR RESPONDENT GEORGETOWN COUNTY

Matthew E. Pecoy, (SC Bar # 76657)
DarrowEverett LLP
28 Broad Street, Suite 204
Charleston, SC 29401
(864) 915-3717
mpecoy@darroverett.com
ATTORNEY FOR RESPONDENTS LAINE CRE, LLC AND TRISTAR LAND, LLC

Other Parties of Record:

Samuel J. Nesbit, on behalf of the heirs of Will Nesbit
6201 Rosebud Street
Columbia, SC 29203
PRO SE RESPONDENT

Transcript

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN * TRANSCRIPT OF RECORD

-----X
MICHAEL T. GREEN, et al., *
Plaintiffs, *
vs. * Case No. 2022-CP-22-00912
GEORGETOWN COUNTY, et al., *
Defendants. *
-----X

June 23, 2023

B E F O R E:

The Honorable Benjamin Culbertson, Presiding Judge

A P P E A R A N C E S:

Cynthia Person, Esq.
Attorney for the Plaintiffs

H. Thomas Morgan, Esq.
Sydney J. Douglas, Esq.
Attorney for Defendant Georgetown County

Matthew Pecoy, Esq.
Attorney for Defendant Laine CRE, LLC and
TriStar Land, LLC

Cliff Nesbit, Pro Se Defendant

Recorded by: Webex Virtual Courtroom

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

THE COURT: All right. We're back on the record regarding Case No. 2022-CP-22-00912, Michael T. Green and others versus Georgetown County and others. If you're involved in that, please raise your hand.

(Pause in the proceedings.)

THE COURT: All right. This is 2022-CP-22-00912, Michael T. Green and others versus Georgetown County; Laine CRE, LLC; TriStar Land, LLC; and Samuel J. Nesbit on behalf of the heirs of Will Nesbit.

According to my roster, the matter is before the Court on a motion to dismiss Georgetown County, a motion to strike by the plaintiff, and a motion to dismiss by the defendant Samuel Nesbit and Will Nesbit.

(Indiscernible) start first? Ms. Person, you represent who?

MS. PERSON: I represent the plaintiffs, Your Honor.

THE COURT: All right. Mr. Morgan?

MR. MORGAN: Yes, sir. Good morning, Your Honor. Tommy Morgan with Smith Robinson. I'm coming to you this morning in my capacity as the assistant Georgetown County attorney. I have also got my associate, Ms. Sydney Douglas, who is with us this morning.

Previously, the County attorney, Jay Watson, was on the line, but he's had to step away for a few minutes.

1 And, Your Honor, if I may, also, I have Mr. Matthew
2 Pecoy here. He is a member of our motion to dismiss as
3 well as a joint defendant. The first motion on your
4 roster is not only a motion to dismiss by Georgetown
5 County but also by Laine CRE, LLC, and TriStar Land, LLC,
6 who is Mr. McCoy's clients.

7 THE COURT: Mr. Pecoy?

8 MR. PECOY: Good morning, Your Honor. Thank you,
9 Tommy. Yes, Matt Pecoy of Darrow Everett, LLP, here on
10 behalf of Laine CRE, LLC, and TriStar Land, LLC.

11 THE COURT: Ms. Douglas?

12 MS. DOUGLAS: Good morning, Your Honor. As Tom
13 mentioned, I'm here on behalf of Defendant Georgetown
14 County.

15 THE COURT: And, Mr. Nesbit, you're here
16 representing yourself?

17 MR. NESBIT: Yes, and the heirs of Samuel Nesbit --
18 of Will Nesbit.

19 THE COURT: Unless you're licensed to practice law,
20 you can't represent someone else.

21 MR. NESBIT: Just myself.

22 THE COURT: Okay. All right. I guess, Mr. Morgan,
23 we will deal with your motion first.

24 MR. MORGAN: Yes, Your Honor. If it pleases the
25 Court? Good morning. We're here this morning on, again,

1 the motion to dismiss on behalf of Georgetown County as
2 well as the defendants, Laine CRE, LLC, and TriStar Land,
3 LLC.

4 Your Honor, this is, in essence, a planning and
5 zoning issue here in Georgetown County. It's one of
6 several cases that Ms. Person has brought against the
7 County as relates to some zoning decisions which her
8 clients, both individually as well as some of the
9 organizational clients that are listed in the caption --
10 the Parkersville Planning and Development Alliance, Keep
11 It Green, and Preserve Murrells Inlet -- they have brought
12 several of these lawsuits against the County, which of one
13 has already been dismissed previously by Judge Seals, and
14 it's very similar to this case here, Your Honor.

15 But by way of just brief factual background, this
16 arises from an application for a site plan review in
17 Georgetown County that was submitted by the other
18 developers -- the Laine and TriStar Land, those
19 defendants -- to the County back in July of 2022. And
20 they were received into the Planning and Zoning Department
21 in Georgetown County and ultimately were presented to the
22 Planning Commission in Georgetown County where, at a
23 meeting of the Planning Commission, the Planning
24 Commission voted to deny the applications.

25 But then, as required by the Georgetown County

1 ordinances, that decision was submitted to County Council
2 for its ultimate review and decision, and at that hearing,
3 that council meeting held on September 27th, the
4 Georgetown County Council voted to approve the
5 applications and allow this to go forward, and then this
6 lawsuit followed, Your Honor.

7 And the plaintiffs, collectively, have filed several
8 different declaratory judgment causes of actions. I'm
9 going to try to summarize those for the Court. But,
10 first, they're seeking a declaratory judgment that the
11 Planning Commission -- not the Council but the Planning
12 Commission's decisions to deny the application was valid
13 and final, and, therefore, County Council had no authority
14 to overturn or even review those, the decision of the
15 Planning Commission; that the Georgetown County ordinances
16 that require a site plan review by County Council, those
17 ordinances themselves are void and unenforceable; that the
18 ultimate approval by County Council of the two
19 applications, because it involves two different parcels,
20 is in violation of state law; that -- and, Your Honor, I'm
21 trying to go forward here as quick as I can -- that
22 Georgetown County has a statutory mandate to bring the
23 zoning ordinances and land use regulations into compliance
24 with the comprehensive plan; and, finally, that they have
25 a statutory mandate that they consider the compliance with

1 the comprehensive plan in the decision-making process.

2 So, Your Honor, we immediately jumped ahead and
3 filed this Rule 12(b)(6) motion, Your Honor, a motion to
4 dismiss, and I know the Court is very familiar with that
5 because that's the rule that allows a defendant to move to
6 dismiss a Plaintiff's complaint based upon the failure to
7 state facts sufficient to constitute a cause of action.

8 And I'll note, in the plaintiff's memorandum in
9 opposition, they state that they're unaware of the
10 specific basis for the motion, but I think 12(b)(6), in
11 and of itself, speaks -- you know, speaks for itself.
12 That is the basis for our motion to dismiss.

13 And I know the Court, when deciding whether to grant
14 a motion to dismiss, they have to consider whether the
15 complaint, viewed in the light most favorable to the
16 plaintiff, states any valid claim for relief, and that's
17 pursuant to the Flateau v. Harrelson case.

18 But in doing so, Your Honor, I just want to point
19 out that, while you have to view the allegations of the
20 complaint in the light most favorable to the plaintiff,
21 that doesn't mean the Court must consider every single
22 word of the complaint as true. And that's the basis for
23 our motion today, Your Honor, because this is a situation
24 wherein the legal bases for the complaint that have been
25 brought by the plaintiff is not there. It's not valid.

1 It's a complete misstatement of the law, and hence the
2 reason we filed this motion to dismiss, because this is a
3 case that's brought under the Uniform Declaratory Judgment
4 Act, which means that the pleadings themselves must
5 establish the existence of a justiciable controversy,
6 which the elements of that, as the Court in the
7 Power v. McNair Case said there must be a contra-issue, a
8 definitive assertion of legal rights, and a positive legal
9 duty with respect to those rights which are being denied
10 by the plaintiff.

11 And, ultimately, Your Honor, this entire case and
12 the ones that have been presented to the Court before,
13 which have been denied, and other ones that are
14 subsequent -- will come before the Court is that the
15 comprehensive plan -- Georgetown County's comprehensive
16 plan is the document. It must be adhered to in making
17 land decisions, and that's clearly not the law in the
18 State of South Carolina, Your Honor. I'm going to go into
19 a little bit more detail about that.

20 So, Your Honor, first and foremost, there's a
21 long-standing tradition in South Carolina, the principle
22 is that the Court should exercise a policy of judicial
23 restraint in reviewing the decisions of a governing body.
24 And I'm quoting, Your Honor, "Courts have no prerogative
25 to pass upon the wisdom of a municipality's decision

1 unless such decision is so unreasonable as to impair or
2 destroy a citizen's constitutional rights." And that's
3 been stated multiple times through -- in our case law.
4 The Knowles vs. City of Aiken case is kind of one of the
5 bellwether cases for that.

6 And when in reviewing an ordinance's validity, a
7 Court must make every presumption in favor of the
8 constitution -- constitutionality, excuse me, of a
9 legislative enactment because, you know, it's manifest.
10 There's a separation of powers here, and that's the
11 difference between the legislative branch and the judicial
12 branch.

13 And a Court cannot overturn a decision of a county's
14 governing body if a decision is fairly debatable. And
15 that's an important standard for the Court to apply to
16 this particular case, because, again, the County's
17 decision is presumed to be a valid exercise of power, and
18 it's not the prerogative of the Court to pass upon the
19 wisdom of the decision.

20 If citizens don't like the decision of their elected
21 officials -- in this instance, County Council -- they have
22 an opportunity to challenge that at the ballot box, not
23 necessarily every single time they don't like something
24 that happens, they run to the courts, and ask the court --
25 a judge such as yourself, to overturn that decision, which

1 is exactly what's going on here, Your Honor.

2 So if we turn specifically to the complaint and what
3 was really being alleged here, it seems -- and I'm using
4 the word "seems," Your Honor, because it's not really
5 specified in the complaint -- that the plaintiffs have
6 some type of problem with certain subsections of the
7 County's zoning ordinances. And there's a citation,
8 Ordinance 607, but then it also -- the complaint just
9 generally and globally talks about, well, there's
10 prerogatives, there's other things that the County Council
11 must look at. And when we turn and look specifically at
12 the ordinances themselves -- whether it's 607.4025 -- it
13 talks specifically about the process that County Council
14 has when reviewing a decision of the Planning Commission,
15 which is exactly what's going on here, Your Honor.

16 And if we look at this from a big picture, Your
17 Honor -- and I know the Court is well aware of this --
18 South Carolina has a series of statutes that relate to the
19 land development regulations and ordinances that have been
20 passed, in this instance, by Georgetown County, and we
21 know that South Carolina Code 6-29-720, it states
22 specifically that the creation and regulation of zoning
23 districts is in the purview of the governing body, which,
24 again, is County Council, not the Planning Commission.

25 So this is all part of the South Carolina local

1 government Comprehensive Plan Enabling Act of 1994, and
2 that's a touchstone of this case as well because that's
3 the document, that's the laws that grant the authority to
4 a county such as Georgetown, to the County Council to
5 enact and make decisions just like they did in this
6 particular case, Your Honor. It's definitely on point.

7 Now, what the plaintiffs will argue is that there
8 are certain sentences and there are certain bits and
9 parts, and they're cherry-pick parts of the language to
10 try to support their version of events to say, "Oh, well
11 the County didn't have the authority to make the decision.
12 They didn't have the authority to overturn the decision of
13 the Planning Commission." Well, the Planning Commission
14 is unelected body. They're not the governing body of the
15 County. That's the County Council.

16 And that's -- if you look, again, Your Honor, at the
17 law, it's 6-29-1120, and that's the General Assembly
18 granting the authority to the County Council to establish
19 a procedural process to approve plans, such as what took
20 place at this particular case, Your Honor. And that's the
21 whole point of the Planning Act, I mean, in and of itself.
22 It grants the County broad powers to create regulations in
23 order to carry out the purposes of planning in the County
24 itself, such as the promotion of public health, safety,
25 and, quote, "the progressive development of land." And,

1 again, that's 6-29-1120.

2 And if you look further into the document, it says
3 that the whole purpose of the zoning ordinances are to
4 further the public welfare in any other regard as
5 specified by the governing body. Again, that is County
6 Council. It's not the Planning Commission.

7 So, Your Honor, when we look at the actual
8 allegations of this particular case as brought by the
9 plaintiffs, they continue to focus on, "Well, the Planning
10 Commission said one thing, therefore, the County Council
11 can't say something else." That's clearly not the law,
12 because, otherwise, that would just completely abrogate
13 the entire structure of the comprehensive planning law in
14 South Carolina. Every county across the state uses that
15 framework, uses that law to establish their specific
16 ordinances and regulations for development in each county.
17 And that's exactly what Georgetown County has done.

18 So if there's any challenge whatsoever by the
19 plaintiffs about whether or not the ordinances themselves
20 are valid, they're long since past the deadline by which
21 they can make any challenge to that. These are ordinances
22 that were passed in 2011, and the statutes themselves
23 provide that you have to bring a challenge within 60 days.
24 I'm not the best at math, Your Honor, but I think we're
25 past the 60-day statute of limitations here in 2023.

1 So, if we look at the structural framework from the
2 State law, it then turns everything over to the counties
3 and the governing body -- again, County Council -- to make
4 the decisions. And there's going to be an argument, Your
5 Honor, that the plaintiffs are going to make, well,
6 there's a conflict; that the comprehensive plan might have
7 some terms that they purport to be in conflict with the
8 ordinances.

9 Well, Your Honor, the McClanahan case out of
10 Richland County is clear, and it's been the law of this
11 state for over a decade now -- I think two decades, to be
12 honest with Your Honor -- is that a comprehensive is just
13 that: It's a planning document. It is a guide. It is
14 something that the County Council, as the governing body,
15 then uses to help guide it when it makes a decision as it
16 relates to ordinances and regulations.

17 And in this instance, Your Honor, the ordinances
18 specifically allow for the approval of the type of
19 development that's going -- being brought by Mr. McCoy's
20 clients -- being approved by Mr. Nesbit. And I'm not
21 trying to speak for Mr. Nesbit; I'm sure he's more than
22 happy to speak for himself. But that's exactly what is
23 going on here.

24 So it's a challenge by these plaintiffs. There are
25 certain individual landowners, Your Honor, but there's

1 also several groups. We have got the Parkersville
2 Alliance. We have got Keep It Green. We have got
3 Preserve Murrells Inlet. And, Your Honor, we could even
4 make the argument -- and we do in our memo; I'm not going
5 to really address that -- about the standing issue of
6 whether or not these organizations can even make a claim
7 that they're being somehow injured by the presumptive,
8 valid decision of County Council, Your Honor.

9 And so that's really what this focuses on.
10 Plaintiffs are going to argue, "Well, the comp plan says
11 you can't do this. That's why anything that the County
12 Council does is wrong because their version, their reading
13 of the comp plan says you can't do this." But that's not
14 what the ordinances say. That's not what the laws of
15 Georgetown County state. Therefore, any decision that is
16 made is being presumed valid, it's been statutorily
17 defined by the General Assembly, because we all know that
18 counties can only act under the Home Rule Act by the
19 powers that are granted to it by the General Assembly.
20 These are powers that have been granted to counties all
21 across the state, that are used all across the state.
22 This is nothing more, Your Honor, than a situation wherein
23 the plaintiffs don't like what took place, and they want
24 to turn around and try to manipulate and game the system
25 and have a judge such as yourself, a Court come in and

1 say, "No, County Council, you didn't make the right
2 decision. I'm going to overturn the will of the people
3 who have voted -- all seven members of County Council into
4 office -- and force my decision, my view, my opinion, not
5 that of the elected body." And, Your Honor, that's the
6 very reason -- and I know Ms. Person is probably going to
7 not approve of me even bringing this up, that Judge Seals
8 denied an extremely similar case just last month.

9 I'd point it out and I'd ask the Court to take
10 judicial notice of the public record. I'm not trying to
11 brig any extraneous documents into this. We're focusing
12 solely on the four corners of the complaint, Your Honor.
13 But I know the Court can take notice of what's already
14 been done. And I realize what Judge Seals decided is not
15 necessarily binding on this Court, but I just want to
16 point out, it's the same exact arguments, it's the same
17 exact structure, it's the same exact situation that we
18 have here. And if this Court were to open this up to
19 allowing it to impress its opinion about whether this
20 zoning decision or this regulation or this development, it
21 would completely shut out the voice of the voters of
22 Georgetown County, it would be against the law, Your
23 Honor, and for that very reason, that's why the courts
24 have said they have "no prerogative to pass upon the
25 wisdom of the municipality's decision unless it's so

1 unreasonable as to impair or destroy citizens' rights."

2 And I'm quoting it again. That's the Knowles v. City of
3 Aiken case.

4 And, Your Honor, that's not what we have here.
5 There's been no showing whatsoever on the four corners of
6 the document that that is the case, Your Honor, because
7 the ordinances are passed, they're specifically in keeping
8 with the State enabling legislation, the Planning Act,
9 that allows for them to review, comment, and make any
10 decisions of the unelected Planning Commission. That's
11 exactly what took place in this situation, Your Honor, and
12 I'm going to let Mr. McCoy speak because he may have some
13 specific arguments he wants to make on behalf of the
14 developers.

15 But, Your Honor, we think the law is clear. We
16 understand that it's a long complaint with lots of facts,
17 lots of paragraph and pages that are going to be used to
18 say, "Well, there's a question of fact," so on and so
19 forth, but there is no question about the law, and that's
20 what we're asking this Court to rule upon, is the
21 application of the law, and it's clear that County Council
22 had the right to do what they did. They're authorized to
23 do what they did. Their decision is valid and binding.
24 It's well within their prerogative. And if Plaintiffs
25 don't like it, they can head to the ballot box, they can

1 vote, and that's what this democracy is all about, Your
2 Honor.

3 So, again, I appreciate the Court's indulgence.
4 Again, I'm going to turn -- if the Court so would
5 approve -- and let Mr. McCoy make any arguments on behalf
6 of his clients. We tried to bring this as a joint motion,
7 Your Honor, to, you know, expedite things in the economy
8 of the courts. We all understand that the time is
9 important, and I appreciate the opportunity to speak this
10 morning, Your Honor.

11 THE COURT: All right. Mr. McCoy, any argument one
12 way or the other?

13 MR. PECOY: May it please the Court? Thank you,
14 Your Honor, and thank you, Tommy. Just to begin, we join
15 wholly and unequivocally with Mr. Morgan and the County's
16 arguments related to the interpretation of law, so I'm not
17 going to touch on that. I think counsel did a fine job,
18 and we'll defer to the Court's discretion as to its ruling
19 there.

20 So specifically as to the portion of our joint
21 motion related to the request of Laine CRE and TriStar
22 Land, LLC, to be dismissed from this action, should this
23 Court even -- should this Court deny the request of an
24 outright dismissal of the complaint, we have a
25 supplemental request that my clients be dismissed, Judge.

1 And specifically as to Defendant Laine, when this
2 Court reviews the 139-paragraph complaint contained on 35
3 pages, only three of those paragraphs involve Defendant
4 Laine, Your Honor, and those three allegations include
5 paragraph 33, and it simply identifies Defendant Laine as
6 a party in this case, as a defendant; paragraph 36 alleges
7 only that Defendant Laine is the authorized agent of
8 Defendant Samuel Nesbit; and paragraph 37 alleges, "Upon
9 information and belief, in or around early 2022, Defendant
10 Laine CRE, LLC, and/or TriStar Land, LLC, hereinafter" --
11 and she quoted "developers" -- entered into a contract
12 with the Nesbit heirs to purchase both the Petrigru and
13 Parkersville parcels contingent upon approval of
14 applications for land development projects." That's it.

15 Plaintiffs are not contesting any acts by Defendant
16 Laine. The interpretation of the law applicable to
17 whether or not Georgetown County Council had the correct
18 authority to approve Defendant -- Mr. Nesbit's application
19 for development does not relate to any acts, authority, or
20 power of Defendant Laine, Your Honor.

21 Furthermore, as to Defendant TriStar, once again,
22 only three of the 139 paragraphs contained on the over 35
23 pages of the plaintiff's lawsuit even mention Defendant
24 TriStar, and they're similar -- the scant, minimum
25 allegations related to Defendant Laine, which is, one,

1 Defendant TriStar is a defendant; two -- and that would be
2 in paragraph 34, Your Honor. Paragraph 36 alleges only
3 that Defendant TriStar is an authorized agent of Defendant
4 Nesbit. And, three, is paragraph 37, which I will save
5 the Court's time in quoting one again.

6 Of particular import to both Defendant Laine and
7 Defendant TriStar in their request to be dismissed from
8 that action, even if Your Honor does not grant an outright
9 dismissal of the complaint, not one of the six
10 aforementioned declarations sought by the plaintiffs that
11 Counsel Morgan touched upon name my collective defendant
12 clients, are directed at, or are related to any decision,
13 power, or authority of either Defendant Laine or Defendant
14 TriStar, Your Honor.

15 So for these supplemental reasons, in addition to --
16 that we join Counsel Morgan's position related to the
17 application of the law to this case, we would ask that
18 Defendants Laine and TriStar be dismissed from this action
19 regardless of whether or not this Court allows the lawsuit
20 to continue. Thank you, Judge.

21 THE COURT: All right. Mr. Nesbit, do you have an
22 argument one way or the other?

23 MR. NESBIT: I believe my argument is the fact that
24 my family's been involved in this lawsuit, and we're just
25 selling property. And this is an issue, I believe,

1 between the County and Keep It Green or whoever they are,
2 but it has nothing to do with the Nesbit family ourselves.
3 You know, we have the right to have -- to sell our
4 property or dictate whatever we want to do with what
5 belongs to us, and I just think we need to dismiss on this
6 case because it has nothing to do with my family itself.

7 THE COURT: Thank you, sir.

8 All right. Ms. Person, let me hear from you.

9 MS. PERSON: Yes, thank you. Your Honor, first,
10 I'll just address in reverse order the inclusion of the
11 Nesbit heirs and the developers are simply because the
12 Declaratory Judgment Act requires any parties who may be
13 affected by the action to be named as parties. There's no
14 question that it's really the actions of Georgetown County
15 that are at issue here.

16 So I'll get into -- I will say that I did not learn
17 until yesterday afternoon when the defendants filed their
18 memorandum of law what the specific bases for their motion
19 to dismiss were. So I am prepared to address those
20 orally. I would request that, if the Court wishes, we
21 would perhaps have some additional time to address issues
22 that we didn't really have time to address because we only
23 learned of them less than 24 hours ago.

24 Anyway, the issue before the Court, as the Court I'm
25 sure is well aware, it's very narrow. It's the

1 sufficiency of the complaint in this declaratory judgment
2 action, which is a very broad action. And the examination
3 is limited to the four corners of the complaint itself and
4 whether or not it states a cause of action under the
5 Declaratory Judgment Act, and, also, it is an appeal of
6 the two development decisions.

7 I would say that a considerable portion of both
8 defendants' arguments address the merits of the case and
9 actually mischaracterize what this case is. This case is
10 not about what the comprehensive plan says. It's about
11 what state law says and whether or not Georgetown County's
12 actions are in accordance with state law, and what those
13 actions were is really a factual issue to be determined
14 after evidence is presented. It's not about whether we
15 like the decision or don't like the decision. It's about
16 whether or not the actions followed the law.

17 As far as the sufficiency of the complaint is
18 concerned, of course the Court is aware that South
19 Carolina specifically -- the Supreme Court has said it's
20 not -- a motion to dismiss is not a vehicle for addressing
21 the underlying merits of the claim, all of the allegations
22 of Plaintiffs' complaint, and supporting affidavits, which
23 we have supporting affidavits from every single adjoining
24 landowner, and exhibits must be accepted as true for this
25 purpose, and every doubt resolved in the favor of the

1 plaintiffs and solely on the face of the complaint.

2 So as far as the factual issues, Your Honor, this is
3 not a zoning change case, and incidentally, mentioning
4 another case that some of the plaintiffs in this case have
5 filed and what the disposition was of that case -- which
6 is still pending, by the way -- is completely misplaced in
7 this context. The facts are different. The issues are
8 different. That was a zoning change case. This is not a
9 zoning change case.

10 This case is about land development approval, which
11 is a non-legislative decision that was made by County
12 Council that Plaintiffs are alleging was improper for a
13 variety of reasons, including conflict with state law and
14 whether or not the substantive facts that were considered
15 by Georgetown County in making that decision were proper
16 as a factual issue; whether the approval process
17 employed -- and what the approval process was as a factual
18 issue; whether or not the proposed subdivisions comply
19 with the law are factual issues. In fact, the case that
20 Mr. Morgan cited is a case that was decided after evidence
21 was presented. It certainly was not a case that was
22 decided on a motion to dismiss.

23 So Plaintiffs respectfully submit that the complaint
24 is more than sufficient to notify the defendants of the
25 plaintiffs' claim. And the three aspects that are

1 necessary for the plaintiffs to establish are, first,
2 standing. Standing is the right of a party to bring a
3 legal action. The complaint is very specific about the
4 individual landowners. In this case, we cite deeds. We
5 cite the fact that they actually own land that adjoins
6 these two proposed developments.

7 The other category of plaintiffs in this case are
8 the association community organizations who represent both
9 these landowners and other landowners. The mission of the
10 community organizations is just very simply to ensure that
11 development in the Waccamaw Neck is approved in accordance
12 with state and local law.

13 The defendants made arguments in their memorandum
14 about constitutional harm not being alleged.
15 Constitutional standing is only one of several kinds of
16 standing that give Plaintiffs the right to bring this
17 action. As I'm sure the Court is aware, standing can be
18 acquired by statute or under constitutional standing or
19 under the public importance exception. The declaratory
20 judgment act provides statutory standing for Plaintiffs in
21 this case, and it specifically says that -- well, let me
22 just say first, if statutory standing exists, it's not
23 necessary to get into whether constitutional standing
24 exists. That's a very clear rule that was set forth by
25 the Supreme Court of this state. In this particular case,

1 statutory standing has been established under the South
2 Carolina Uniform Declaratory Judgment Act, which is
3 alleged in the complaint. It specifically says, "Any
4 person whose rights are affected by a municipal ordinance
5 may have determined any question of validity arising under
6 the ordinance and obtain a declaration of rights, status,
7 or other legal relations." It's very broad. It extends
8 to any person -- any person whose rights are affected by a
9 municipal ordinance. It's not limited to adjoining
10 landowners, although, in this particular case, they are
11 adjoining landowners.

12 The complaint specifically alleges that they have
13 been affected by things such as traffic, enjoyment,
14 recreational uses, esthetics, which are things that South
15 Carolina state law says are appropriate for declaratory
16 judgment standing.

17 The complaint specifically alleged that their rights
18 have been affected by decrease in property values;
19 increase in stormwater and flooding problems; negative
20 impact on character, esthetics, and enjoyment of land;
21 increase in traffic; precedent for future land development
22 in the immediate neighborhood that does not comply with
23 state law; increased burden on overburden;
24 infrastructure -- all these things are very clear under
25 South Carolina state law to establish statutory standing.

1 There's also standing under the Planning Act, which
2 specifically allows the appeal of decisions by Planning
3 Commission or a county. In this case, it happened to be
4 County Council. But the enabling act specifically allows
5 appeals to the circuit court within 60 days. This appeal
6 is within 60 days of the decision.

7 The affidavits and exhibits establish that the
8 individual plaintiffs are owners of land that directly
9 adjoin the parcel in question. The affidavits of each of
10 the associations establish that they represent these
11 landowners and other landowners.

12 Associational standing is also -- I'm not going to
13 get into that because I think we have clearly established
14 statutory standing, although our memorandum of law
15 addresses that. Clearly, associational standing applies
16 here.

17 And constitutional standing, while it's not
18 necessary for Plaintiffs to establish constitutional
19 standing independent of statutory standing, they did.
20 They cited the injuries in fact that I mentioned earlier:
21 the decrease in property value, increase in flooding and
22 stormwater problems. These are all factual issues. They
23 were pled. We have to assume they're true.

24 Public importance standing we addressed in our memo
25 as well.

1 So the issue -- once standing has been established,
2 the issue is whether or not the sufficiency of the
3 complaint -- whether or not the complaint establishes a
4 cause of action under the Declaratory Judgment Act, and
5 that is established by showing the existence of a
6 justiciable controversy. And, in this particular case,
7 the complaint clearly sets forth far more than the minimum
8 required to establish a controversy. The controversy is
9 whether or not the land development decisions complied
10 with the law. We have to look at what were the actions,
11 what were the procedures. All factual questions.

12 The sufficiency of the complaint, it's very clear
13 that it doesn't have to set forth everything in every --
14 in great detail. Notice of the action to the defendants
15 is what is required. We believe that our complaint more
16 than sufficiently sets forth sufficient facts to notify
17 Defendant of the issues.

18 All these arguments about legislative presumption,
19 whether or not the zoning ordinance is fairly debatable,
20 there's no question that counties have authority to enact
21 zoning. The question here is whether or not the actions
22 of the County were, in fact, in compliance with state law.
23 These are all matters that should be decided after
24 evidence is presented, not before. Whether or not the
25 ordinance is in question are fairly debatable. Whether or

1 not the council exceeded its authority are factual issues
2 to determine -- to be determined after facts are presented
3 and not now. Those are the merits of the cases.

4 The role of the comprehensive plan. The defendants
5 argued, for a considerable portion, that the comprehensive
6 plan is not law and that somehow Plaintiffs -- that this
7 justifies dismissal of the action. Plaintiffs have never
8 suggested nor does the complaint allege that the
9 comprehensive plan is law. What the complaint does allege
10 is that Georgetown County is required to follow South
11 Carolina state law; notwithstanding the fact that it has
12 broad discretion to enact ordinances. And this isn't
13 about enacting ordinances. This is about whether or not
14 their actions comply with state law.

15 Georgetown County still has to follow the Planning
16 Act. If the legislature of South Carolina says one thing,
17 Georgetown County cannot enact an ordinance that's
18 inconsistent with that, and if it does, it's void.
19 There's no statute of limitations that applies to that.
20 It's void from its inception.

21 And Plaintiffs submit that the actions of Georgetown
22 County in this case, in making the decision, are issues of
23 fact to be determined after evidence has been produced and
24 evaluated.

25 The argument -- I didn't hear anything about the

1 argument on service of the complaint, but I read it in the
2 memorandum. I would simply say that service was made by a
3 process server on the executive assistant of the county
4 administrator. We would submit that that complies with
5 the rules.

6 The only facts of record at this stage, Your Honor,
7 are those alleged in the complaint, all of which must be
8 accepted as true. The complaint sets forth that
9 Plaintiffs that adjoining landowners in an
10 African-American neighborhood, which has been the
11 long-standing target of inappropriate county land use
12 decisions that do not comply with state and local law.
13 These named landowners, along with the citizens groups,
14 all of whom are represented by the non-profit
15 (indiscernible) have been harmed by the repeated failure
16 of Georgetown County's actions that fail to follow the
17 mandates of state and local law, and that's a factual
18 issue. They're not matters of argument. They are pleaded
19 facts, and they must be accepted as true for the purpose
20 of examining the sufficiency of the complaint, because
21 that's all we're here for today.

22 So, thank you, Your Honor.

23 THE COURT: All right. Mr. Morgan, anything in
24 reply?

25 MR. MORGAN: Yes, sir. Very briefly. And I

1 appreciate the Court's indulgence. I understand that
2 Ms. Person has drafted an extremely long and factually
3 detailed complaint, but thankfully, she's also just
4 acknowledged the fact that this isn't -- this is all a
5 question of law. That's what's before the Court. And
6 she's explicitly stated, without a shadow of a doubt, the
7 steps that were taken throughout this entire process.
8 They acknowledge the fact that every ordinance is in
9 place. They have acknowledged the fact that there's a
10 state law that provides for this ordinance.

11 What she's asking this Court to do is to go back
12 behind the council, which is the elected body, which is
13 statutorily authorized both at the state level and the
14 county level, and doesn't like the decision, is asking
15 this Court to turn around and put its opinion and to
16 determine everything and whether or not her clients speak
17 for the entirety of the community.

18 And, again, I'm not going to speak for Mr. Nesbit,
19 but I doubt that her client would speak for him. I mean,
20 that's, I think, the whole reason why he's here is because
21 they don't, in fact, speak for him.

22 So, Your Honor, this is nothing more than a smoke
23 screen. This is nothing more than trying to come back in
24 and look at a decision that's already been taken, that was
25 statutorily provided for. Every step of the process is

1 outlined in the complaint was followed, and all it is is a
2 matter of not -- whether the law allowed for council to do
3 that, and it's manifestly clear. All the case law, all
4 the statutes that we cited, both in our argument and in
5 our brief, none of which were ever argued against by
6 Ms. Person, just moments ago, despite the fact that she
7 said, "Well, I didn't know until less than 24 hours." I'm
8 sorry; the motion stated it was a Rule 12(b)(6). That's
9 been the standard in the law of South Carolina as long as
10 I have been practicing here, Your Honor, and probably the
11 same for yourself, and I don't presume to speak for the
12 Court.

13 But this is not some magical, secret theory that's
14 coming up at the 11th hour. This is a situation which has
15 been brought in this case, and we're arguing against it
16 that it should be dismissed for the reasons that we have
17 said in this case, the reasons why it's previously been
18 dismissed in other cases, and why it should be dismissed
19 in future cases.

20 The law is clear. Council followed the law. Just a
21 matter of interpretation that the plaintiffs don't like
22 what was done, and that's why we're here, Your Honor. And
23 so we would respectfully submit that this is a case that's
24 manifestly appropriate for a motion to dismiss to be
25 granted, and we'd ask the Court to do the same.

1 And, again, I appreciate Your Honor's indulgence
2 this morning.

3 THE COURT: All right. I'll need to take it under
4 advisement so I can read the complaint to see if it
5 sufficiently states a cause of action and I'll take a look
6 at that.

7 I understand the motion to strike, Ms. Person, that
8 was a motion to strike this motion; correct?

9 MS. PERSON: Yes, Your Honor. And now we know the
10 bases, so the only thing -- I would withdraw that motion.
11 The only thing that I would ask is that the -- there are a
12 few issues that were addressed by Mr. Morgan in his
13 memorandum yesterday that I was not able to address in my
14 memo that was filed prior to that that perhaps, if the
15 Court wishes, we would have additional time, if necessary,
16 for you.

17 THE COURT: It's just a 12(b)(6). I'll just take a
18 look at the complaint and see if the complaint states a
19 cause of action upon which relief could be granted giving
20 it the light most favorable to the plaintiff, and I'll
21 take a look and see if it's sufficiently pled.

22 MS. PERSON: Thank you.

23 THE COURT: Now, the motion to dismiss the pro se
24 motion, that is -- Mr. Nesbit? I didn't see. Is that --
25 are you seeking dismissal from this lawsuit because -- do

1 we need to address that motion or is that kind of
2 incorporated in this one as well?

3 MR. NESBIT: I believe it's incorporated in the
4 same.

5 THE COURT: Okay. I think so. I thought I saw
6 that.

7 All right. I'll take it under advisement and I'll
8 let you know.

9 MR. PECOY: Judge Culbertson, may I be heard
10 briefly, please, sir?

11 THE COURT: No, I think you -- it was a joint
12 motion. I have heard enough. I understand.

13 All right?

14 MR. PECOY: It's a specific request as to the
15 defendants regardless of your disposition of the
16 broad-based dismissal, Your Honor. May it please the
17 Court?

18 THE COURT: It's a joint motion. This was a joint
19 motion. I'm not going to hear from multiple attorneys on
20 one motion that's filed. So I think it's been argued
21 effectively for me to decide whether or not the complaint
22 states a valid cause of action.

23 MR. PECOY: Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. PECOY: Yes, sir.

1 MS. PERSON: Thank you.

2 MR. NESBIT: Thank you, Your Honor.

3 MS. DOUGLAS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (The above matter concluded.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Green v. Georgetown County

3 2022-CP-22-0912

4 DATE OF HEARING: June 23, 2023

5 COURT REPORTER/MONITOR: Webex Virtual Courtroom

6 *****

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8 foregoing transcript is a true and correct record of the
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11 recording and supporting information, and that I am
12 neither counsel for, related to, nor employed by any of
13 the parties to this case, and I have no interest,
14 financial or otherwise, in its outcome.

15
16 17 /s/ Bobbi Fisher

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 1/21/24

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF GEORGETOWN) CASE NO. 2022-CP-22-00912

November 7, 2023

BEFORE: The Honorable Benjamin H. Culbertson

Michael T. Green, et al.,
Plaintiff,
vs.
Georgetown County, et al.,
Defendant.

APPEARANCES:

Cynthia Ranck Person, Esq.
F. Patrick Hubbard, Esq.
Attorneys for the Plaintiffs.

H. Thomas Morgan, Jr., Esq.
Jay Watson, Esq.
Attorneys for the Defendant.

Official Court Reporter,
Cynthia D. Weaver

1 P-R-O-C-E-E-D-I-N-G-S

2 THE BAILIFF: All rise.

3 THE COURT: Thank you. Please be seated. Okay.

4 All right. Y'all bear with me for a second while
5 I get set up here.

6 All right. The first thing up is
7 2022-CP-22-00912, Michael T. Green, et al v. Georgetown
8 County, et al. This is before the Court on a motion to
9 alter or amend. Please give the Court Reporter your names
10 and who you represent in this case.

11 MS. PERSON: Cynthia Person. I represent the
12 Plaintiffs, all Plaintiffs.

13 THE COURT: All right.

14 MR. HUBBARD: Patrick Hubbard. I'm also
15 representing the Plaintiffs.

16 THE COURT: All right.

17 MR. MORGAN: Good morning, Your Honor. Tommy
18 Morgan with Smith Robinson here on behalf in my capacity as
19 Assistant Georgetown County Attorney and I represent the
20 defendant Georgetown County in this particular matter.

21 And beside me, not participating today, but I also
22 have Mr. Jay Watson who is the Georgetown County Attorney.

23 THE COURT: All right. Thank you. All right.

24 Ms. Person, Mr. Hubbard, this is your motion, who
25 wishes to argue it?

1 MS. PERSON: Thank you, Your Honor. If I may
2 introduce our clients, briefly. We have Johnny Ford,
3 Michael Green and Frances Baker this morning, Plaintiffs.

4 THE COURT: All right.

5 MS. PERSON: And Dr. Hubbard will be presenting
6 the argument.

7 THE COURT: All right. Dr. Hubbard, let me hear
8 from you.

9 MR. HUBBARD: Good Morning. We sure do appreciate
10 the opportunity to present our argument concerning our
11 motion. As I go through the motion --

12 THE COURT: Hold for a second and let them get
13 that on. I apologize let's wait for a minute.

14 (WHEREUPON, a brief pause in the proceedings.)

15 THE COURT: All right. Dr. Hubbard, let me hear
16 from you.

17 MR. HUBBARD: Okay. I will try to be very brief
18 and I will be mostly following our motion that we filed
19 earlier. And there are some things we agree on, which is
20 really nice, I think both sides agree that the South
21 Carolina State Enabling Act which authorizes zoning is the
22 crucial basic document governing the case that we're dealing
23 with.

24 The question is: To what extent can the county
25 have the power to amend its ordinance in a way that

1 eliminates provisions that are part of the State Enabling
2 Act. And it wound up in eliminating two very important
3 provisions dealing with site plan review, appeal of it, the
4 ways in which it's handled administratively, things like
5 that, they totally eliminated it by doing two things.

6 First, despite statutory language that says the
7 Planning Commission but be in a position to approve or deny
8 site plans. They took that power away despite it being the
9 statute and said that they can only review them but couldn't
10 approve or disapprove.

11 They also took away the remaining power in
12 eliminating the provisions in a couple of the sections that
13 resulted in the County Council having the ability to approve
14 or disapprove requests for site plan approval without
15 anything to guide the decision in that situation. There are
16 no rules, no guidelines, no whatever to deal with it.

17 So in some ways it's almost a very simple question
18 in that the question we're slamming into is: Can a County
19 Council use its ordinance to change what is in the State
20 Enabling Act? And I think basic rules about who is in
21 charge the state legislature make -- adopted the Planning
22 Act -- Enabling Act -- and the county cannot change
23 fundamental parts of it which is what they have done.

24 Going now, to sort of the legal arguments in more
25 detail, I want to address five points. One is a little bit

1 about the Enabling Act and what that law is in South
2 Carolina. The law in South Carolina says that counties and
3 municipalities are free to do zoning following the Enabling
4 Act but they must follow the Enabling Act. Again, going
5 back to the state legislature, the one in charge of how you
6 do zoning and they cannot be overruled by county council and
7 change how it happens.

8 The case that has been important in this is a case
9 called Sinkler v. County of Charleston. In that case what
10 happened was the County of Charleston approved a zoning
11 scheme called PUD, P-U-D, Planned Unit Development. But the
12 statute said Planned Unit -- the problem was it was all
13 residential in the PUD. There were no other types of uses
14 and the statute explicitly stated: If you're going to deed
15 your PUD, you must have mixed-use development. And the
16 county did not approve mixed use development, it was all
17 residential. And, thus, the zoning in that case was
18 stricken and thrown out.

19 Going on -- I don't want to draw too long and I
20 appreciate the time that we're taking today to do this.
21 There's crucial language from the case, the Sinkler case,
22 was that: If you adopt it -- the Circuit Court -- the
23 Circuit Court had ruled against the County and they said the
24 Circuit Court correctly ruled that the ordinance was invalid
25 because it did not properly establish a PUD, or PD, as

1 contemplated in the statute, it did not follow the statute.

2 Going to where we are now, we have the same
3 problem, they not only did not change the statute, they
4 purported to -- excuse me -- they did not follow the
5 statute, instead they just simply said: We no longer follow
6 that statute here in Georgetown County. The Planning
7 Commission cannot approve or disapprove and we are the
8 ultimate authority with no guidelines whatsoever to decide
9 whether you can have a site plan approved. So the first
10 argument is based on that statutory approach used in
11 Sinkler.

12 The second argument deals with due process. And
13 the South Carolina Supreme Court dealt with a case involving
14 Rock Hill involving billboards. And in this case of Schloss
15 v. Poster Advertising Company on Page 5 of our Memorandum,
16 the Court held that the City Council, which had taken it
17 upon itself to be the entity that would determine whether
18 you got a billboard approved or not approved, but there are
19 absolutely no guidelines, no standards, to do it. And what
20 the Court said in Schloss: Unless you have some sort of
21 standards to guide it, particularly when you're dealing with
22 people's property rights, you cannot be doing it without
23 standards to guide what you're doing, which is precisely
24 what Georgetown County -- since they have eliminated basic
25 provisions of the Enabling Act -- that's where Georgetown

1 County is -- that they're operating in violation of due
2 process.

3 I'll have to admit the third point, I'm puzzled as
4 to why they said we don't have any grounds for using the
5 Declaratory Judgment Act. It says we are supposed to be
6 able to address statutes, municipal ordinances, this type of
7 thing, was there a question about it and that's exactly what
8 we've done, is we have two -- as I mentioned, we had these
9 two grounds indicating that we had something that needs to
10 be considered.

11 A fourth point, and I don't know how this has
12 happened, but somehow it's popped up along the way, there
13 are a number of inaccuracies in the order concerning what
14 was in the complaint. In particular there were statements
15 in the order to the effect on Page 4 that the complaint does
16 not allege any challenged ordinances despite and so forth.
17 It also says that we haven't cited any Constitutional Rights
18 that have been affected. Both of these statements are
19 wrong. The Constitutional Rights were addressed in
20 Paragraphs 72 to 73 of the complaint. The specific
21 ordinances are listed in Paragraph 90. In addition, there
22 are also, as I've said, statutory grounds that have been
23 identified in the complaint.

24 I've got to admit something, I don't know what in
25 the -- there's language in the statute, in the Enabling Act,

1 that zoning must be, quote, In accordance with the
2 Comprehensive Plan. That language has been in the South
3 Carolina Statute, because it adopted a model statute that
4 was set forth in the '20s and has been repeated in Enabling
5 Acts on and on and on, but we have not confronted in any
6 detail precisely what that language means. And as a result
7 of that it's a little hard to cite authority. Other
8 jurisdictions have wrestled with it as well. It has to mean
9 something. I mean, you know, we can't -- it's not mere
10 cerclage. But I will concede that I have no authority in
11 South Carolina that clearly makes the point. There are some
12 cases that refer to it but don't really get into wrestling
13 with it and our hope is that at least we will have the
14 opportunity at some point to take this up to an Appellate
15 Court and get them to finally decide in South Carolina what
16 does this language mean which would simplify a large number
17 of cases.

18 I'll be glad to answer any questions you might
19 have.

20 THE COURT: All right. Thank you, very much.

21 MR. HUBBARD: Thank you.

22 THE COURT: All right. Mr. Morgan, let me hear
23 from you.

24 MR. MORGAN: Yes, Your Honor. If it pleases the
25 Court.

1 We are here this morning -- again, Tom Morgan on
2 behalf of Georgetown County, and we're here this morning on
3 the Plaintiff's motion to alter or amend under Rule 59 of
4 the South Carolina Rules of Civil Procedure. And I know the
5 Court knows this, but I'm going to try to explain this for
6 everybody that's in here.

7 A Rule 59(e) is often referred to as a Motion to
8 Reconsider. The South Carolina Department of Transportation
9 case, the Elam v. South Carolina Department of
10 Transportation. That's pretty the benchmark case that South
11 Carolina law looks at. And there's elements that in order
12 for a Court to even consider a Rule 59(e) Motion before it
13 even get to the merits it has to look at these three
14 elements, Your Honor.

15 The first of which is: A party may file this type
16 of motion when he or she believes that the Court has
17 misunderstood an issue; Number 2, failed to fully consider
18 and issue; or Three, perhaps failed to rule on an argument
19 or an issue that was raised before. So those are the three
20 elements that kind of serve as the backdrop as it relates to
21 this morning's proceedings.

22 And so the Plaintiffs have enumerated in their
23 Motion five particular issues that they want to raise after
24 the Court has already issued this order. And I know the
25 Court will probably remember this, there was a lengthy

1 hearing that took place in June of this year in which, not
2 only did Georgetown County but the other Defendants, who
3 were a part of this matter at the time, that would be the
4 Laine CRE LLC; TriStar Land, LLC; and Samuel J. Nesbit on
5 behalf of the heirs of Will Nesbit. All of these Defendants
6 filed motions to dismiss which were properly briefed and
7 argued, Your Honor heard the arguments, and, ultimately, in
8 July issued the order, which is why we're here today.

9 And so the Plaintiffs have said: Look, there are
10 five issues we want to bring up as it relates to the order
11 and ask for the Court's reconsideration. The first is the
12 role of the South Carolina Comprehensive Planning Enabling
13 Act.

14 Number 2, the denial of due process resulting from
15 the adoption of the 2011 Amendments to Section 607 of the
16 Georgetown County's GRD, or General Residential District,
17 provision.

18 Three, the interpretation and application of the
19 Enabling Act Provision that, quote, Regulations must be made
20 in accordance with the comprehensive plan for the
21 jurisdiction.

22 Number 4, Your Honor, is the elements that
23 constitute a cause of action for Declaratory Judgment.

24 And Number 5, and I'll very briefly touch on this,
25 talks about some standing issues.

1 So, if we look at all four of those, one by one,
2 we'll find out, we'll start backwards from forwards, and I
3 think it's probably easier in this particular case -- it's
4 clear that the Plaintiffs failed to meet the last two
5 elements, whether the Court has failed to fully consider
6 each one of those issues or perhaps failed to rule on the
7 argument that the issue was raised.

8 So if we turn and we look, and the professor
9 himself has talked himself about the fact that the South
10 Carolina Government Comprehensive Planning Enabling Act --
11 who, lot of words -- Enabling Act. That's the overarching
12 statute that allows for counties, such as Georgetown County,
13 but pretty much all the counties across the state, to go in
14 and create statutory schemes of planning and zoning and so
15 on and so forth.

16 And that is exactly what the Court in its order
17 spent several pages reviewing all the arguments and quoted
18 the case law, quotes the standards. And, Your Honor, I'm
19 going to bring those back up just for the Court's reminder,
20 we quoted the case of Knowles v. the City of Aiken. Quote,
21 Courts have no prerogative to pass upon the wisdom of the
22 municipalities decision unless such a decision is so
23 unreasonable as to impair or destroy a citizen's rights.
24 Zoning is a legislative act which will not be interfered
25 with by the Courts unless there's a clear violation of

1 Constitutional Rights. A Court may not, however, substitute
2 its judgment for that of the local zoning ordinance. That's
3 the Bear Enterprises v. County of Greenville case.

4 Quote, It is not the function of the Courts to
5 pass upon the wisdom or following municipal ordinances or
6 regulations. That's the Dunes Golf Club v. the Town of Mt.
7 Pleasant.

8 Quote, In reviewing the discretionary decision of
9 a legislative body, our Courts have been loath to substitute
10 their judgment for that of elected representatives. That's
11 the Sloan v. Greenville County case.

12 Quote, There's a strong presumption in favor of
13 the validity of the municipal zoning ordinances and in favor
14 of the validity of their application. That's the Rushing v.
15 City of Greenville case.

16 Quote, A municipal ordinance is a legislative
17 enactment and is presumed to be constitutional. That's the
18 Town of Scranton v. Willoughby case.

19 Your Honor, these are all cases that the Court
20 looked at and reviewed when taking the facts as presented by
21 the Plaintiffs in their complaint in this case, and said
22 Look, Georgetown County has properly passed these ordinances
23 and properly applied them.

24 There's case law in statute that --

25 THE COURT: Well, excuse me for interrupting.

1 MR. MORGAN: Certainly.

2 THE COURT: Well, reconcile those with the Sinkler
3 v. Charleston case. I mean, because that --

4 MR. MORGAN: That's a good point. As a matter of
5 fact, we ended up quoting the Sinkler v. Charleston case in
6 our Memorandum on Page 5, The goals and objectives of a
7 county's plan are effectively implemented due to the zoning
8 ordinances and land use regulations. That's an overarching
9 principal that allows for a county such as Georgetown to
10 enact these enabling ordinances, the regulations, so on and
11 so forth.

12 Sinkler itself, if you look at the facts the
13 Professor pointed out, that dealt with a P.D.D. or a PUD,
14 they have differing terms but it's the same planned type of
15 development. That's not an issue in this case, Your Honor.

16 THE COURT: Well, in his underlying argument was
17 that it was contrary to the Enabling Act.

18 MR. MORGAN: Correct.

19 THE COURT: And therefore that ordinance was
20 invalid.

21 MR. MORGAN: Correct. And that was in the Sinkler
22 and that was what the Courts did in Sinkler. In this
23 particular case, this Court has reviewed the ordinances and
24 said that it is not in violation of the Enabling Act because
25 as cited in the order itself the county has the ability to

1 make these regulations that were at issue and were brought
2 before the Court.

3 So, Your Honor, when we look at the elements of
4 Elam we find that the Court has not failed to understand
5 this argument, has misapprehended it, or even not even
6 addressed it, it's fully developed and briefed as it relates
7 to this particular issue.

8 Your Honor, if we want to turn to Issue No. 2 in
9 the Plaintiffs -- about the Denial of Due Process, first and
10 foremost, if you look at the complaint they note the
11 Plaintiffs themselves note that the process that they had is
12 it relates to the underlying applications and the
13 presentation of information in contrary, in contrast to what
14 was going forward as it relates to the project. They've had
15 ample opportunity to have due process and they did so in
16 this case.

17 Hence, the reason why the Court would -- and we'll
18 point this out again in our memorandum, Your Honor, that the
19 Plaintiffs have failed to specifically identify special
20 certain parts of ordinances that the Court could consider as
21 it relates to their argument to ultimately deprive the
22 Plaintiffs Constitutional Rights. Their own complaint
23 points out the opportunities they had to bring the
24 information both before the Planning Commission and County
25 Council.

1 So, Your Honor, we think that under the Elam,
2 under all three of those prongs, again it fails to rise to a
3 level for the Court at this point in time reconsider that
4 information.

5 Your Honor, if we look at Item No. 3 about the
6 interpretation of the application of the Enabling Act, and I
7 think there is some agreement there, Your Honor, that the
8 crux of the case that was previously brought before this
9 Court. And, Your Honor, I'll point out it's also been
10 brought before the court on several other occasions.
11 There's multiple other cases in which Ms. Person on behalf
12 of, in some instances, the exact same Plaintiffs, in other
13 instances, the different individual Plaintiffs, have brought
14 these types of complaints against Georgetown County Council
15 and their actions and how their actions sometimes at times
16 go against the decisions of the recommendations of the
17 underlying planning commission.

18 And, Your Honor, that's the -- we focus on that
19 exclusively at length, not only our memorandum in
20 opposition, but in the Court's order which is well reasoned
21 in this, almost 14-pages long, it notes in Section 2, the
22 entirety of that section talks about how the comprehensive
23 plan is just that, it's a guideline, it is plan, it is a
24 document that when used in accordance with the County's
25 zoning ordinances helps guide and make them in control of

1 the decisions. And that's why we voted for Sinkler v.
2 Charleston case, it brings that out.

3 And the Court's order went on to cite McLanahan v.
4 Richland County Council case, and I think that, you know --
5 Professor Hubbard noted that, Well, he doesn't have case law
6 on point in his favor and that's because McLanahan makes it
7 clear, quote, The comprehensive plan is a guideline it's not
8 binding law.

9 And so, again, we look at the 59(e) elements as
10 elucidated in (e) alone, there's just no way that Plaintiffs
11 can now say, Well, this wasn't fully considered, it wasn't
12 ruled upon because we brought -- the Court spent ample
13 amount of time on this.

14 Looking at Item No. 4, Your Honor, when it talks
15 about the Declaratory Judgment issue, the Court, again, in
16 Section 3 of the order specifically lays out the need for a
17 justiciable controversy, this can't be a question that is
18 hypothetical. I know the Court knows this but I just want
19 to make sure that it's brought out. There's must be a
20 concrete issue, a definite assertion of legal rights, and a
21 positive legal duty with respect to those rights which are
22 being denied by the Defendant.

23 And in this instance the Court noted: Because
24 there's an absence of a positive legal duty in this case and
25 no definite assertion of legal rights, there are no legal

1 rights which would conceivably be denied as a result of the
2 Defendant's conduct, because they were exercising their
3 valid and presumptive valid legislative authority. And by
4 doing that, there's no way at this point in time and the
5 Plaintiffs can sit there and say, Well, this wasn't
6 something that was considered, it was something that was not
7 brought up or was misunderstood, the Court went to great
8 lengths to point this out at its order.

9 Finally, Your Honor, in trying to wrap this up as
10 briefly as I can. I know that there was an issue that was
11 raised in the 59(e) Motion as to standing. I'll just point
12 out that that was not a basis for the Court to even deny --
13 excuse me, to dismiss the complaint that the Plaintiffs
14 brought to grant the Motions to Dismiss. Standing really
15 wasn't the basis for, I believe the Professor really didn't
16 talk about that, I just wanted to make sure that the Court
17 was aware of that.

18 So, Your Honor, I think Mr. Hubbard is correct, if
19 the Plaintiffs wish to have this issue brought forward
20 and talk about we're going forward in the Appellate posture,
21 I mean, we're talking about esoteric issues here, Your
22 Honor. they already have filed one case with the Court of
23 Appeals based upon a prior grant of the County's Motion to
24 Dismiss at which point in time the 59(e) was denied there by
25 another judge.

1 Likewise, there was a second case in which similar
2 issues were brought for by the same counsel. That Court
3 denied their -- excuse me -- did not allow that complaint to
4 go forward, granted the County's Motion to Dismiss, and then
5 denied the 59(e), and I fully expect -- and I'm not trying
6 to put Ms. Person on the record right now -- fully expect
7 that case is going to be appealed or taken up to the Court
8 of Appeals.

9 So we think that's the exact same posture that
10 this Court should take right now. That it is fully
11 reviewed, understood all the issues that were brought before
12 it, as raised in the complaint and was raised in the
13 arguments, it issued its order granting our Motions to
14 Dismiss. It fully dismissed all of the other Defendants
15 from the case and kept the Count 7, which is the Court's
16 order specifically stated that to the extent that the
17 Plaintiffs can go forward with an appeal of a decision.
18 They can do so. That's exactly what you hear Mr. Hubbard
19 say earlier that there is an intent to go forward with those
20 appeals.

21 So we think denial of 59(e) is appropriate at this
22 point in time. The Plaintiffs have failed to meet their
23 burden pursuant to the Elam case. And we ask that the Court
24 do so. And I thank you very much, Your Honor.

25 THE COURT: Thank you.

1 Dr. Hubbard, anything in reply?

2 MR. HUBBARD: Oh, yes. One thing I mentioned, the
3 failure to read the complaint carefully on somebody's part.
4 Repeated, again, that we never said something, as I said,
5 I've indicated the paragraph where we identified the due
6 process denials, I identified the paragraph where we listed
7 the specific things we're objecting to, okay.

8 So that fits into one of these things that were
9 overlooked or whatever misunderstood. In addition, I think
10 we have not had a ruling on whether the old fashioned term
11 "Ultra Vires" applies here, meaning, it's beyond the power
12 of the County -- go back to where I started, the County
13 cannot change the statute. And the ordinances involved here
14 changed the statute by taking away the power of the Planning
15 Commission to approve or disapprove a site plan review. And
16 by virtue of the fact that it took to itself the right to do
17 whatever it wanted, up -- down to a request for site plan
18 review, denies due process just as in the Schloss case
19 dealing with the billboards, that was not addressed, the
20 Ultra Vires argument was not addressed in the order.

21 So I think we have met what we need in terms of
22 this type of motion and I think that we should have some
23 relief in that regard.

24 THE COURT: Thank you, very much.

25 All right. I'll take it under advisement. I need

1 to go back and review these cases again and read the
2 Enabling Act again to see what it says. So I'll take it
3 under advisement and let you know. All right.

4 MS. PERSON: Thank you, Your Honor.

5 MR. MORGAN: Thank you, Your Honor.

6 THE COURT: Thank you.

7 END OF REQUESTED PROCEEDINGS

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CERTIFICATE OF REPORTER

State of South Carolina)

County of Georgetown)

I, Cynthia D. Weaver, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas for Georgetown County, South Carolina, on the 7th of November, 2023.

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

February 19, 2024

Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

Other



2022CP2200912 : Michael T Green , plaintiff, et al VS Georgetown County , defendant, et al

Common Pleas

Case Number 2022CP2200912
Case Subtype Special-Comp/Oth 699
Filed Date 10-24-2022
Status Appeal

Plaintiff Michael T Green et al
Defendant Georgetown County
Assigned Judge Clerk Of Court C P, G S, And Family Court
File Type Mediator-Jury

[Show/Hide Participants](#)

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Michael T Green	Appeal/Notice of Appeal to Court of Appeals	Filing	01-05-2024 02:59:23 PM
Michael T Green	Service/Certificate Of Service	Filing	01-05-2024 02:59:23 PM
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Cynthia Ranck Person	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-26-2023	11:10:55 AM
Sydney Jean Douglas	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-26-2023	11:10:55 AM
H. Thomas Morgan, Jr.	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-26-2023	11:10:55 AM
Case Party Inactive	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-26-2023	11:10:55 AM
Michael T Green	NEF(01-26-2023 10:24:55 AM) Motion/Strike	Filing	01-26-2023	11:07:02 AM
Michael T Green	Motion/Strike	Motion	01-26-2023	10:24:55 AM
Georgetown County	NEF(01-23-2023 03:19:13 PM) Proposed Order/Protection fr...	Filing	01-23-2023	04:20:23 PM
Georgetown County	Order/Order Cover Sheet \$25.00	Filing	01-23-2023	03:19:13 PM
Case Party Inactive	NEF(01-23-2023 09:57:52 AM) Order/Protection from Court ...	Filing	01-23-2023	09:58:17 AM
Case Party Inactive	Order/Protection from Court Appearance	Order	01-23-2023	09:57:52 AM
Case Party Inactive	NEF(01-20-2023 04:22:49 PM) Notice/Notice of Appearance	Filing	01-20-2023	04:33:57 PM
Case Party Inactive	Notice/Notice of Appearance	Filing	01-20-2023	04:22:49 PM
Case Party Inactive	Order/Order Cover Sheet \$25.00	Filing	01-20-2023	04:22:49 PM
Cynthia Ranck Person	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-13-2023	10:15:28 AM
Sydney Jean Douglas	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-13-2023	10:15:28 AM
H. Thomas Morgan, Jr.	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action	01-13-2023	10:15:28 AM
Georgetown County	NEF(12-21-2022 11:49:04 AM) Motion/Dismiss	Filing	12-21-2022	02:19:22 PM
Georgetown County	Motion/Dismiss/Morgan	Motion	12-21-2022	11:49:04 AM
Georgetown County	Notice/Notice of Appearance	Filing	12-21-2022	11:49:04 AM
Michael T Green	NEF(11-09-2022 10:35:18 AM) Service/Affidavit Of Service	Filing	11-09-2022	11:49:03 AM
Michael T Green	NEF(11-09-2022 10:39:00 AM) Service/Affidavit Of Service	Filing	11-09-2022	11:37:10 AM
Michael T Green	NEF(11-09-2022 10:44:24 AM) Service/Affidavit Of Service	Filing	11-09-2022	11:36:12 AM
Michael T Green	Service/Affidavit Of Service/Proof of Service	Filing	11-09-2022	10:44:24 AM
Michael T Green	Service/Affidavit Of Service/Proof of Service	Filing	11-09-2022	10:44:24 AM
Michael T Green	Service/Affidavit Of Service/Proof of Service	Filing	11-09-2022	10:39:00 AM
Michael T Green	Service/Affidavit Of Service/Proof of Service	Filing	11-09-2022	10:35:18 AM
Michael T Green	Summons & Complaint	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_1	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_2	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_3	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_4	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_5	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_6	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_7	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_8	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_9	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_10	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_11	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_12	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_13	Filing	10-24-2022	02:12:58 PM
Michael T Green	Summons & Complaint-EX_14	Filing	10-24-2022	02:12:58 PM

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

Appellate Case No. 2024-000023
Circuit Court Case No. 2022-CP-22-00912

Michael T. Green and Carrie J. Green; Julian P. Rutledge and Melvin L. Rutledge; Patricia S. Grate; Carlethia B. Jenkins; Frances Jo Baker; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc., Plaintiffs

of which Michael T. Green and Carrie J. Green; Julian P. Rutledge and Melvin L. Rutledge; Carlethia B. Jenkins; Frances Jo Baker; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc. are the Appellants,

v.

Georgetown County; Laine CRE, LLC; TriStar Land, LLC; and Samuel J. Nesbit on behalf of the heirs of Will Nesbit, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Record on Appeal dated September 11, 2024, contains all material proposed to be included by all of the parties hereto and not any other material.

/s/ F. Patrick Hubbard
F. Patrick Hubbard (SC Bar #12614)
1525 Senate Street
Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR APPELLANTS

/s/ Cynthia Ranck Person
Cynthia Ranck Person (SC Bar #105126)
KEEP IT GREEN ADVOCACY, INC.
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
kig.advocacy@gmail.com
ATTORNEY FOR APPELLANTS

September 11, 2024

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