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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

Civil Action No. 2022-CP-22-00912

Appellate Case No. 2024-000023

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.

FINAL BRIEF OF RESPONDENTS GEORGETOWN COUNTY, LAINE CRE, LLC, AND TRISTAR LAND, LLC

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STATEMENT OF THE CASE AND FACTS[1]

This case concerns the determination by Georgetown County Council ("County Council"), a legislative body, to approve two site plan proposals from prospective developers Laine CRE, LLC ("Laine") and TriStar Land, LLC ("TriStar", and together with Laine, "Developers"). County Council's legislative determination to approve the applications differed from the determination of the Georgetown County Planning Commission (the "Planning Commission"). On account of this difference, Appellants filed a lawsuit seeking to invalidate County Council's decision.

Appellants argue, in essence, that County Council functions as no more than a rubber stamp for the Planning Commission, lacking authority to make any decision in variance with what the Planning Commission determines. As Appellants would have it, County Council has no role in zoning decision making, all of it being left to the Planning Commission. However, as set forth more fully below, Appellants' position is contrary to the Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 *et seq.* ("Planning Act"), whose provisions, when read in their entirety, contemplate preserving County Council's role in making local zoning determinations. Appellants' position also goes against well-settled South Carolina law holding that zoning determinations are squarely within the ambit of legislative bodies, and courts must give deference to such determinations. The circuit court agreed, dismissing all of Appellants' causes of action now on appeal, and holding that a court will not substitute its judgment for the decisions of a legislative body if that decision is at least fairly debatable.

Appellants are a collection of individuals whose properties adjoin the properties Developers propose to build on, along with several activist organizations. Respondents are

[1] Respondents combine the statement of the case and the statement of facts to eliminate repetition due to considerable overlap between the procedural history and the facts pled in this case.

Georgetown County, the Developers, and Samuel J. Nesbit, who, on behalf of the heirs of Will Nesbit, is the representative owner of the properties at issue. (R. p. 35; Compl. ¶¶ 33–35).

Developers proposed the construction of two developments on two separate parcels, one parcel consisting of approximately 6.87 acres ("Petigru Parcel"), and another consisting of approximately 13.69 acres ("Parkersville Parcel"). (R. pp. 28, 30; Compl. ¶¶ 1, 9–10). On July 19, 2022, they submitted applications to Georgetown County for site plan review (the "Applications"). (R. p. 36; Compl. ¶ 40). At a public hearing held on August 18, 2022, the Planning Commission reviewed the Applications (R. p. 29; Compl. ¶ 2), and, at that hearing, voted to recommend denial of the Applications to County Council. (R. p. 29; Compl. ¶ 4). The Applications were then forwarded to County Council for final approval, as is required under Georgetown County Zoning Ordinances for site plan reviews of developments qualifying as major developments. (R. p. 29; Compl. ¶ 4). At a council meeting held September 27, 2022, County Council voted to approve the Applications. (R. p. 29; Compl. ¶ 5).

Based on County Council's approval, Appellants filed a Complaint on October 24, 2022 seeking declaratory judgment on the following grounds: (1) the Planning Commission's decision to deny the Applications on August 18, 2022, was valid and final; (2) County Council had no authority to render the September 27, 2022 decisions approving the Applications; (3) Georgetown County ordinances requiring site plan review by County Council are void and unenforceable; (4) the approval of the Applications was a violation of state and county law; (5) Georgetown County has a statutory mandate to bring zoning ordinances and land use regulations into compliance with Georgetown County's Comprehensive Plan; and (6) Georgetown County has a statutory mandate to consider compliance with the Comprehensive Plan in its decision making processes. (R. pp. 55–59; Compl. ¶¶ 123–134). In the alternative, Appellants purported to bring an appeal of County Council's decision to approve the Applications. (R. p. 59; Compl. ¶ 136).

Developers are each mentioned in just three (3) of the Complaint's 139 paragraphs. Paragraphs 33 and 34 identify them as defendants, and paragraphs 36 and 37 allege they are authorized agents of Nesbit who entered into a contract with the Nesbit heirs to purchase and develop both the Petigru and Parkersville Parcels, contingent upon approval of the Applications. (R. pp. 35–36; Compl. ¶¶ 33–34, 36–37). Notably, not one (1) of the six (6) aforementioned declarations sought by the Appellants are directed at, or are related to any decision, power, or authority of Developers.

In response to the Complaint, on December 21, 2022, Respondent Georgetown County, along with Respondents Laine and TriStar (collectively hereinafter the "Respondents"), jointly moved to dismiss the Complaint in its entirety pursuant to South Carolina Rule of Civil Procedure 12(b)(6). (R. pp. 116–17). Respondents later filed a Memorandum in Support of their Motion to Dismiss on June 22, 2023, (R. pp. 144–58), after Appellants filed a Motion to Strike on January 26, 2023. (R. pp. 122–24). Respondent Nesbit also filed a motion to dismiss on March 27, 2023. (R. pp. 118–21).

A hearing on both motions to dismiss was held before the Honorable Benjamin H. Culbertson on June 23, 2023. (R. pp. 3, 16). On July 18, 2023, Judge Culbertson issued an Order ("Order") dismissing all causes of action except as to Appellants' appeal of County Council's decision (Cause of Action VII), (R. pp. 3–4, 14–15; Order 1–2, 12–13), which is not the subject of this appeal. (Apps.' Br. 8). As a result of that Order, Respondents Nesbit,[2] Laine, and TriStar were dismissed from the case. (R. p. 15; Order 13).

Appellants filed a Rule 59(e) Motion to Alter or Amend Judgment on July 28, 2023 (R. pp. 159–85), and Respondent Georgetown County filed a Response in Opposition to Appellants'

[2] Respondent Nesbit has not filed a brief in this appeal.

motion on November 6, 2023. (R. pp. 186–92). A hearing on the motion was held before Judge Culbertson on November 7, 2024, and on November 9, 2023, the motion was denied. Judge Culbertson issued a formal Order to that effect on December 11, 2023. ("Order II"). (R. pp. 17–25). On January 5, 2024, Appellants served their notice of appeal on all named Respondents. (R. pp. 193–94).

STANDARD OF REVIEW

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). An appellate court may affirm a lower court's "ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. 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 v. Harrelson* at 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

Cases that present legal questions, and do not involve factual disputes, are well-suited for dispositive motions. *See Madison v. Am. Home Prods. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) ("Where . . . the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss."); *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005); *see also Palmer v. State*, 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019) (finding that the circuit court did not err in dismissing the case pursuant to Rule 12(b)(6), SCRCP even the though the underlying issue was a novel one, because the underlying dispute was purely one of constitutional interpretation).

ARGUMENT

The circuit court correctly held that Appellants failed to state facts sufficient to constitute a cause of action for declaratory judgment. Therefore, the Court should affirm the decision of the circuit court in favor of Respondents.

I. THE CIRCUIT COURT APPLIED THE PROPER STANDARD ON A RULE 12(b)(6), SCRCP, MOTION.

The circuit court correctly reviewed Appellants' claims as solely presenting questions of law and dismissed Appellants' claims accordingly. *See Madison v. Am. Home Prods. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) ("Where . . . the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss."). Appellants admit that this case involves questions of law and statutory interpretation. (Apps.' Br. 14). Appellants' argument that the circuit court improperly considered the merits of the case or applied some sort of inappropriate evidentiary presumption misunderstands the basis upon which the circuit court made its ruling. First, the only "evidentiary presumption," if one can call it that, applied by the circuit court was to review the Complaint in the light most favorable to Appellants for the purposes of a 12(b)(6) motion. Appellants don't appear to argue that this is the incorrect standard of review on a 12(b)(6) motion. (Apps.' Br. 14). Instead, Appellants have twisted the circuit court's reiteration of well-established law into an assertion that the presumption of legislative validity creates a presumption of evidence which can never be applied at the 12(b)(6) stage. (Apps.' Br. 33–34).

Appellants also appear to misinterpret the circuit court's application of well-established law to the allegations of their Complaint. While factual allegations in a complaint are generally presumed true for purposes of a 12(b)(6) motion, the same cannot be said for legal conclusions. *DeBerry v. McCain*, 275 S.C. 569, 574–75, 274 S.E.2d 293, 296 (1981) (holding that in ruling on a

motion to dismiss, the court must assume facts in the complaint to be true, but not legal conclusions asserted in the complaint); *see also Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 190, 826 S.E.2d 585, 587, 593 (2019) (emphasizing that facts alleged and inferences reasonably deducible therefrom, are viewed in the light most favorable to the plaintiff). The rule is that if those facts and reasonable inferences therefrom would not entitle the plaintiff to relief under any legal theory, then dismissal under Rule 12(b)(6) is proper. *Flateau*, at 202, 584 S.E.2d at 415. This is the standard applied by the circuit court in its ruling. Applying this standard, the circuit court concluded that the factual allegations of Appellants' Complaint failed to state a claim for declaratory judgment under any theory of law.

II. THE CIRCUIT COURT PROPERLY FOUND THAT THE ZONING ORDINANCES REQUIRING SITE PLAN REVIEWS BY THE GEORGETOWN COUNTY COUNCIL HAVE NOT DEPRIVED PLAINTIFFS OF THEIR CONSTITUTIONAL RIGHTS AND DO NOT CONFLICT WITH SOUTH CAROLINA LAW, AND, THEREFORE, THE PRESUMPTION OF THEIR VALIDITY CANNOT BE REBUTTED BY APPELLANTS' CLAIMS FOR DECLARATORY JUDGMENT.

On appeal, Appellants challenge the validity of the zoning ordinances requiring site plan reviews on two bases: (1) the ordinance conflicts with state law and is therefore *ultra vires*; and (2) the ordinance deprives Appellants of their due process rights. As discussed below, neither is grounds for reversing the order of the circuit court.

A. Appellants have not been deprived of their constitutional rights.

The circuit court recognized, correctly, that courts are limited in their authority to review and invalidate zoning decisions made by local governing bodies. (R. p. 6; Order 4). South Carolina jurisprudence so restricts a court's authority to infringe upon a county's zoning decisions that a court may only invalidate an ordinance after finding that the ordinance has violated constitutional rights. *See Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) ("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.'" (quoting *Hampton v. Richland County*, 292 S.C. 500, 503, 357 S.E.2d 463, 465 (Ct. App. 1987))).

A zoning ordinance is a legislative act which must be presumed to be constitutional. *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991); *see also Knowles*, 305 S.C. at 224, 407 S.E.2d at 642 ("Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of constitutional rights."); *see also Ani Creation, Inc. v. City of Myrtle Beach Board of Zoning Appeals*, 440 S.C. 266, 278, 890 S.E.2d 748, 754 (2023) ("Courts must make every presumption in favor of the constitutionality of a legislative enactment."). A zoning ordinance violates constitutional rights when it deprives an individual of their property without due process of law. *McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243–44 (2002) (finding that county council's adoption of the county's comprehensive plan did not deprive appellant of his property nor did the process by which it was adopted). While a court may invalidate an ordinance where it finds there has been a violation of constitutional rights, it may not substitute its judgment for that of the local zoning ordinance where no such violation is present. *Bear Enters. v. County of Greenville*, 319 S.C. 137, 141–42, 459 S.E.2d 883, 886 (Ct. App. 1995).

Zoning and land use decisions must be upheld so long as the propriety of the local governing body's decision is "fairly debatable." *Knowles*, 305 S.C. at 223, 407 S.E.2d at 642. A decision is fairly debatable when it is "not so unreasonable as to impair or destroy [a] citizen's constitutional rights." *Id.* at 224, 143 S.E.2d at 643 (internal quotations omitted). "The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon [the challenger] to show the arbitrary and capricious character of the ordinance through clear and convincing evidence." *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 298, 37 S.E.2d 601, 610 (2013) (quoting *Willoughby*, 306 S.C. at 422, 412 S.E.2d at 425) (internal quotations

omitted).

Applying these principles to the challenged ordinance in this case, Georgetown County Zoning Ordinance 607, requires upholding the ordinance. At the outset, with respect to Appellants' claim that the ordinance violates their due process rights, "[i]t is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *B & A Dev., Inc. v. Georgetown Cnty.*, 372 S.C. 261, 271, 641 S.E.2d 888, 894 (2007) (citing *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000)); *see also* SCACR Ruel 210(c) ("The Record shall not .. include matter which was not presented to the lower court or tribunal.").[3] Here, Appellants did not raise a due process violation to the trial court on their motion to strike or on their motion to reconsider, and thus the trial court did not rule on this issue. Appellants also did not allege in their Complaint that their due process rights were violated, nor did the Complaint allege any facts sufficient to state such a claim. Only now, do Appellants argue for the first time that they have been deprived of due process. Therefore, any such arguments are not preserved and should not be considered by this court. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("An issue that was not preserved for review should not be addressed by the Court of Appeals...").

In any event, there is no merit to Appellants' argument that they have been deprived of due process. According to Appellants, their due process rights are violated because the provisions of Ordinance 607 "contain no controls or guides for the discretion granted to the Georgetown County Council." (Apps.' Br. 22). This is clearly not so. Sections 607.4 and 607.3 of Ordinance 607 contain many requirements for townhouses within a general residential zoning district. These include

[3] Respondents intend to file a motion to strike any materials and references related to Appellants' due process claim and requests the Court ignore and/or strike the portions of Appellant's brief that reference it.

guidelines for approval of a proposed townhome development, design requirements, and parking requirements, among others, all of which County Council must comply with in making decisions. Therefore, unlike in the case relied upon by Appellants, *Schloss Poster Advertising Co. v. City of Rock Hill*, 190 S.C. 92, 2 S.E.2d 392 (1939), where the ordinance at issue delegated unrestrained power to the legislative body to issue permits, with no controls guiding the exercise of its discretion, here, sufficient controls exist in Sections 607.4 and 607.3 to ensure that County Council does not have unfettered discretion in its decision-making process.

Additionally, any assertions by Appellants that they have been denied rights of some sort granted by the Planning Act are misplaced and are based upon a legal fiction. (Apps.' Br. 8, 10, 12–13, 15–17, 19–20). The Planning Act does not operate to grant substantive rights. There are provisions which permit certain parties the ability to file a suit contesting an ordinance or zoning decision, but such a provision works only so far as to provide statutory standing to those parties. *See* S.C. Code Ann. § 6-29-760; S.C. Code Ann. § 6-29-1150. Appellants have failed to appreciate the clarifying language provided by the General Assembly in enacting such provisions, however. "An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, *this subsection does not create any new substantive right in any party*." S.C. Code Ann. 6-29-760(C) (emphasis added). This express language, as well as the applied function of the other Planning Act provisions cited by the Appellants in their Brief, make it clear that the General Assembly did not intend to create any new substantive rights through the enactment of the Planning Act.

The circuit court was therefore correct in its finding that Appellants' Complaint did not plead facts which could sufficiently establish a claim for declaratory judgment because there were no allegations that the challenged Ordinances infringed upon any constitutional rights of the Appellants.

B. Ordinance 607 does not conflict with state law.

At the outset, the circuit court aptly noted that the Complaint fails "to specifically identify which ordinances [Appellants] are seeking to challenge." (R. p. 8; Order 6). It is assumed from reasonable inferences that the intended target of the Complaint is Georgetown County Zoning Ordinance 607, and its provisions directing that certain major development proposals, such as those at issue in this case, have "site plan(s) reviewed by the Planning Commission" and then "approved by County Council." Georgetown Zoning Ordinance § 607.4025. Attempting to invalidate these provisions, the Complaint, and now Appellants' Brief, point to certain sections of the Planning Act and argue that the Ordinance conflicts with state law and therefore must be invalidated.

However, a proper analysis of all pertinent parts of the Planning Act reveals no conflict with Ordinance 607. This is because County Council ultimately determines the terms of the land use regulations and zoning ordinances for Georgetown County that best effectuate the purposes enumerated in the Planning Act. *See* S.C. Code Ann. §§ 6-29-760, 1130. Although County Council may permit the Planning Commission to review and approve a development plan, it is within the authority of 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 does just that. It allows medium-to-high density residential uses in a General Residential district, where the properties at issue are located. It further sets out specific requirements in Section 607.4 for townhouses within a general residential zoning district. These requirements include guidelines for approval of a proposed townhouse development, such as design requirements, parking requirements, as well as additional requirements set out in the ordinance provisions controlling multi-family developments. Georgetown County Zoning Ordinance § 607.4. Ultimately, it is apparent from the Ordinance that a policy decision was made by the County 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, like those proposed in the Applications in this case. 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 that 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.

Because of these adequate safeguards built into Ordinance 607, the circuit court properly determined from this well-established legal framework that Ordinance 607 does not conflict with the Planning Act and that because there are no constitutional deprivations alleged in this case, there is no mechanism under the law by which to grant the remedy sought by Appellants.

Appellants take a much too narrow approach in picking a mere handful of subsections of an otherwise extensive state law that touches upon and impacts multiple areas of this case. Appellants omit that the Planning Act directs that the creation and regulation of zoning districts is within the purview of the governing body of a county. S.C. Code Ann. § 6-29-720(A). The language of the statute also reflects an intent to leave the crafting of the procedural process for approving development plans to the governing bodies of counties. *See* S.C. Code Ann. § 6-29-1120(A) ("The land development regulations adopted by the *governing authority* must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff") (emphasis added). Additionally, the General Assembly's stated purposes of the Planning Act are directly within the purview and responsibility of the governing body of a county, not the Planning Commission. *See* S.C. Code Ann. § 6-29-1120 (stating that the purpose of Article Seven is to provide counties with the ability to create regulations promoting public health and safety, good order, and "progressive development of land."); S.C. Code Ann. § 6-29-710 (stating that the purpose of Article Five is to "further the public welfare in any other regard specified by the governing body."

(emphasis added). These stated purposes are directly within the purview and responsibility of the governing body of a county. The governing body of Georgetown County is County Council, not the Planning Commission.

Appellants' reference to a Rhode Island legal principle is misplaced here. It should go without saying that the law of Rhode Island is not the law of South Carolina. (Apps.' Br. 17–18 (quoting *Hardy v. Zoning Board of Review of the Town of Coventry*, 321 A.2d 289, 290–91 (R.I. 1974)). South Carolina courts have taken great pains to effectuate the intent of its state legislature that when it comes to zoning, counties and municipalities of this State are to be given great deference. Further, while there is a general principle that state law supersedes county or municipal laws where a conflict exists, here, no conflict exists because County Council has adopted and utilized a zoning scheme within its enumerated powers.

Lastly, Appellants' reliance on *Sinkler v. County of Charleston* misunderstands the holding in that case. 387 S.C. 67, 75–76, 690 S.E.2d 777, 781 (2010). For one thing, *Sinkler* represents a narrow review and application of the Planning Act's requirements regarding Planned Development Districts (PDD), which are not at issue here. This case does not involve a PDD, and the statutory provisions examined in *Sinkler* do not relate to this case.

More importantly, although the *Sinkler* court reversed the ultimate decision of the Court of Appeals because of its finding regarding compliance with the use requirements for planned development districts, it found no error in the standard of review applied by the lower court. *Id.* at 78 n.3, 690 S.E.2d at 782 n.3. The standard of review applied by the Court of Appeals in its ruling on the case was that a court should practice judicial restraint in substituting its judgment for that of a local governing authority's and that an "appellate court 'must leave [the disputed] decision undisturbed if the propriety of that decision is even 'fairly debatable.'" *Id.* at 73–74, 690 S.E.2d at 780 (describing the standard of review applied by the Court of Appeals). That same standard was

applied in this case, and correctly so. As was maintained in *Sinkler*, here too, the trial court was correct in not substituting its judgment for a local governing body, the County Council.

III. THE CIRCUIT COURT PROPERLY FOUND THAT AN ALLEGED DEVIATION FROM THE GEORGETOWN COUNTY COMPREHENSIVE PLAN CANNOT SERVE AS A BASIS TO INVALIDATE COUNTY COUNCIL'S DECISION TO APPROVE THE CHALLENGED SUBDIVISION APPLICATIONS.

The crux of the remainder of Appellants' claims for declaratory judgment rely on the assertion that the Georgetown County Comprehensive Plan ("Comprehensive Plan") acts as a rigid set of requirements that County Council must follow when approving a development application or making any sort of land use decision. In making this argument, Appellants claim that the trial court failed to appreciate that their claims arise from the "in accordance with" language from provisions of the Planning Act relating to a county's comprehensive plan. However, this unremarkable language aside, a county's comprehensive plan acts as a *guideline* for numerous development considerations in a county. *McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002) (emphasis added). It is not a mandate.

The Planning Act makes clear that comprehensive plans act as guideposts to allow a county to set out plans based on data, economic goals, public policy, and long-term outlays. The circuit court correctly recognized this point and accordingly rejected Appellants' arguments to the contrary. By its own terms, the Planning Act describes a county's comprehensive plan as being a guide and including mere "objectives." *See* S.C. Code Ann. § 6-29-510(A) (Planning Commission has 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." (emphasis added); *see also* S.C. Code Ann. § 6-29-740 (describing terms of a county's comprehensive plan as "objectives").

Indeed, it is necessary that a county's comprehensive plan serves as a guidepost in order to achieve a practical outcome. The goals set forth in a county's comprehensive plan characterize a balancing of interests and priorities for that county. With the many policies and areas of import involved in a comprehensive plan, however, the goals and elements in a comprehensive plan naturally conflict at times with each other in some form or fashion. For instance, a comprehensive plan may strive to both limit all major development while, at the same time, seek to increase land use to account for current and future population growth essential to support a county's economy. To reconcile these conflicting goals and elements, comprehensive plans are intended to function as guideposts, not binding requirements, and courts give deference to local legislative bodies that make determinations taking into account such conflicts.

Appellants now attempt to pivot the assertions of their Complaint that were dismissed by the circuit court and instead claim that the Order failed to appreciate that their claims arise from the "in accordance with" language. This type of circular analysis is a fallacy. Appellants are arguing that the Planning Act requires a county to strictly adhere to the terms of its comprehensive plan and that the ordinance conflicts with state law. That is the basis of their argument and the crux of their Complaint – whether that is admitted or not. The circuit court found that the ordinance did not conflict with state law and the Comprehensive Plan cannot by its terms invalidate the ordinance because it is merely a guideline. Arguing the same point from a different perspective at this point is still to argue the same thing; to argue six is half of twelve is the same as arguing half a dozen is six.

In conclusion, Appellants' insistence on excerpting preferential snippets of individual sections of the Planning Act fails to appreciate the entirety of the Act's intent and application. It is not uncommon that a sentence in one subpart of a statute is modified or restricted by the very next sentence. As with any statutory interpretation, what is important is the intent of the legislature enacting the law. The intent of the General Assembly in enacting the Planning Act very clearly

indicates that broad authority and deference be given to a county and its legislative body in making land use decisions.

Therefore, the circuit court's Order should not be overturned, as it properly applied South Carolina law to the assertions set forth in the Complaint and found that there can be no remedy for a statutory violation that does not exist.

IV. THE CIRCUIT COURT PROPERLY FOUND THAT THE COMPLAINT FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION FOR DECLARATORY JUDGMENT.

The near entirety of Appellants' Complaint alleges claims for a declaratory judgment.[4] A cause of action for declaratory judgment is defined by the nature of the *underlying issue* presented in the case. *Doe v. South Carolina Med. Malpractice Liability Joint Underwriting Ass'n*, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001) (emphasis added). To make the determination as to whether such an action is legal or equitable, "an appellate court must look to the essential character of the cause of action." *Barnacle Broadcasting, Inc. v. Baker Broadcasting Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). "The issue of statutory interpretation is a question of law for the court." *Sloan v. Greenville County*, 380 S.C. 528, 534, 670 S.E.2d 663,667 (Ct. App. 2009).

The heart of this case focuses upon statutory interpretation and the bounds of a county's authority to make zoning and land use decisions. This is firmly within the purview of a legal issue to be decided by the court. *See Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013) ("The interpretation of a statute is a question of law"). For a complaint to survive a motion to dismiss under the Declaratory Judgments Act, there must be a justiciable controversy, meaning there is a concrete issue, a definite assertion of legal rights, *and* a positive legal duty with respect to

[4] Appellants' appeal of County Council's decision in the alternative was not dismissed by the circuit court in its Order and Appellants have not challenged that portion of the circuit court's decision.

those rights which are being denied by the defendant. *Power v. McNair*, 255 S.C. 150, 153–54, 177 S.E.2d 551, 553 (1970) (emphasis added).

Here, the underlying bases of Appellants' claims for declaratory relief were dismissed by the circuit court. As set forth above, the circuit court correctly determined that there was no conflict between state law and the challenged ordinance, that there were no constitutional deprivations properly alleged in the Complaint, and that the alleged conflicts with the Comprehensive Plan could not serve as a basis to invalidate a decision of County Council because the Comprehensive Plan does not set forth legally binding terms or requirements. The circuit court also correctly determined that courts must defer to a county's zoning decisions, and that such a decision does not infringe upon or destroy a citizen's constitutional rights where there is no deprivation of property without due process. Here, there has been no such infringement or deprivation for the reasons articulated above. Essentially, there can be no assertion of legal rights that are definite if the legal rights asserted do not exist under the law. Likewise, there can be no affirmative legal duty as to a right that does not exist. Therefore, Appellants have failed to sufficiently allege a cause of action for declaratory judgment.

Appellants' claims for declaratory judgment were correctly dismissed because the Complaint has not stated facts to constitute a cause of action for declaratory judgment, under any theory of law. The statutory violations complained of do not exist in this case, and the courts are required to defer to a county's zoning decision where it is at least fairly debatable. Because neither the ordinance complained of nor the decision to approve the Applications impairs or destroys the constitutional rights of the Appellants, they are fairly debatable zoning decisions. In the context of zoning, a county's decision does not infringe upon or destroy a citizen's constitutional rights where there is no deprivation of property without due process. The Complaint does not allege such a deprivation, nor have Appellants properly alleged a due process violation. Therefore, the circuit court properly found

that the Complaint failed to state facts sufficient to establish a cause of action for declaratory judgment.

CONCLUSION

Appellants have attempted to assert the circuit court went beyond its authority in granting Respondents' motion to dismiss. However, the motion was properly granted as to Appellants' causes of action for declaratory judgment as the case solely involves a dispute as to the interpretation of the law and does not involve a dispute as to the underlying facts.

As the circuit court found and the record establishes, the Complaint does not state facts sufficient to constitute a cause of action for declaratory judgement and those claims were properly dismissed. It was correctly concluded by the circuit court that the presumption of Ordinance 607's validity cannot be rebutted based upon the allegations in the Complaint and the decision to grant the Applications pursuant to the valid provisions of Ordinance 607 should not be disturbed by the courts.

Therefore, for the reasons set forth herein, this Court should affirm the order of the circuit court granting Respondents' motion to dismiss as to Appellants' claims for declaratory judgment.

[*Signature Page Follows*]

RESPECTFULLY SUBMITTED,

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October 2, 2024

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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

Civil Action No. 2022-CP-22-00912

Appellate Case No. 2024-000023

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 COMPLIANCE

Pursuant to Rule 211(b), SCACR, I certify that this brief complies with the provisions of Rule 211(b), SCACR.

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October 2, 2024