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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

Honorable David P. Caraker, Jr., Circuit Court Judge

Appellate Case No. 2025-000066

Emmanuel Stikas, Trustee of the Stikas Revocable Living Trust, dated February 1, 2023, d/b/a The Village Shops; Donald W. Reid and Katheryn W. Reid, husband and wife; Elizabeth Gattshall Hawkins Martin; and Tall House Farm, L.P.,.....Appellants,

v.

Georgetown County; David E. Tanner; RCB Land Holdings, LLC; and Magic Oaks, LLC, .....Respondents,

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

**MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT**

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s/ Zachary J. Crowl

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Myrtle Beach, South Carolina  
February 18, 2025

Respondents Magic Oaks, LLC (“Magic Oaks”) and RCB Land Holdings, LLC (“RCB”), move, pursuant to Rule 240, SCACR, for an order dismissing this appeal. As discussed herein, the Circuit Court’s Order Granting Respondents’ Motion to Strike is interlocutory and not immediately appealable. Accordingly, the appeal should be dismissed, and this matter returned to the Circuit Court to proceed with litigation.

This case involves the rezoning of 8.3 acres of property in Pawleys Island, South Carolina. Magic Oaks is the developer of the property. The matter at issue in this appeal deals with a contingent public kayak launch proposed to be placed on the northern boundary of the property at issue. Prior to closing on the property, Magic Oaks filed an application with Georgetown County to rezone the property to a Flexible Design District, which was ultimately approved. The application initially included a development plan with a private kayak launch in the middle of the property. Planning Commission reviewed and recommended the development plan for approval. During Georgetown County Council’s review of the rezoning application, a member of Georgetown County Council requested a minor change to the development plan. The Council member requested that the kayak launch be moved to the northern boundary of the property and be made open to the public. The public kayak launch would require access through the adjoining landowner’s property. Thus, the requested kayak launch was ultimately contingent upon receiving approval of the adjoining Hammock Shops landowner allowing public parking and access through its property. If, however, the contingency failed, the development plan would revert to the initial plan recommended by Planning Commission. County Council voted upon the rezoning of the property with this understanding and approved the development plan.

Thereafter, Magic Oaks was informed in writing that the Hammock Shops landowner is “unable to provide access to the South boundary of Hammock Shops Real Estate for the intended

purpose of a public boardwalk and kayak launch.” Due to the fact that the adjoining Hammock Shops landowner is unable to provide access through its property, the contingency upon which the public kayak launch was dependent failed. Thus, the plan reverts back to the initial plan submitted which was reviewed and approved by Planning Commission.

The public kayak launch is no longer part of the development plan, so the Circuit Court has stricken **four** allegations in Appellants’ Complaint regarding the public kayak launch as moot and immaterial. Appellants have filed this appeal seeking to use the Court’s time and resources to prolong this non-issue and further stall this case.

### **STATEMENT OF THE CASE**

This case began eight months ago, but has not progressed past the pleadings. On two separate occasions Magic Oaks and RCB have attempted to serve discovery upon Appellants and Third Party Defendant. Appellants continue to use the Circuit Court’s Order striking **four** allegations regarding a public kayak launch which cannot and will not exist to stall and delay this case and, in effect, the residential development of Magic Oaks’ property.

Appellants brought this action on June 18, 2024 challenging the rezoning of property owned by Magic Oaks.<sup>1</sup> Appellants’ lawsuit challenges validly passed ordinances of Georgetown County, however it is not in the form of or claiming to be an appeal. Appellants’ action does not allege any bad acts on behalf of Magic Oaks or RCB, but it does have the effect of blocking Magic Oaks from developing its own property. Magic Oaks and RCB filed an Answer and Third Party Complaint<sup>2</sup> along with a Motion to Strike<sup>3</sup> on August 23, 2024. The Motion to Strike requested the Court strike certain allegations of Appellants’ Complaint regarding a proposed public kayak

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<sup>1</sup> Appellants’ Summons and Complaint are attached hereto as Exhibit A and incorporated herein by reference.

<sup>2</sup> Magic Oaks and RCB’s Answer and Third Party Complaint are attached hereto as Exhibit B and incorporated herein by reference.

<sup>3</sup> Magic Oaks and RCB’s Motion to Strike is attached hereto as Exhibit C and incorporated herein by reference.

launch on Magic Oaks' development plans. The Motion was based upon the fact that the contingency upon which the kayak launch was dependent will not occur, thus there will be no public kayak launch, and Appellants' allegations are now moot and immaterial. On September 16, 2024, Appellants filed a Memorandum in Opposition to Respondents' Motion to Strike. Also, on September 16, 2024, Magic Oaks and RCB filed an Affidavit in support of their Motion.<sup>4</sup> On September 18, 2024, Respondent Georgetown County filed a Notice to Join Magic Oaks and RCB's Motion to Strike.

The Honorable David P. Caraker, Jr. presided over the hearing on Respondents' Motion to Strike on September 19, 2024. On October 15, 2024, Judge Caraker signed an Order granting Respondents' Motion to Strike and Ordering Appellants to file an Amended Complaint in compliance with the Court's Order within fifteen (15) days of the issuance of the Order.<sup>5</sup>

On October 24, 2024, Magic Oaks and RCB served their first set of discovery requests on Appellants and Third Party Defendant. The following day, on October 25, 2024, Appellants filed a Motion for Reconsideration of the Court's Order Granting the Motion to Strike. On October 30, 2024, Appellants requested that Magic Oaks and RCB withdraw their discovery requests based on the fact that the Court's Order required Appellants to amend their Complaint. Respondents declined this request.

On November 6, 2024, Magic Oaks and RCB filed a Memorandum in Opposition to Appellants' Motion for Reconsideration.<sup>6</sup> The following day, on November 7, 2024, Appellants and Third Party Defendant filed a Motion for Protection from Discovery. On November 15, 2024,

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<sup>4</sup> The Affidavit of Tripp Nealy is attached hereto as Exhibit D and incorporated herein by reference.

<sup>5</sup> Judge Caraker's Order is attached hereto as Exhibit E and incorporated herein by reference.

<sup>6</sup> Magic Oaks and RCB's Memorandum in Opposition is attached hereto as Exhibit F and incorporated herein by reference.

Appellants filed an Amended Summons and Complaint.<sup>7</sup> On November 26, 2024, Magic Oaks and RCB filed an Answer, Counterclaims, and Third Party Complaint in response to Appellants' Amended Complaint.<sup>8</sup> Also, on November 26, 2024, Magic Oaks and RCB again attempted to serve discovery requests on Appellants and Third Party Defendant. On December 27, 2024, Judge Caraker signed an Order denying Appellants' Motion for Reconsideration.

On January 10, 2025, Magic Oaks and RCB sent Appellants a letter pursuant to Rule 11, SCRPC requesting responses to their discovery requests. The same day, Appellants filed this appeal and notified Magic Oaks and RCB that they would not be responding to discovery due to the appeal.

### **STATEMENT OF FACTS**

This case is one in a series of lawsuits attempting to block residential development in Georgetown County. Plaintiffs are represented in this action by Keep It Green Advocacy, Inc. ("KIGA"), in-house counsel for Keep It Green, Inc. ("KIG"), a public interest group that opposes land use and zoning changes that increase residential density in Georgetown County. KIG has opposed many residential projects in Georgetown County upon virtually identical assertions as are raised in this matter. In fact, in the past three years, KIG has brought three other Georgetown County lawsuits as a named Plaintiff to stop residential development. Each of those actions have been summarily dismissed pursuant to Court Orders Granting Defendants' Motions to Dismiss.<sup>9</sup> The gist of all of these lawsuits is the false and incorrect assertion that residential development in

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<sup>7</sup> Appellants' Amended Summons and Complaint is attached hereto as Exhibit G and incorporated herein by reference.

<sup>8</sup> Magic Oaks and RCB's Answer, Counterclaims, and Third Party Complaint in response to Appellants' Amended Complaint is attached hereto as Exhibit H and incorporated herein by reference.

<sup>9</sup> The KIG lawsuits which have been dismissed include C/A Nos. 2022-CP-22-00912; 2023-CP-22-000007; and 2023-CP-22-00210.

Georgetown County is incompatible with the Georgetown County Comprehensive Plan and thus in violation of state and local law. This lawsuit is no different.

The property at issue in this case is planned to be a residential neighborhood consisting of only 27 single family lots. Despite the fact that Magic Oaks has gone through the proper local, state, and federal administrative channels and procedures to secure the necessary approvals to build this neighborhood, Appellants and Third Party Defendant seek to use this action as a vehicle to hinder and delay this residential development, as they have attempted to do with numerous other developments in Georgetown County.

As set forth above, this appeal deals with a contingent public kayak launch that is no longer part of the property development plan. The development plan was submitted to Georgetown County and reviewed and recommended by Planning Commission with a private kayak launch. During County review, a member of County Council proposed a minor change which would make the kayak launch public, contingent upon access through the adjoining landowner's property. The development plan was voted on and approved by Council with the contingency. If the contingency failed, the plan would revert back to the initially submitted plan reviewed and approved by Planning Commission. The contingency failed when the adjoining landowner denied access through his property and the plan reverted to exclude the public kayak launch.

Thus, the public kayak launch is no longer part of the development plan and Appellants' **four** allegations regarding the public kayak launch are moot and immaterial.

#### **STANDARD OF REVIEW**

“An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005). “The

determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330.” Id. at 708. Pursuant to S.C. Code Ann. § 14-3-330, appellate courts have jurisdiction to review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

“An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” Hagood, 607 S.E.2d at 708.

## ARGUMENT

### **I. The Trial Court’s Order Granting Respondents’ Motion to Strike is Not Immediately Appealable.**

The Order of the Circuit Court Granting the Rule 12(f) Motion to Strike does not fall into any of the categories of § 14-3-330. Therefore, it is not immediately appealable.

In Thornton v. S.C. Elec. & Gas Corp., this Court explained that an order granting a Rule 12(f) motion to strike should not be mistakenly equated with an order that is appealable under § 14-3-330(2)(c). Thornton, 391 S.C. 297, 301-02, 705 S.E.2d 475, 478 (Ct. App. 2011). The two are not the same. Id. This Court held, “In particular, we find the use of the word ‘strike’ in both

Rule 12(f) and section 14-3-330(2)(c) does not mean that an order granting a Rule 12(f) motion is automatically appealable.” Id. “Generally, section 14-3-330(2) has been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed.” Id. This Court noted that “a narrow construction of section 14-3-330(2)(c) requires [the court] to focus on the effect of the order, not the label given to the motion or to the order granting it.” Id. “Whether an order granting a Rule 12(f) motion to strike is appealable under section 14-3-330(2)(c) depends on the effect of the individual order under the facts and circumstances of the case.” Id. at 479.

The effect of the Circuit Court’s Order was to strike Appellants’ references to a public kayak launch that will not be a part of the property at issue. The Order did not affect any substantial right of Appellants under § 14-3-330(2). “To affect a substantial right, the order must determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.” Brown v. Cnty. of Berkeley, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005). Appellants’ case is an action for declaratory judgment. Allegations regarding the public kayak launch are irrelevant to Appellants’ declaratory judgment action. A declaratory judgment action must show the existence of a justiciable controversy defined as a real and substantial controversy appropriate for judicial determination. Carolina All. for Fair Emp. v. S.C. Dep’t of Lab., Licensing, & Regul., 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999) (emphasis added). The public kayak launch will not be put on the property, thus no real and substantial controversy exists regarding the public kayak launch.

Appellants’ first cause of action seeks declaratory judgment that Georgetown County Council did not have the authority to amend the ordinances at issue because the pre-existing zoning was allegedly void as ultra vires. This has nothing to do with the public kayak launch. Appellants’

other declaratory judgment causes of action deal with claims of violations of the Enabling Act and Georgetown County Ordinances. These actions are not dependent on the public kayak launch, but rather focus on issues with compatibility of the rezoning with the comprehensive plan and promoting the purposes of the Enabling Act such as public health and public welfare. The striking of Appellants' allegations regarding the public kayak launch do not determine the action, prevent a judgment from which an appeal might be taken, or discontinue the action.

In fact, Appellants' Amended Complaint retains all of the same causes of action as the initial Complaint. Even though reference to the public kayak launch has been removed, all of Appellants' causes of action remain.

## **II. Appellants' Appeal is Solely for the Purposes of Delay and Sanctions are Appropriate.**

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Rule 269, SCACR

As set forth above and more fully detailed in Magic Oaks and RCB's pleadings and memorandums filed in the Circuit Court and attached hereto, the purpose of Appellants' lawsuit is to hinder and delay Magic Oaks from developing its property. Appellants' appeal, and their other actions since the commencement of this lawsuit, are designed to delay development and effect an injunction without posting a bond to protect Magic Oaks. This ulterior purpose is the same in all of the KIG actions that have been dismissed in Georgetown County.<sup>10</sup> Magic Oaks and RCB respectfully request that the Court consider imposing sanctions upon its own Motion based upon the circumstances and to discourage like conduct in the future.

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<sup>10</sup> See C/A Nos. 2022-CP-22-00912; 2023-CP-22-000007; and 2023-CP-22-00210.

**CONCLUSION**

Based upon the foregoing, the Circuit Court's Order Granting Magic Oaks and RCB's Motion to Strike is interlocutory and not immediately appealable. Therefore, Magic Oaks and RCB respectfully request that this Honorable Court dismiss this appeal and, upon its own Motion, impose appropriate sanctions upon Appellants.

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s/ Zachary J. Crowl  
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Myrtle Beach, South Carolina  
February 18, 2025

<b>STATE OF SOUTH CAROLINA</b>	:	<b>IN THE COURT OF COMMON PLEAS</b>
<b>COUNTY OF GEORGETOWN</b>	:	<b>FIFTEENTH JUDICIAL CIRCUIT</b>
	:	
<b>Emanuel Stikas, Trustee of the Stikas</b>	:	<b>CASE NO.</b>
<b>Revocable Living Trust, dated</b>	:	
<b>February 1, 2023, d/b/a The Village</b>	:	<b>SUMMONS</b>
<b>Shops; Donald W. Reid and Katheryn</b>	:	
<b>W. Reid, husband and wife; Elizabeth</b>	:	<b>Declaratory Judgment</b>
<b>Gattshall Hawkins Martin; Tall House</b>	:	
<b>Farm, L.P.,</b>	:	<b>Jury Trial Demanded</b>
<b>Plaintiffs</b>	:	
<b>v.</b>	:	
	:	
<b>Georgetown County; David E. Tanner;</b>	:	
<b>RCB Land Holdings, LLC; Magic</b>	:	
<b>Oaks, LLC</b>	:	
<b>Defendants</b>	:	

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/ F. Patrick Hubbard  
F. Patrick Hubbard (SC Bar #12614)

/s/ Cynthia Ranck Person  
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June 18, 2024  
Pawleys Island, South Carolina

<b>STATE OF SOUTH CAROLINA</b>	:	<b>IN THE COURT OF COMMON PLEAS</b>
<b>COUNTY OF GEORGETOWN</b>	:	<b>FIFTEENTH JUDICIAL CIRCUIT</b>
	:	
<b>Emanuel Stikas, Trustee of the Stikas</b>	:	<b>CASE NO.</b>
<b>Revocable Living Trust, dated</b>	:	
<b>February 1, 2023, d/b/a The Village</b>	:	<b>COMPLAINT</b>
<b>Shops; Donald W. Reid and Katheryn</b>	:	
<b>W. Reid, husband and wife; Elizabeth</b>	:	<b>Declaratory Judgment</b>
<b>Gattshall Hawkins Martin; Tall House</b>	:	
<b>Farm, L.P.,</b>	:	<b>Jury Trial Demanded</b>
<b>Plaintiffs</b>	:	
<b>v.</b>	:	
	:	
<b>Georgetown County; David E. Tanner;</b>	:	
<b>RCB Land Holdings, LLC; Magic</b>	:	
<b>Oaks, LLC</b>	:	
<b>Defendants</b>	:	

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint seeking Declaratory Judgment against Defendants named herein as follows:

INTRODUCTION & SUMMARY

1. This Complaint involves challenge to an approval by Georgetown County Council of a rezoning application to allow residential development on a parcel of land along the Salt Marsh in Pawleys Island, Georgetown County, South Carolina, which was designated by the Georgetown County Comprehensive Plan as "Conservation Preservation."

2. On April 23, 2024, County Council approved this rezoning request by Ordinances 24-05 and 24-06. Changes were made to the proposed ordinance text and plan approved by County Council without being "first submitted to the planning commission for review and recommendation" in violation of the requirements of Section 6-29-760(A) of the South Carolina

Comprehensive Planning Enabling Act, (hereinafter “Enabling Act”), S.C. Code, Section 6-29-310, *et seq.*

3. The Georgetown County Comprehensive Land Use Plan does not permit residential or commercial development on land designated "Conservation Preservation," and severely restricts residential density increases in the South Waccamaw Neck where this parcel is located.

4. The land in question is known as "Magic Oaks," which consists of primarily forested land containing significant wetlands and which lies on the east side of Highway 17, between the iconic "Hammock Shops" on the north and "Village Shops" on the south, running in an easterly direction from Highway 17 to the Pawleys Island Salt Marsh.

5. Ordinance 24-05 changed an 8.3 acre parcel from a Conservation Preservation Comprehensive Plan designation, which allows no residential development, to Medium Density Residential, which permits up to 5 dwelling units per acre or up to 41 dwelling units on the 8.3 acre parcel. Ordinance 24-05 is attached hereto as Exhibit "1," and incorporated herein by reference.

6. Ordinance 24-06 approved Flexible Design District zoning for development of 27 homes and a public kayak launch on the Salt Marsh. Ordinance 24-06 is attached hereto as Exhibit "2," and incorporated herein by reference.

7. Ordinances 24-05 and 24-06 were approved in violation of state law and local ordinances, and are null, void and of no force or effect for the following reasons as set forth in detail hereinafter:

- a. The pre-existing zoning that the ordinances purport to amend was void as *ultra vires* because it conflicted with the Enabling Act and was not capable of being amended.
- b. Georgetown County Council did not have authority to amend ordinances that were void and invalid as *ultra vires*.
- c. Changes were made to the proposed ordinance text and plan approved by County Council without being "first submitted to the planning commission for review and recommendation" in violation of the requirements of Section 6-29-760(A) of the Enabling Act, *to wit*:

On April 5, 2024, the following change was added to the plan at the request of a County Council members: A proposed public kayak launch located on the northeast corner of the Magic Oaks property that adjoins neighboring private property and includes a 15 foot public access running along the entire length of the southern boundary of adjoining private property. The plan includes a public access located on private adjoining property. The proposed change necessarily raised issues of potential easements, access to private property, parking, liability, security, privacy, wetlands and other matters that directly impact neighboring landowners and the public. Other changes involving drainage easements and public sidewalks had been made to the plan on April 4, 2024. The April 4 and April 5 changes were made after the February 15, 2024, Planning Commission public hearing and were not part of the plan reviewed, considered and recommended by Planning Commission as required by Section 6-29-720(A) of

the Enabling Act which states as follows with respect to the procedure to be followed when enacting or amending zoning regulations or maps:

No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation.

- d. After review and recommendation of the proposed rezoning by Planning Commission on February 15, 2024, new information came to light pertaining to the status of wetlands, an investigation by the Army Corps of Engineers, the wetlands delineation submitted by the developer, and the Conservation Preservation status of Magic Oaks that had not been reviewed or considered by Planning Commission. Instead of sending the matter back to Planning Commission for review, consideration and recommendation of the new information, County Council approved the rezoning without proper investigation or inquiry into issues raised by this new information.
- e. Adjoining landowners disputed the wetlands delineation submitted by the Developer to County Council at Second Reading. The adjoining landowners requested permission to have an independent wetlands delineation conducted at their own expense. Tanner refused to allow the independent wetlands access to the property to have an independent wetlands study performed, and County Council arbitrarily refused to require him to do so and failed to submit the issue back to Planning Commission.
- f. Georgetown County Ordinance 611.216 requires that the property on which taverns, nightclubs or billiard halls are located must be at least 300 feet from any

residentially zoned property. Approval of this rezoning for a residential use within 300 feet of existing taverns and nightclubs caused adjoining commercial landowners to be in violation of this ordinance, thereby substantially reducing the value of their land.

- g. Approval of Ordinances 24-05 and 24-06 was otherwise improper, arbitrary and capricious and deprived Plaintiffs of constitutional, due process, and other rights provided by law as set forth herein.

PARTIES

Plaintiffs

8. Plaintiff Emanuel Stikas, Trustee of the Stikas Revocable Living Trust, dated February 1, 2023, as amended, (hereinafter "Village Shops") is an adult individual residing in Georgetown County, South Carolina, with a mailing address of P.O. Box 1541, Pawleys Island, South Carolina, who owns a 1.52 acre parcel of land identified as Georgetown County Tax Map No. 04-0158-060-04-00, that directly adjoins the Magic Oaks parcel and is improved as a commercial complex known as the Village Shops, consisting of 10 units of commercial rental space. The Stikas family has owned and operated the parcel as the Village Shops since February 28, 2003, when it was acquired by Deed recorded in Deed Book 1359, Page 156, in the Office of Recorder of Deeds for Georgetown County.

9. Plaintiffs, Donald W. Reid and Katheryn W. Reid, husband and wife, (hereinafter "Reids"), are adult individuals who own and reside at 101 Marsh Alee Court, Pawleys Island, Georgetown County, South Carolina, on land that directly adjoins Magic Oaks, identified as Tax Map No. 04-0158-059-01-00, recorded in Deed Book 1277, Page 251, in the Office of Recorder of Deeds for Georgetown County on June 4, 2002.

10. Plaintiff, Elizabeth Gattshall Hawkins Martin, (hereinafter "Elizabeth Martin"), is an adult individual residing at 135 Haunted Trail, Pawleys Island, Georgetown County, South Carolina, who owns and resides on 2.9 acres of land that directly adjoins Magic Oaks, identified as Tax Map No. 04-0158-061-06-00, recorded in Deed Book 691, Page 296, in the Office of Recorder of Deeds for Georgetown County on April 23, 1996.

11. Plaintiff, Tall House Farm, L.P., is a Domestic Limited Partnership organized and existing pursuant to the laws of the State of Georgia, having a principal office at 6771 H. Abercrombie Road, Murrayville, Georgia, 30564, which owns a home at 70 King Arthur's Court, Pawleys Island, Georgetown County, South Carolina, identified as Tax Map No. 04-0158-059-02-00, occupied by Jane E. White and Joseph Amerling, husband and wife, recorded in Deed Book 1292, Page 267, in the Office of Recorder of Deeds for Georgetown County on July 19, 2002.

Defendants

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

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

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

13. 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).

14. 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.

15. Defendant, David E. Tanner, (hereinafter "Tanner"), an adult individual residing at 10798 Ocean Highway, Pawleys Island, Georgetown County, South Carolina, was the owner of Magic Oaks at the time of the zoning change application, pursuant to Deed dated April 10, 2004, recorded in Georgetown County Deed Book 1371, Page 296, and incorporated herein by reference.

16. Upon information and belief, Tanner inherited Magic Oaks from his employer, Wilson Reese Hart, who died on April 18, 1997. Tanner acquired title to the land by Deed of Distribution dated August 5, 1998, recorded in Deed Book 891, Page 122 on August 6, 1998 in the Office of the Register of Deeds of Georgetown County, South Carolina. Thereafter, on January 9, 1999, Tanner transferred the property to Samuel E. Tanner, Trustee, pursuant to an unrecorded Agreement dated December 21, 1998, by Deed recorded at Deed Book 939, Page 323 on January 12, 1999, in the Office of the Register of Deeds of Georgetown County, South Carolina. On April 9, 2003, Samuel E. Tanner, Trustee, pursuant to the same unrecorded Agreement dated December 21, 1998, transferred the property back to David Tanner by Deed recorded at Deed Book 1371, Page 296 on April 10, 2003, in the Office of the Register of Deeds of Georgetown County, South Carolina.

17. Prior to expiration of the 60 day period within which interested parties may challenge the validity of zoning amendments pursuant to Section 6-29-760(D) of the Enabling

Act, Tanner executed a Deed on June 6, 2024, recorded in the Office of the Register of Deeds of Georgetown County, South Carolina on June 10, 2024, at Deed Book 4681, Page 258, transferring the property to Magic Oaks, LLC.

18. Defendant, Magic Oaks, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 1905 Main Street, Conway, South Carolina 29526, and is the current owner of the property as set forth above.

19. Defendant, RCB Land Holdings, LLC, (hereinafter "RCB") is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 1717 4th Ave., Unit H, Conway, South Carolina 29526. RCB was referenced as the developer in the zoning change application and plans submitted to the county.

BACKGROUND

Conservation Preservation

20. The Magic Oaks parcel, identified as Tax Map No. 04-0203-155-00-00, consists of a total of 19.03 acres that was at all times pertinent hereto designated in its entirety by the Georgetown County Comprehensive Land Use Plan and Maps as "Conservation Preservation" which permits no residential or commercial use or development.

21. Upon information and belief, the Conservation Preservation designation had been in place since original approval of the 2007 Georgetown County Comprehensive Land Use Plan and Maps and then was reapproved with the 2015 Comprehensive Land Use Plan update.

22. Under the provisions of the Comprehensive Land Use Plan, land designated as "Conservation Preservation" is not required to be in a Conservation Easement nor is there any other formal prerequisite or condition for the Conservation Preservation designation.

23. Upon information and belief, at all times pertinent hereto and for as long as Magic Oaks had been designated by the Comprehensive Plan as "Conservation Preservation," the owner received a substantial property tax benefit from having it classified as "Agricultural" which was consistent with the Conservation Preservation Comprehensive Plan designation.

Pre-existing Zoning was *ultra vires*

24. Section 6-29-720(B) of the Enabling Act requires that [zoning regulations] *must* be made *in accordance with the comprehensive plan* for the jurisdiction. (emphasis added).

25. After Georgetown County Council approved the designation of Magic Oaks as "Conservation Preservation," in or around 2007, it failed to bring conflicting pre-existing residential and commercial zoning that had been in place on Magic Oaks since the 1970s, "into accordance with the Comprehensive Plan" as required by the Enabling Act.

26. The Introduction to the Georgetown County Comprehensive Plan, originally enacted in 1997, which remains in effect today, states that:

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. (p. 1-4).

One of the most important implementation measures is the *immediate* preparation of revisions to the Georgetown County Zoning Ordinance ... 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. (pp. 1-5 and 1-6)

27. To the extent that pre-existing zoning on the Magic Oaks parcel conflicted with the Enabling Act requirement that zoning regulations "*must* be in accordance with the comprehensive plan," it is void and unenforceable as *ultra vires*.

28. As a consequence of Georgetown County's failure to follow the plain and unambiguous requirements of the Enabling Act and the mandates of its own Comprehensive Plan, the following outdated and conflicting zoning remained "on the books" for the Magic Oaks parcel that was completely irreconcilable with the Comprehensive Plan designation of "Conservation Preservation":

- a. 5.08 acres of "General Residential" zoning which allowed high density, multi-family residential development, and
- b. 3.22 acres of "General Commercial" zoning which allowed commercial development.

29. The remaining 10.73 acres of Magic Oaks were properly zoned Conservation Preservation consistently with the Comprehensive Plan.

Tanner Rezoning Application

30. On February 2, 2024, Tanner, by his agent, submitted a zoning change application and conceptual plan (hereinafter "Tanner Rezoning Application") requesting to change the 3.22 acres of General Commercial zoning and the 5.08 acres of General Residential zoning to an 8.3 acre Flexible Design District to construct 27 single family homes. A true and correct copy of said application and conceptual plan is attached hereto as Exhibit "3," and incorporated herein by reference.

LAW APPLICABLE TO ZONING AMENDMENTS

South Carolina Enabling Act Requirements

31. Enabling Act Section 6-29-720(A) states that:

No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation.

32. The South Carolina Enabling Act *requires* zoning and land development to be consistent with the Comprehensive Plan as evidenced by the following provisions:
- a. Section 6-29-720(B), requires that zoning regulations “*must* be made in accordance with the comprehensive plan for the jurisdiction.” (emphasis added).
  - b. Section 6-29-720(A), provides that a zoning ordinance is to “implement the comprehensive plan.”
  - c. Section 6-29-540, requires that the “location, character, and extent” of new development must be compatible “with the comprehensive plan of the community.”
  - d. Section 6-29-1120(5) states that 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.
33. Enabling Act, Section 6-29-720(B), requires that zoning regulations “be made with a view to promoting the purposes set forth throughout this chapter,” and Section 6-29-710, sets forth those purposes to include:
- promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare ... to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets ... to protect and preserve scenic, historic, or ecologically sensitive areas ... to regulate the density and distribution of populations ... to further the public welfare in any other regard ...

#### Georgetown County Requirements

34. Georgetown County Ordinance 1701 requires as follows with respect to amending zoning ordinances:
- “When the public necessity, convenience, general welfare or good zoning practice justifies such action and after the required review and report of the

Planning Commission, the County Council may undertake the necessary steps to amend the Zoning Ordinance.”

35. Georgetown County Planning Commission Bylaws state in Article V, Section 2 that: "All zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan."

COMPREHENSIVE PLAN REQUIREMENTS

36. The Georgetown County Comprehensive Land Use Plan states that it “will serve as a basis for zoning map amendments [and] zoning code revisions ... so the future growth and development of Georgetown County can occur according to local goals and objectives.” (p. 1).

37. The Comprehensive Plan states as follows with respect to residential density and Land Use Goals for the South Waccamaw Neck where Magic Oaks is located:

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. (p. 23).

Density increases in new development should only be allowed if open space is provided by use of planning tools: as part of a Planned Development District, Transfer Development Rights, Cluster Development, or land placed in a Conservation Easement, etc. (p. 25) (emphasis added).

38. The Comprehensive Plan allows density increases only when there is a corresponding density decrease or elimination through use of one of the enumerated planning tools specifically designed to offset a density increase. In the present case, the request was to increase residential density on a parcel that allowed no residential density without providing a corresponding density decrease or elimination as required by the Comprehensive Plan.

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

40. These particular density restrictions were included to prevent the kinds of arbitrary increases in density requested in the Tanner zoning change application which proposed to increase residential density from zero (Conservation Preservation) to medium density without offering any need, reason, or public benefit, or otherwise meeting the requirements of the Comprehensive Plan.

41. The Tanner rezoning request was in direct conflict with the explicit and unambiguous language of the Comprehensive Plan text and maps.

42. A decision to change zoning to allow increased density over the current Comprehensive Plan designation in contravention of the Comprehensive Plan density restrictions sets a precedent for arbitrary land use decisions that serve only to promote the interests of a single landowner applicant.

43. The cumulative incremental impact of density increases in the South Waccamaw Neck has had, would have, and is having devastating and far-reaching negative consequences.

PLANNING COMMISSION PUBLIC HEARING

44. The Planning Commission public hearing was held on February 15, 2024.

45. The Planning Commission was improperly informed by the Planning Department that it was considering a request to "downzone" which would reduce residential density. In fact, the request proposed to substantially increase density by changing the Comprehensive Plan Map designation from "Conservation Preservation" to "Medium Density Residential."

46. Without reviewing, discussing or considering conformity or conflicts with the Comprehensive Plan text and maps as required by the South Carolina Enabling Act, Georgetown County Ordinances, and its own Bylaws, the Planning Commission voted to recommend approval of the amendments based on the inaccurate characterization of this matter as a downzoning.

47. The Planning Commission did not review, discuss or consider relevant provisions of the Comprehensive Land Use Plan, including but not limited to the following:

- a. The parameters and significance of the Conservation Preservation designation of the Magic Oaks parcel.
- b. Provisions that specifically restrict residential density increases in the South Waccamaw Neck.
- c. Provisions that were inconsistent with the proposed zoning amendment.
- d. Provisions that were inconsistent with pre-existing zoning.

48. The Planning Commission did not discuss or consider whether the applicant demonstrated a "need" for the zoning change as required by the application or whether public necessity, convenience, general welfare or good zoning practice justified the requested amendments as required by state and local law.

49. The Planning Commission did not note the conflicts with the Comprehensive Plan in a report to Council as required by Georgetown County Ordinance 1701 and its Bylaws.

50. The decision by Planning Commission to recommend approval of the Tanner proposed amendments was arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

COUNTY COUNCIL DECISION

51. Proposed Ordinances for the Tanner rezoning were placed on the County Council agenda for First Reading on February 27, 2024. Second Reading was deferred from March 12, 2024, until April 9, 2024, and Third Reading was April 23, 2024.

Second Reading

52. On April 5, 2024, after the Planning Commission Public Hearing and First Reading of County Council, but prior to Second and Third Readings, changes were made to the text and plan of the proposed ordinances that included, *inter alia*, a public kayak launch located on the northeast corner of the Magic Oaks property that adjoins the land of Plaintiffs Don and Kathy Reid. This proposed public kayak launch into the Salt Marsh included a 15 foot public access that ran along the entire length of the southern boundary of the Reid property and along other private property. The plan included a public access located on private adjoining property. The proposed change necessarily raised issues of parking, easements, access to private property, liability, security, privacy, wetlands and other issues that directly impact neighboring landowners and the public. On April 4, changes were made relative to drainage easements and public sidewalks. These changes were not part of the plan reviewed, considered and recommended by Planning Commission on February 15, 2024. A true and correct copy of the modified proposed plan along with the revised ordinance and Agenda Request Form outlining the revisions and modifications is attached hereto as Exhibit "4," and incorporated herein by reference.

53. According to Section 6-29-720(A) of the Enabling Act, these changes should have been sent back to Planning Commission for its review, consideration and recommendation as part of the whole plan and proposed ordinances before being considered by County Council. Instead, the modified rezoning proposal was improperly placed on the County Council agenda for Second and Third readings without input, consideration or recommendation by the Planning Commission.

54. Pursuant to procedure specifically set forth in the Enabling Act, County Council did not have authority to consider or approve the modified zoning amendment ordinances without a recommendation by Planning Commission.

55. County Council voted 6-1 to approve the proposed zoning change with modifications at Second Reading on April 9, 2024.

56. Approval of the Tanner rezoning by County Council is a violation of Plaintiffs' due process rights and has caused and will cause injury to Plaintiffs and their property as follows: Negative impact on character, aesthetics and enjoyment; additional stormwater and flooding problems; increase in existing stormwater and flooding problems; decrease in value of property; increased security, safety and liability issues due to public kayak launch and public access on adjoining property; increased traffic and burden on over-burdened existing infrastructure that is operating beyond.

Third Reading

57. At Third Reading on April 23, 2024, the Planning Director and the County Attorney advised Council in response to a question that the Comprehensive Plan is to be brought into compliance with zoning ordinances and that the Comprehensive Plan must be adjusted to accommodate zoning ordinances when they are "out of sync." Council was informed that it is the

regular practice in Georgetown County to amend the Comprehensive Plan to accommodate zoning.

58. Council members were given instructions that were in direct conflict with the requirements of the Enabling Act.

59. Based on erroneous instructions, County Council voted 6-1 to approve Ordinances 24-05 and 24-06 which contained modifications that had not been reviewed or considered by Planning Commission.

60. The decision by Council and the underlying instructions which formed the basis of the decision were in direct conflict with the plain language of the Enabling Act, Georgetown County Ordinances and the mandates of the Georgetown County Comprehensive Land Use Plan

61. County Council did not review, discuss or consider relevant provisions of the Comprehensive Land Use Plan, including but not limited to the following:

- a. The parameters and significance of the Conservation Preservation designation of the Magic Oaks parcel.
- b. Provisions that specifically restrict residential density increases in the South Waccamaw Neck.
- c. Provisions that were inconsistent with the proposed zoning amendment.
- d. Provisions that were inconsistent with pre-existing zoning.

62. County Council did not discuss or consider whether the applicant demonstrated a "need" for the zoning change as required by the rezoning application or whether public necessity, convenience, general welfare or good zoning practice justified the requested amendments as required by state and local law.

63. County Council did not receive a report from Planning Commission noting the conflicts with the Comprehensive Plan as required by Georgetown County Ordinance 1701.

64. Without reviewing, discussing or considering conformity or conflicts with the Comprehensive Plan text and maps as required by the South Carolina Enabling Act and Georgetown County Ordinances, County Council voted to recommend approval of the amendments.

65. The following additional matters were brought to the attention of County Council which approved the rezoning without proper investigation or inquiry into the issues raised:

- a. Approval of this rezoning for a residential use within 300 feet of existing taverns and nightclubs would cause adjoining commercial landowners to be in violation of Georgetown County Ordinances.
- b. New information pertaining to the status of wetlands, investigation by the Army Corps of Engineers, the wetlands delineation submitted by the developer, and the Conservation Preservation status of Magic Oaks that had not been reviewed or considered by Planning Commission.
- c. Adjoining landowners disputed the wetlands delineation submitted by the Developer's expert and requested permission to have an independent wetlands delineation conducted at their own expense. Tanner arbitrarily refused to allow the independent wetlands expert access to the property to have an independent wetlands study performed.

66. The decision by County Council to approve Ordinances 24-05 and 24-06 was unauthorized, improper, arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

JURISDICTION, STANDING AND VENUE

67. Paragraphs 1 through 66, above, are incorporated by reference as though fully set forth herein.

68. 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.

69. 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.

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

- a. South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-760(C), states that “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment.” All Plaintiffs are owners of land that adjoins Magic Oaks.
- b. South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, states:

Any 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 affected by approval of Ordinances 24-05 and 24-06, and they have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions.

71. Alternatively and in addition, 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 this zoning change to allow a residential use and increase in residential density on property that directly adjoins land owned by them and that did not previously allow any residential use or density; (b) the injury was caused by the improper approval of the ordinances; and (c) the injury is redressable by a favorable decision of this court declaring that these ordinances are improper, null and void and requiring Georgetown County to perform its required duties.

72. 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.

COUNT I

DECLARATORY JUDGMENT

Pre-existing Zoning was Void as ultra vires

73. Paragraphs 1 through 72, above, are incorporated by reference as though fully set forth herein.

74. Plaintiffs seek declaratory judgment from this Court that:

- a. Ordinances 24-05 and 24-06 are invalid as they purport to amend pre-existing zoning that was void as *ultra vires* because it conflicted with the South

Carolina Comprehensive Planning Enabling Act, (hereinafter “Enabling Act”), S.C. Code, Section 6-29-310, *et seq.*, and was not capable of being amended.

- b. Georgetown County Council did not have authority to amend ordinances that were void and invalid as *ultra vires*.

COUNT II

DECLARATORY JUDGMENT

Violations of South Carolina Enabling Act

75. Paragraphs 1 through 74, above, are incorporated by reference as though fully set forth herein.

76. Plaintiffs seek declaratory judgment from this Court that Georgetown County Council's approval of Ordinances 24-05 and 24-06 was a violation of the Enabling Act provisions as set forth in paragraphs 31 through 33 above, rendering them null, void and of no force or effect.

COUNT III

DECLARATORY JUDGMENT

Violations of Georgetown County Ordinances and Procedure

77. Paragraphs 1 through 76, above, are incorporated by reference as though fully set forth herein.

78. Plaintiffs seek declaratory judgment from this Court that Georgetown County Council's approval Ordinances 24-05 and 24-06 was a violation of Georgetown County Ordinances and procedure as set forth in paragraphs 34 through 43 above, rendering them null, void and of no force or effect.

COUNT IV

DECLARATORY JUDGMENT

Adjoining Commercial Landowners

79. Paragraphs 1 through 78, above, are incorporated by reference as though fully set forth herein.

80. Plaintiffs seek declaratory judgment from this Court that Georgetown County Council's approval Ordinances 24-05 and 24-06 caused adjoining commercial landowners to be in violation of local ordinances as set forth in paragraphs 7(f) and 65(a), which constitutes a violation of constitutional due process and other rights.

COUNT V

ATTORNEYS FEES FROM GEORGETOWN COUNTY

81. Paragraphs 1 through 80, above, are incorporated by reference as though fully set forth herein.

82. 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.

83. 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. Ordinances 24-05 and 24-06 are null, void and of no force or effect as set forth herein.
- b. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County.
- c. Such other relief as the court deems just and appropriate.

Respectfully submitted,

/s/ F. Patrick Hubbard  
F. Patrick Hubbard (SC Bar #12614)

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ATTORNEY FOR PLAINTIFFS

June 18, 2024  
Pawleys Island, South Carolina

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

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ATTORNEY FOR PLAINTIFFS

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL )  
CIRCUIT )

C/A NUMBER: 2024-CP-22-00577

Emanuel Stikas, Trustee of the Stikas )  
Revocable Living Trust, dated February 1, )  
2023, d/b/a The Village Shops; Donald W. )  
Reid and Katheryn W. Reid, husband and )  
wife; Elizabeth Gattshall Hawkins Martin; )  
Tall House Farm, L.P., )

**SUMMONS TO COUNTERCLAIMS )  
AND THIRD PARTY COMPLAINT )**

Plaintiffs, )

vs. )

Georgetown County; David E. Tanner; )  
RCB Land Holdings, LLC; Magic Oaks, )  
LLC, )

Defendants. )

\_\_\_\_\_  
Magic Oaks, LLC, )

Third Party Plaintiff, )

vs. )

Keep It Green, Inc., )

Third Party Defendant )  
\_\_\_\_\_

TO: THE ABOVE-NAMED PLAINTIFFS AND THIRD PARTY DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaims and Third Party Complaint on the subscribers at their office at 1000 29<sup>th</sup> Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaims and Third Party

**EXHIBIT B**

Claims within the time aforesaid, Defendants/Third Party Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Counterclaims and Third Party Complaint and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.  
Post Office Box 357  
Myrtle Beach, South Carolina 29578-0357  
(843)448-2400  
Attorneys for Magic Oaks, LLC and RCB Land  
Holdings, LLC

s/ Zachary J. Crowl  
David B. Miller, SC Bar #10296  
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina  
August 23, 2024

ELECTRONICALLY FILED - 2024 Aug 23 11:44 AM - GEORGETOWN - COMMON PLEAS - CASE#2024CP2200577

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL )  
CIRCUIT )  
C/A NUMBER: 2024-CP-22-00577 )

Emanuel Stikas, Trustee of the Stikas )  
Revocable Living Trust, dated February 1, )  
2023, d/b/a The Village Shops; Donald W. )  
Reid and Katheryn W. Reid, husband and )  
wife; Elizabeth Gattshall Hawkins Martin; )  
Tall House Farm, L.P., )

Plaintiffs, )

vs. )

Georgetown County; David E. Tanner; )  
RCB Land Holdings, LLC; Magic Oaks, )  
LLC, )

Defendants. )

**ANSWER, COUNTERCLAIMS, & )  
THIRD PARTY COMPLAINT ON )  
BEHALF OF DEFENDANTS MAGIC )  
OAKS, LLC AND RCB LAND )  
HOLDINGS, LLC )**

\_\_\_\_\_  
Magic Oaks, LLC, )

Third Party Plaintiff, )

vs. )

Keep It Green, Inc., )

Third Party Defendant )

Defendants, Magic Oaks, LLC and RCB Land Holdings, LLC (hereinafter "Defendants")

by and through their undersigned attorneys, would hereby answer the Complaint of the Plaintiffs  
as follows:

**FOR A FIRST DEFENSE**  
(General Objection)

1. Each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted,  
modified, qualified, or denied is denied and strict proof demanded thereof.

**FOR A SECOND DEFENSE**  
(Reservation of Defenses and Claims)

2. The allegations of the prior Defense are incorporated herein and made a part and parcel of this Second Defense.
3. Defendants reserve the right to assert, and do not waive, any additional or further defenses and/or claims as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

**FOR A THIRD DEFENSE**  
(Specific Responses)

4. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Third Defense.
5. As to the allegations of Paragraph 1, it is admitted that Plaintiffs are challenging a valid approval by Georgetown County Council of a rezoning application to rezone a parcel of land in Pawleys Island, Georgetown County, South Carolina. The parcel was shown on the Comprehensive Plan as Conservation Preservation, but was zoned General Commercial and General Residential. The rezoning application sought to rezone the parcel to a Flexible Design District.
6. As to the allegations of Paragraph 2, it is admitted that on April 23, 2024, County Council validly approved the rezoning request by Ordinance 24-06 and validly approved Ordinance 24-05 to amend the Comprehensive Plan Future Land Use Map. The remaining allegations of Paragraph 2 are denied and strict proof demanded thereof.
7. The allegations of Paragraph 3 are denied and strict proof demanded thereof.
8. The allegations of Paragraph 4 are admitted with the exception that the land does not contain significant wetlands. The land in question was surveyed by The Brigman

Company for potential wetlands and minimal wetlands were found on the property. This survey was submitted to the United States Army Corps of Engineers for review and request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated “Based on a review of the information you submitted, the delineated boundaries depicted on the map titled ‘Delineation Concurrence Exhibit Tanner Property’ and dated January 22, 2024, are a reasonable representation of the aquatic resources located onsite.” Thus the allegations of Paragraph 4 regarding wetlands are false and strict proof demanded thereof.

9. As to the allegations of Paragraph 5, Ordinance 24-05 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
10. As to the allegations of Paragraph 6, Ordinance 24-06 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
11. The allegations of Paragraph 7 are denied and strict proof demanded thereof.
12. As to the allegations of Paragraphs 8, 9, 10, and 11, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
13. As to the allegations of Paragraph 12, the South Carolina Uniform Declaratory Judgments Act speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof. The remaining allegations of Paragraph 12 are denied and strict proof demanded thereof.
14. The allegations of Paragraph 13 are admitted.
15. As to the allegations of Paragraph 14, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.
16. Upon information and belief, the allegations of Paragraphs 15 are admitted.

17. As to the allegations of Paragraph 16, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
18. As to the allegations of Paragraph 17, it is admitted that Tanner executed a Deed on June 6, 2024, recorded in the Office of the Register of Deeds of Georgetown County, South Carolina on June 10, 2024, at Deed Book 4681, Page 258, transferring the property to Magic Oaks, LLC. As to the remaining allegations of Paragraph 17, S.C. Code Ann. § 6-29-760(D) speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
19. The allegations of Paragraph 18 are admitted.
20. As to the allegations of Paragraph 19, it is admitted that RCB Land Holdings, LLC is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 1717 4<sup>th</sup> Avenue, Unit H, Conway, SC 2526. The remaining allegations of Paragraph 19 are denied and strict proof demanded thereof.
21. As to the allegations of Paragraph 20, it is admitted that the Magic Oaks parcel consists of a total of 19.03 acres and was previously shown on the Comprehensive Plan, Future Land Use Map as Conservation Preservation. The remaining allegations of Paragraph 20 are denied and strict proof demanded thereof.
22. As to the allegations of Paragraphs 21, 22, and 23, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
23. As to the allegations of Paragraph 24, S.C. Code Ann. § 6-29-720 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
24. The allegations of Paragraph 25 are denied and strict proof demanded thereof.

25. As to the allegations of Paragraph 26, the Georgetown County Comprehensive Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
26. The allegations of Paragraphs 27 and 28 are denied and strict proof demanded thereof.
27. As to the allegations of Paragraph 29, it is admitted that the remaining 10.73 acres of Magic Oaks remain zoned Conservation Preservation.
28. The allegations of Paragraph 30 are admitted.
29. The allegations of Paragraph 31 are denied and strict proof demanded thereof.
30. As to the allegations of Paragraph 32, the South Carolina Enabling Act speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
31. As to the allegations of Paragraph 33, S.C. Code Ann. §§ 6-29-720(B) and 6-29-710 speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.
32. As to the allegations of Paragraph 34, Georgetown County Ordinance 1701 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
33. As to the allegations of Paragraph 35, the Georgetown County Planning Commission Bylaws speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.
34. As to the allegations of Paragraphs 36 and 37, the Georgetown County Comprehensive Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

35. As to the allegations of Paragraph 38 regarding the Georgetown County Comprehensive Plan, the Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof. The remaining allegations of Paragraph 38 are denied and strict proof demanded thereof. The application for rezoning did not increase residential density. The original zoning of the parcel was General Commercial and General Residential. The Application for Rezoning requested a change to a Flexible Design District which provides for less residential density than previously allowed under the original zoning.
36. The allegations of Paragraphs 39, 40, 41, 42, and 43 are denied and strict proof demanded thereof.
37. The allegations of Paragraph 44 are admitted.
38. The allegations of Paragraph 45 are denied and strict proof demanded thereof.
39. As to the allegations of Paragraph 46, it is admitted that the Planning Commission voted to recommend approval of the amendments. The remaining allegations of Paragraph 46 are denied and strict proof demanded thereof.
40. The allegations of Paragraphs 47, 48, 49, and 50 are denied and strict proof demanded thereof.
41. The allegations of Paragraph 51 are admitted.
42. As to the allegations of Paragraph 52, it is admitted that the plan was amended to include a public kayak launch. However, the inclusion of the public kayak launch was contingent upon access through adjoining property. Such access will not be provided; thus the public kayak is not part of the plan and this issue is moot.

43. The allegations of Paragraph 53 are denied and strict proof demanded thereof. The inclusion of the public kayak launch was contingent upon access through adjoining property. Such access will not be provided; thus the public kayak is not part of the plan and this issue is moot.
44. The allegations of Paragraph 54 are denied and strict proof demanded thereof.
45. The allegations of Paragraph 55 are admitted.
46. The allegations of Paragraph 56 are denied and strict proof demanded thereof.
47. As to the allegations of Paragraph 57, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
48. The allegations of Paragraph 58 are denied and strict proof demanded thereof.
49. As to the allegations of Paragraph 59, it is admitted that County Council voted to approve Ordinances 24-05 and 24-06. The allegations that this approval was based on erroneous instructions are denied and strict proof demanded thereof.
50. The allegations of Paragraphs 60, 61, 62, and 63 are denied and strict proof demanded thereof.
51. As to the allegations of Paragraph 64, it is admitted that County Council voted to recommend approval of the amendments. The remaining allegations of Paragraph 64 are denied and strict proof demanded thereof.
52. As to the allegations of Paragraph 65, it is admitted that County Council approved the rezoning. The remaining allegations of Paragraph 65 are denied and strict proof demanded thereof.
53. The allegations of Paragraph 66 are denied and strict proof demanded thereof.

54. Paragraph 67 is a pleading paragraph requiring no response. To the extent Paragraph 67 incorporates prior allegations, Defendants crave specific reference herein.
55. The allegations of Paragraphs 68 and 69 are admitted.
56. The allegations of Paragraphs 70, 71, and 72 are denied and strict proof demanded thereof.
57. Paragraph 73 is a pleading paragraph requiring no response. To the extent Paragraph 73 incorporates prior allegations, Defendants crave specific reference herein.
58. The allegations of Paragraph 74 are denied and strict proof demanded thereof.
59. Paragraph 75 is a pleading paragraph requiring no response. To the extent Paragraph 75 incorporates prior allegations, Defendants crave specific reference herein.
60. The allegations of Paragraph 76 are denied and strict proof demanded thereof.
61. Paragraph 77 is a pleading paragraph requiring no response. To the extent Paragraph 77 incorporates prior allegations, Defendants crave specific reference herein.
62. The allegations of Paragraph 78 are denied and strict proof demanded thereof.
63. Paragraph 79 is a pleading paragraph requiring no response. To the extent Paragraph 79 incorporates prior allegations, Defendants crave specific reference herein.
64. The allegations of Paragraph 80 are denied and strict proof demanded thereof.
65. Paragraph 81 is a pleading paragraph requiring no response. To the extent Paragraph 81 incorporates prior allegations, Defendants crave specific reference herein.
66. The allegations of Paragraphs 82 and 83 are denied and strict proof demanded thereof.

**FOR A FOURTH DEFENSE**  
(Failure to State a Claim)

67. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fourth Defense.

68. Plaintiffs fail to state a claim against Defendants upon which relief may be granted by this Court. The Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCP.

**FOR A FIFTH DEFENSE**  
(Waiver and Estoppel)

69. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fifth Defense.

70. Defendants plead waiver and estoppel as a complete and affirmative defense.

**FOR A SIXTH DEFENSE**  
(Attorney Fees Not Recoverable)

71. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Sixth Defense.

72. Plaintiffs' Complaint seeks attorney fees for claims upon which attorney fees may not be awarded against these answering Defendants.

**FOR A SEVENTH DEFENSE AND FIRST COUNTERCLAIM AGAINST ALL  
PLAINTIFFS**  
(Motion to Strike)

73. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.

74. The amendment to the development plan to include a public kayak launch on the northern boundary of the property was contingent upon receiving approval from the adjoining Hammock Shops landowner for access to the south boundary of its property for parking and access to the kayak launch. It was clearly identified in the development plan that the public kayak launch was subject to this contingency. Still, Plaintiffs ignored this and brought their claims prematurely.

75. On August 14, 2024 i3, LLC on behalf of the Hammock Shops informed Defendants that it is “unable to provide access to the South boundary of Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch.”
76. Thus, the contingency upon which the public kayak launch was dependent will not occur.
77. As such, Plaintiffs’ allegations regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission for review are moot and immaterial, and must be stricken from the Complaint. This includes Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59.
78. Defendants have filed a Motion to Strike this matter pursuant to Rule 12(f), SCRPC prior to filing this Answer.

**FOR AN EIGHTH DEFENSE AND SECOND COUNTERCLAIM AGAINST ALL PLAINTIFFS**

(Request for Judicial Bond)

79. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
80. While Plaintiffs have not filed for injunctive relief or a temporary restraining order to stop development of the property, Plaintiffs’ action challenges the very approvals necessary for the development of this neighborhood.
81. In this regard, without final resolution, it is unclear whether Magic Oaks, LLC may proceed with development.
82. Consequently, Magic Oaks, LLC is accruing interest daily on its third party loan on this property and losing money each day it cannot proceed.
83. Magic Oaks, LLC respectfully requests that this Honorable Court require Plaintiffs to post a judicial bond during the pendency of this action. Magic Oaks, LLC requests the

Court schedule a hearing to determine the amount of the bond necessary to compensate Magic Oaks, LLC for the accruing interest and lost profits resulting from the delay on construction due to this action.

**FOR A NINTH DEFENSE AND THIRD COUNTERCLAIM AGAINST ALL PLAINTIFFS**

(Tortious Interference with Existing Contractual Relations)

84. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
85. As part of the purchase of the property at issue, Magic Oaks, LLC obtained a loan from a third party secured by the property. The Mortgage and Security Agreement evidencing this loan is filed of public record.
86. Upon information and belief, Plaintiffs are aware of the Mortgage and Security Agreement between Magic Oaks, LLC and the third party.
87. Plaintiffs have filed this lawsuit to hinder and delay Magic Oaks, LLC from developing this property, thus procuring the potential breach of the Mortgage and Security Agreement.
88. Plaintiffs' action is without justification and has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, and other damages which may be identified in the course of this litigation.
89. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with existing contractual relations, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FOR A TENTH DEFENSE AND FOURTH COUNTERCLAIM AGAINST ALL  
PLAINTIFFS**

(Tortious Interference with Prospective Contractual Relations)

90. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
91. Magic Oaks, LLC purchased the property at issue for the purpose of developing a residential neighborhood. The residential development will consist of 27 single family lots which Magic Oaks will contract to sell to third parties for the purpose of constructing homes.
92. Plaintiffs are aware of Magic Oaks' residential development plans and the reasonable probability that the contractual relations with third parties for the sale and development of these lots will be realized.
93. Plaintiffs have filed this unfounded action to intentionally interfere with these prospective contractual relations and to hinder and delay the development altogether.
94. Plaintiffs' action has hindered and delayed Magic Oaks from acquiring these prospective contractual relations and has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.
95. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with prospective contractual relations, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FOR AN ELEVENTH DEFENSE AND FIFTH COUNTERCLAIM AGAINST ALL PLAINTIFFS**  
(Nuisance)

96. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
97. Plaintiffs have brought this action claiming standing by virtue of their ownership of neighboring property.
98. Plaintiffs have used their ownership of their property to unreasonably interfere with Magic Oaks' use of its land by bringing this baseless action which has hindered and delayed Magic Oaks' development of the land.
99. Magic Oaks has suffered damages as a result of Plaintiffs' unreasonable interference in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.
100. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' nuisance, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT BY WAY OF COUNTERCLAIM AGAINST ALL PLAINTIFFS & THIRD PARTY CLAIM AGAINST KEEP IT GREEN, INC.**

101. Defendants reallege and incorporate by reference all Paragraphs above as if fully set forth herein.
102. This case is one in a series of lawsuits attempting to stop residential development in Georgetown County.

103. Plaintiffs are represented in this action by Keep It Green Advocacy, Inc. (“KIGA”), in-house counsel for Keep It Green, Inc. (“KIG”), a public interest group that opposes land use and zoning changes that increase residential density in Georgetown County.
104. KIG has opposed many residential projects in Georgetown County upon virtually identical assertions raised in this matter. In fact, in the past two years, KIG has brought three other Georgetown County lawsuits as a named Plaintiff to stop residential development. Each of those actions have been dismissed pursuant to Court Orders Granting Defendants’ Motions to Dismiss.<sup>1</sup> Notably, after three consecutive Orders of Dismissal, KIG has refrained from naming itself as a Plaintiff in this action, but has provided its in-house counsel to represent all Plaintiffs in this matter.
105. The gist of all of these lawsuits is the false and incorrect assertion that residential development in Georgetown County is incompatible with the Georgetown County Comprehensive Plan and thus in violation of state and local law. This lawsuit is no different.
106. The planned Magic Oaks development is a residential neighborhood proposing 27 single family lots with minimum lot sizes of 8,000 sq. ft., a 50’ Open Space/Vegetative Buffer along Highway 17, pool and pool house, Reese and Sis Hart Memorial Pavilion, and the incorporation of low impact design techniques such as underground stormwater chambers and the use of pervious paving materials. The road and building footprints are designed to protect existing large trees.

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<sup>1</sup> The KIG lawsuits which have been dismissed include C/A Nos. 2022-CP-22-00912; 2023-CP-22-000007; and 2023-CP-22-00210.

107. Prior to the rezoning of the property at issue, the site was split zoned General Commercial and General Residential. The single-family use of this development through the rezoning to a Flexible Design District will have a significantly smaller impact on the site (including impervious coverage, tree protection, and runoff) as compared to the potential commercial and multifamily uses that were allowed with the previous zoning.
108. Despite the fact that Defendants have gone through the proper local, state, and federal administrative channels and procedures to secure the necessary approvals to build this neighborhood, Plaintiffs and KIG seek to use this action as a vehicle to hinder and delay this residential development as they have attempted to do with numerous other developments in Georgetown County.

**Parties and Jurisdiction**

109. Magic Oaks, LLC is a limited liability company organized and existing under and by virtue of the laws of the State of South Carolina and is authorized to do business within the State.
110. Upon information and belief, KIG is a non-profit South Carolina corporation.
111. The property which is the subject of this action is located in Georgetown County, South Carolina.
112. Based upon the foregoing, this Honorable Court has jurisdiction, and venue is proper.

**Factual Allegations**

113. Prior to this action, the land at issue was split zoned General Commercial/General Residential and owned by Defendant David Tanner.

114. Magic Oaks, LLC entered into a contract with Mr. Tanner for the purchase of the property with the intent to build a residential development.
115. Prior to closing on the property, Magic Oaks and Mr. Tanner sought to rezone the property to accomplish these objectives.
116. Initially, Magic Oaks and Mr. Tanner filed an application to rezone the property to solely General Residential.
117. However, upon discussion with and recommendation of KIG, Magic Oaks and Mr. Tanner amended the application to apply instead for rezoning to a Flexible Design District in order to reduce density. KIG celebrated this collaboration on its website on February 13, 2024 stating:
- The FDD zoning includes saving trees, large natural buffers, open space, and being more aesthetically pleasing.**
- The current General Residential and General Commercial zoning that exists on this parcel would allow high density and up to 95 multi-family/single-family units without any zoning change. The requested change to a Flexible Design District would eliminate the possibility of high density and/or multi-family housing on an environmentally sensitive tract which would be a big win for the community.**
118. Earthworks Group in Murrells Inlet was hired to assist in the rezoning effort and Earthworks undertook to compile all necessary information and materials for the rezoning application.
119. Part of Earthworks' efforts included obtaining a wetlands study which was completed by the Brigman Company on January 22, 2024. As a result, the Brigman Company produced a full report with a Delineation Concurrence Exhibit and submitted the report to the United States Army Corps of Engineers with a request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated "Based on a review of the information you

submitted, the delineated boundaries depicted on the map titled ‘Delineation Concurrence Exhibit Tanner Property’ and dated January 22, 2024, are a reasonable representation of the aquatic resources onsite.” The United States Army Corps of Engineers is the final authority as to jurisdictional wetlands.

120. On February 2, 2024, the amended application for rezoning along with the Development Summary prepared by Earthworks was submitted to Georgetown County.
121. In accordance with Georgetown County procedure, the application was reviewed by Georgetown County Planning Department staff, who then produced a report, and sent the application and report to Georgetown County Planning Commission.
122. Planning Commission held a public hearing on the application on February 15, 2024. Planning Commission recommended approval to rezone and to amend the Future Land Use Map.
123. The application then went to Georgetown County Council for First Reading. First Reading occurred on February 27, 2024.
124. Prior to Second Reading, upon request of a Georgetown County Council member, a minor change was made to the development plan. The development plan originally depicted a private kayak launch down the middle of the property for use by the residents. The Council member requested that the kayak launch be moved to the northern boundary of the property and be made open to the public. However, this change was ultimately contingent upon the approval of the adjoining Hammock Shops landowner allowing public parking and access through its property to the kayak launch. Defendants have been informed that such access will not be provided, thus the public kayak launch is not part of the development plan.

125. Second Reading of County Council occurred on April 9, 2024. During this reading, the staff report of the Georgetown County Planning Department was presented along with a detailed presentation of the project. After this presentation, the floor was open to residents of Georgetown County for public comment. Despite previous support, KIG and others spoke to voice their opinions and concerns about the development. The primary complaint was a request for another wetlands survey despite the fact that the United States Army Corp of Engineers had already issued its final opinion in the Delineation Concurrence. County Council voted 6-1 in favor of second reading approval of the rezoning and amendment to the Future Land Use Map.
126. County Council held its Third Reading on April 23, 2024. During Third Reading, a public hearing was held on the amendment to the Future Land Use Map and the public was provided opportunity once again to comment. Many of the same issues previously raised were once again raised during the public hearing. Ultimately, County Council again voted in favor of the ordinances to rezone the property to a Flexible Design District and to amend the Future Land Use Map.
127. On April 23, 2024, Ordinance 24-05 to amend the Future Land Use Map regarding the property at issue from Conservation Preservation to Medium Density Residential was done, ratified, and adopted. Ordinance 24-06 to amend the official zoning map of Georgetown County regarding the property at issue from General Commercial and General Residential to a Flexible Design District was also done, ratified, and adopted that day.
128. On June 6, 2024, David Tanner executed a deed conveying the property to Magic Oaks and the deed was recorded in the Georgetown County Register of Deeds on June

10, 2024. In conjunction with the closing on the property, Magic Oaks obtained a loan from a third party secured by the land. On June 10, 2024, a Mortgage and Security Agreement to this effect was filed in the Georgetown County Register of Deeds.

129. Eight days later, KIG's in-house counsel, KIGA filed this lawsuit on behalf of the Plaintiffs in an effort to hinder and delay this development.

**FOR A TWELFTH DEFENSE, SIXTH COUNTERCLAIM AGAINST ALL  
PLAINTIFFS, AND FIRST THIRD PARTY CLAIM AGAINST KIG**  
(Civil Conspiracy)

130. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.

131. KIG has brought numerous actions in Georgetown County for the sole purpose of hindering and delaying validly approved residential development.

132. Upon information and belief, KIG has conspired with Plaintiffs to bring another baseless lawsuit on its behalf to hinder and delay residential development and has provided Plaintiffs its in-house counsel to do so.

133. Magic Oaks has suffered damages as a direct result of Plaintiffs' and KIG's civil conspiracy in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.

134. Magic Oaks, LLC is entitled to judgment against the Plaintiffs and KIG, jointly and severally, for Plaintiffs' and KIG's civil conspiracy, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**WHEREFORE**, having fully answered Plaintiffs' Complaint, Defendants/Third Party Plaintiff pray for the following relief:

- (a) That Plaintiffs' Complaint be dismissed with prejudice and the relief requested therein be denied;
- (b) For an Order under the First Counterclaim granting Defendants' Motion to Strike Plaintiffs' allegations in Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59 regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission for review as moot and immaterial;
- (c) For an Order under the Second Counterclaim granting Defendants' request that Plaintiffs post a judicial bond during the pendency of this action and for a hearing to determine the amount of the bond necessary to compensate Magic Oaks, LLC for the accruing interest and lost profits resulting from the delay on construction due to this action;
- (d) For a judgment under the Third Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with existing contractual relations, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;
- (e) For a judgment under the Fourth Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with prospective contractual relations, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;
- (f) For a judgment under the Fifth Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' nuisance, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;

- (g) For a judgment under the Sixth Counterclaim and First Third Party Claim in favor of Magic Oaks, LLC against the Plaintiffs and KIG, jointly and severally, for Plaintiffs' and KIG's civil conspiracy, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action; and
- (h) Award to Defendants/Third Party Plaintiff and against Plaintiffs and Third Party Defendant any such other, further, and additional relief as this Honorable Court deems just and proper.

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.  
Post Office Box 357  
Myrtle Beach, South Carolina 29578-0357  
(843)448-2400  
Attorneys for Magic Oaks, LLC and RCB Land  
Holdings, LLC

s/ Zachary J. Crawl  
David B. Miller, SC Bar #10296  
Zachary J. Crawl, SC Bar #103617

Myrtle Beach, South Carolina  
August 23, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
	)	C/A NUMBER: 2024-CP-22-00577
Emanuel Stikas, Trustee of the Stikas	)	
Revocable Living Trust, dated February 1,	)	
2023, d/b/a The Village Shops; Donald W.	)	
Reid and Katheryn W. Reid, husband and	)	
wife; Elizabeth Gattshall Hawkins Martin;	)	<b>DEFENDANTS RCB LAND</b>
Tall House Farm, L.P.,	)	<b>HOLDINGS, LLC AND MAGIC</b>
Plaintiffs,	)	<b>OAKS, LLC'S MOTION TO STRIKE</b>
	)	<b>PURSUANT TO RULE 12(f), SCRPC</b>
vs.	)	
Georgetown County; David E. Tanner;	)	
RCB Land Holdings, LLC; Magic Oaks,	)	
LLC,	)	
Defendants.	)	

PLEASE TAKE NOTICE that pursuant to Rule 12(f), SCRPC, Defendants RCB Land Holdings, LLC and Magic Oaks, LLC hereby move this Court for an Order to Strike Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59 of Plaintiffs' Complaint on the grounds that such allegations are moot and immaterial. Defendants will rely upon the pleadings, affidavits or memorandums which may be filed with this Court, and South Carolina law in support of this Motion.

Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59 of Plaintiffs' Complaint make allegations regarding an amendment to the development plan for the property in question to include a public kayak launch on the northern boundary of the property. The inclusion of the public kayak launch was contingent upon receiving approval from the adjoining Hammock Shops landowner for access to the south boundary of its property for parking and access to the kayak launch. It was clearly identified in the development plan that the public kayak launch was subject to this contingency. Still, Plaintiffs ignored this and brought their claims prematurely.

On August 14, 2023, i3, LLC, on behalf of the Hammock Shops informed Defendants that it is “unable to provide access to the South boundary of Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch.” Thus, the contingency upon which the public kayak launch was dependent will not occur. As such, Plaintiffs’ allegations regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission are moot and immaterial, and must be stricken from the Complaint.

The undersigned affirms under Rule 11 that consultation could not be timely had and would serve no useful purpose.

WHEREFORE, Defendants respectfully request of this Honorable Court:

- (a) An Order Striking Plaintiffs’ allegations in Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59 regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission for review as moot and immaterial.

BELLAMY, RUTENBERG, COPELAND,  
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(843)448-2400  
Attorneys for Magic Oaks, LLC and RCB Land  
Holdings, LLC

s/ Zachary J. Crowl  
David B. Miller, SC Bar #10296  
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina  
August 23, 2024

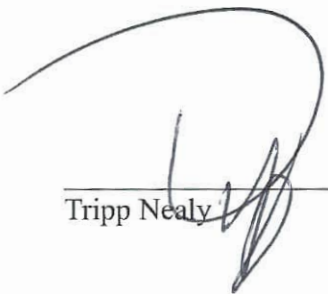
EXHIBIT D

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY ) AFFIDAVIT OF TRIPP NEALY,  
INDIVIDUALLY AND ON BEHALF OF  
RCB LAND HOLDINGS, LLC AND  
MAGIC OAKS, LLC

PERSONALLY appeared before me, Tripp Nealy, who first being duly sworn, alleges  
and says:

1. My name is Tripp Nealy, and I am familiar with the allegations of the Plaintiffs in the case of Emanuel Stikas, Trustee of the Stikas Revocable Living Trust, et al. v. Georgetown County, et al., Case No. 2024-CP-22-00577 currently pending in the Georgetown County Court of Common Pleas.
2. I am over the age of 18 years old and competent to testify to the matters set forth in this affidavit.
3. I am a member of RCB Land Holdings, LLC and Magic Oaks, LLC and am authorized to testify on their behalf.
4. Magic Oaks, LLC purchased the property at issue in this matter for the purpose of developing a residential neighborhood.
5. At the time of purchase, the property was split zoned General Commercial and General Residential. Prior to closing, Magic Oaks filed an application with Georgetown County to rezone the property to a Flexible Design District, which was ultimately approved. Rezoning to a Flexible Design District reduced the site density and has a significantly smaller impact on the site (including impervious coverage, tree protection, and runoff) as compared to the potential commercial and multifamily uses that were allowed with the previous zoning.
6. During Georgetown County Council’s review of the rezoning application, a member of Georgetown County Council requested a minor change to the development plan for the property. The development plan originally depicted a private kayak launch down the middle of the property for private use by the residents. The Council member requested that the kayak launch be moved to the northern boundary of the property and be made open to the public. A true and accurate copy of the development plan with the public kayak launch is attached hereto as Exhibit A and incorporated herein by reference.
7. As noted on the development plan, access to the public kayak launch would be through the adjoining landowner’s property. Thus, the requested change to move the kayak launch to the northern boundary and open it to the public was ultimately contingent upon receiving approval of the adjoining Hammock Shops landowner allowing public parking and access through its property.

- 8. On August 14, 2023, i3, LLC on behalf of the Hammock Shops informed me in writing that the Hammock Shops landowner is “unable to provide access to the South boundary of Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch.” A true and accurate copy of the letter from i3, LLC is attached hereto as Exhibit B and incorporated herein by reference.
- 9. Due to the fact that the adjoining Hammock Shops landowner is unable to provide access through its property, the contingency upon which the public kayak launch was dependent will not occur.



\_\_\_\_\_  
Tripp Nealy

September 16, 2024

Sworn to before me this 16

day of September, 2024

 (LS)  
Notary Public for South Carolina

My Commission Expires: 4-10-33

**STEPHANIE SEYMOUR**  
Notary Public - State of South Carolina  
My Commission Expires  
April 10, 2033





## Re: Hammock Shop Adjacent Development

Magic Oaks, LLC  
C/O Tripp Nealy  
1905 Main Street  
Conway, SC 29526

Dear Mr. Nealy,

At this time, given existing agreements, we are unable to provide access to the South boundary of Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch.

Thank you for presenting us with this opportunity.

Best Regards,

A handwritten signature in black ink, appearing to read "Kevin Heaton".

Kevin Heaton

i3, LLC

955 E Main Street Suite E Box 92

Lexington, SC 29072

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )  
)

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL )  
CIRCUIT )  
C/A NUMBER: 2024-CP-22-00577 )

Emanuel Stikas, Trustee of the Stikas )  
Revocable Living Trust, dated February 1, )  
2023, d/b/a The Village Shops; Donald W. )  
Reid and Katheryn W. Reid, husband and )  
wife; Elizabeth Gattshall Hawkins Martin; )  
Tall House Farm, L.P., )  
Plaintiffs, )

**ORDER GRANTING DEFENDANTS )  
RCB LAND HOLDINGS, LLC AND )  
MAGIC OAKS, LLC'S MOTION TO )  
STRIKE )**

vs. )  
Georgetown County; David E. Tanner; )  
RCB Land Holdings, LLC; Magic Oaks, )  
LLC, )  
Defendants. )

\_\_\_\_\_)  
Magic Oaks, LLC, )  
Third Party Plaintiff, )

vs. )  
Keep It Green, Inc., )  
Third Party Defendant )  
\_\_\_\_\_)

THIS MATTER came before the Court on September 19, 2024 pursuant to Defendants RCB Land Holdings, LLC and Magic Oaks, LLC's Motion to Strike certain allegations in Plaintiffs' Complaint regarding an amendment to the development plan for the property in question to include a public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission. Present at the hearing were Zachary J. Crowl, Esq. and David B. Miller, Esq. attorneys for RCB Land Holdings, LLC and Magic Oaks, LLC; H. Thomas Morgan, Jr., Esq. and Sydney Douglas, Esq. attorneys for Defendant Georgetown County; and Cynthia Ranck

Person, Esq. attorney for the Plaintiffs. For the reasons stated below, Defendants' Motion to Strike the Plaintiffs' allegations regarding the public kayak launch is GRANTED.

Plaintiffs filed this action on June 18, 2024 challenging the rezoning of property owned by Magic Oaks in Pawleys Island, South Carolina. Several paragraphs of Plaintiffs' Complaint make allegations regarding an amendment to the development plan for the property in question during the rezoning process to include a public kayak launch on the northern boundary of the property. The inclusion of the public kayak launch was contingent upon receiving approval from the adjoining Hammock Shops landowner for access to the south boundary of its property for parking and access to the kayak launch. It was clearly identified in the development plan that the public kayak launch was subject to this contingency.

On August 14, 2023, i3, LLC, on behalf of the Hammock Shops informed Defendants that the Hammock Shops landowner is "unable to provide access to the South boundary of Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch."<sup>1</sup> Thus, the contingency upon which the public kayak launch was dependent will not occur.

On August 23, 2024, Defendants filed their Motion to Strike Plaintiffs' allegations regarding the public kayak launch pursuant to Rule 12(f), SCRCP and based on the grounds set forth above. On September 16, 2024 Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Strike. Also, on September 16, 2024, Defendants filed an Affidavit of Tripp Nealy, Individually and on Behalf of RCB Land Holdings, LLC and Magic Oaks, LLC in support of

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<sup>1</sup> A true and accurate copy of the letter from i3, LLC to Defendants is attached to the Affidavit of Tripp Nealy, Individually and on Behalf of RCB Land Holdings, LLC and Magic Oaks, LLC filed in support of Defendants' Motion.

their Motion. On September 18, 2024, Defendant Georgetown County filed a Notice to Join Defendants RCB Land Holdings, LLC and Magic Oaks, LLC's Motion to Strike.

The Honorable David P. Caraker, Jr. presided over the hearing on Defendants' Motion to Strike on September 19, 2024. During the hearing, the Court heard arguments from counsel for each of the parties present.

After considering Defendants' Motion to Strike, Plaintiffs' Memorandum in Opposition, Defendants' Affidavit in Support, Defendant Georgetown County's Notice to Join, and oral arguments from the parties' counsel, this Court finds that Plaintiffs' allegations regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission are moot and immaterial and hereby GRANTS Defendants RCB Land Holdings, LLC and Magic Oaks, LLC's Motion to Strike. Therefore, it is,

HEREBY ORDERED as follows:

1. Pursuant to Rule 12(f), SCRCP, Plaintiffs' allegations in their Complaint regarding the public kayak launch are stricken, specifically:
  - a. As to paragraph 7(c), any allegations related to, arising from, or affected by the public kayak launch are stricken;
  - b. Paragraph 7(d) is stricken in its entirety;
  - c. As to paragraph 52, any allegations related to, arising from, or affected by the public kayak launch are stricken;
  - d. As to paragraph 56, any allegations related to, arising from, or affected by the public kayak launch are stricken; and
2. Plaintiffs shall file an Amended Complaint in compliance with this Order within fifteen (15) days of the issuance of this Order.

**IT IS SO ORDERED!**

*[Prepared for electronic signature]*



Georgetown Common Pleas

**Case Caption:** Emanuel Stikas , plaintiff, et al VS Georgetown County , defendant,  
et al  
**Case Number:** 2024CP2200577  
**Type:** Order/Other

IT IS SO ORDERED

s/ David P. Caraker, Jr.

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL )  
CIRCUIT )

C/A NUMBER: 2024-CP-22-00577

Emanuel Stikas, Trustee of the Stikas )  
Revocable Living Trust, dated February 1, )  
2023, d/b/a The Village Shops; Donald W. )  
Reid and Katheryn W. Reid, husband and )  
wife; Elizabeth Gattshall Hawkins Martin; )  
Tall House Farm, L.P., )

Plaintiffs, )

vs. )

Georgetown County; David E. Tanner; )  
RCB Land Holdings, LLC; Magic Oaks, )  
LLC, )

Defendants. )

**DEFENDANTS RCB LAND )  
HOLDINGS, LLC AND MAGIC )  
OAKS, LLC'S MEMORANDUM IN )  
OPPOSITION TO PLAINTIFFS' )  
MOTION TO ALTER OR AMEND )  
JUDGMENT )**

\_\_\_\_\_  
Magic Oaks, LLC, )

Third Party Plaintiff, )

vs. )

Keep It Green, Inc., )

Third Party Defendant )  
\_\_\_\_\_

This Court's Order of October 15, 2024 granting Defendants' Motion to Strike, in and of itself, fully addresses and resolves Plaintiffs' Motion. The Court correctly found Plaintiffs' allegations regarding the public kayak launch moot and immaterial because the contingency upon which the public kayak launch was dependent will not occur. Plaintiffs' current Motion seeks to belabor this non-issue and use the Court's time and resources to litigate a public kayak launch which will not and cannot happen. Defendants rely upon and incorporate this Court's

Order, Defendants' prior filings, and Defendants' oral arguments on this matter responsive to Plaintiffs' Motion.

**I. The Court Properly Struck Immaterial Allegations from Plaintiffs' Complaint**

Rule 12(f) allows the court to strike any immaterial matter. Rule 12(f), SCRCP. "It is well settled that a motion to strike is addressed to the sound discretion of the trial court." Totaro v. Turner, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979) (citing Funderburke v. Johnson, 253 S.C. 430, 171 S.E.2d 597 (1969); J. M. S., Inc. v. Theo, 241 S.C. 394, 128 S.E.2d 697 (1962)). "The trial court's decision will not be reversed absent an abuse of discretion." Id. (citing Ellen v. King, 227 S.C. 481, 88 S.E.2d 598 (1955); Rimer v. State Farm Mutual Automobile Insurance Co., 248 S.C. 18, 148 S.E.2d 742 (1966)).

Plaintiffs' Complaint alleged that Plaintiffs will suffer injuries due to a public kayak launch that was proposed for Defendants' residential development by a County Council member. However, the inclusion of the public kayak launch was contingent upon access through adjoining property. This contingency was clearly identified in the development plan, but Plaintiffs ignored this and brought their claims prematurely. The necessary access through adjoining property will not be provided. Thus, the contingency upon which the public kayak launch was dependent will not occur. The public kayak launch is not part of the plan and the injuries and issues Plaintiffs complain of do not exist. As such, Plaintiffs' allegations regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission are moot and immaterial, and the Court properly ordered these allegations stricken from the Complaint.

Still, Plaintiffs are asking the Court to use its time and resources to consider and rule upon something that does not, cannot, and will not exist. Plaintiffs seek to stall and delay this action as a means to hinder and ultimately prevent Defendants' development of a residential

neighborhood on the property at issue. Rule 12(f) provides the Court the ability to handle this exact situation. “Rule 12(f) empowers courts to strike immaterial matter to promote judicial efficiency and avoid needless expenditure of time and money.” Cnty. of Dorchester, S.C. v. AT & T Corp., 407 F. Supp. 3d 561 (D.S.C. 2019) (citing Gibson v. Confie Ins. Grp. Holdings, Inc., No. 2:16-cv-02872-DCN, 2017 WL 2936219, at \*12 (D.S.C. July 10, 2017)). Here, the Court has properly exercised its power under Rule 12(f) to strike Plaintiffs’ immaterial allegations to promote judicial efficiency and avoid needless expenditure of time and money over a matter that does not exist.

## II. Plaintiffs’ Allegations Regarding the Kayak Launch are Irrelevant

Plaintiffs allege that the public kayak launch raises various issues that directly impact neighboring landowners and the public and even allege that Plaintiffs will be injured due to the public kayak launch and public access on adjoining property. None of these issues can come to fruition and are irrelevant since there will be no public kayak launch.

Plaintiffs claim that these allegations are relevant to one of their actions for declaratory judgment. They are not. A declaratory judgment action must show the existence of a justiciable controversy defined as a real and substantial controversy appropriate for judicial determination. Carolina All. for Fair Emp. v. S.C. Dep’t of Lab., Licensing, & Regul., 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999) (internal citations omitted) (emphasis added). The public kayak launch will not be put on the property, thus no real and substantial controversy exists regarding the public kayak launch. Allegations regarding the public kayak launch are irrelevant to an action for declaratory judgment.

### III. The Court's Order Does Not Dismiss Plaintiffs' Causes of Action

Plaintiffs' argument that the Order effectively dismisses their cause of action regarding the alleged ultra vires nature of the ordinance approval is a misrepresentation of Plaintiffs' cause of action. Plaintiffs' first cause of action seeks declaratory judgment that Georgetown County Council did not have the authority to amend the ordinances at issue because the pre-existing zoning was allegedly void as ultra vires. This has nothing to do with the public kayak launch.

Furthermore, Plaintiffs' other declaratory judgment actions deal with claims of violations of the Enabling Act and Georgetown County Ordinances. These actions are not dependent on the public kayak launch, but rather focus on issues with compatibility of the rezoning with the comprehensive plan and promoting the purposes of the Enabling Act such as public health and public welfare. The striking of Plaintiffs' allegations regarding the public kayak launch do not dismiss Plaintiffs' causes of action.

Based upon the foregoing, Plaintiffs' Motion to Alter or Amend should be denied.

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s/ Zachary J. Crowl  
David B. Miller, SC Bar #10296  
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina  
November 6, 2024

<b>STATE OF SOUTH CAROLINA</b>	:	<b>IN THE COURT OF COMMON PLEAS</b>
<b>COUNTY OF GEORGETOWN</b>	:	<b>FIFTEENTH JUDICIAL CIRCUIT</b>
	:	
<b>Emanuel Stikas, Trustee of the Stikas</b>	:	<b>CASE NO. 2024 CP 2200577</b>
<b>Revocable Living Trust, dated</b>	:	
<b>February 1, 2023, d/b/a The Village</b>	:	<b>SUMMONS TO PROVISIONAL</b>
<b>Shops; Donald W. Reid and Katheryn</b>	:	<b>AMENDED COMPLAINT</b>
<b>W. Reid, husband and wife; Elizabeth</b>	:	
<b>Gattshall Hawkins Martin; Tall House</b>	:	<b>Declaratory Judgment</b>
<b>Farm, L.P.,</b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Jury Trial Demanded</b>
	:	
<b>v.</b>	:	
	:	
<b>Georgetown County; David E. Tanner;</b>	:	
<b>RCB Land Holdings, LLC; Magic</b>	:	
<b>Oaks, LLC</b>	:	
	:	
<b>Defendants</b>	:	

**SUMMONS TO PROVISIONAL AMENDED COMPLAINT**

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Provisional Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Provisional Amended 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 Provisional Amended Complaint within the time aforesaid, Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Provisional Amended Complaint.

Respectfully submitted,

/s/ F. Patrick Hubbard  
F. Patrick Hubbard (SC Bar #12614)

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

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ATTORNEY FOR PLAINTIFFS

November 15, 2024

<b>STATE OF SOUTH CAROLINA</b>	:	<b>IN THE COURT OF COMMON PLEAS</b>
<b>COUNTY OF GEORGETOWN</b>	:	<b>FIFTEENTH JUDICIAL CIRCUIT</b>
	:	
<b>Emanuel Stikas, Trustee of the Stikas</b>	:	<b>CASE NO. 2024 CP 2200577</b>
<b>Revocable Living Trust, dated</b>	:	
<b>February 1, 2023, d/b/a The Village</b>	:	<b>PROVISIONAL AMENDED</b>
<b>Shops; Donald W. Reid and Katheryn</b>	:	<b>COMPLAINT</b>
<b>W. Reid, husband and wife; Elizabeth</b>	:	
<b>Gattshall Hawkins Martin; Tall House</b>	:	<b>Declaratory Judgment</b>
<b>Farm, L.P.,</b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Jury Trial Demanded</b>
	:	
<b>v.</b>	:	
	:	
<b>Georgetown County; David E. Tanner;</b>	:	
<b>RCB Land Holdings, LLC; Magic</b>	:	
<b>Oaks, LLC</b>	:	
	:	
<b>Defendants</b>	:	

**PROVISIONAL AMENDED COMPLAINT**

Plaintiffs filed a Declaratory Judgment Complaint against Defendants named herein on June 18, 2024. On August 23, 2024, Defendants RCB Land Holdings, LLC, and Magic Oaks, LLC, hereinafter "Developer Defendants" filed a Rule 12(f), SCRCP, Motion to Strike portions of Plaintiffs' Complaint. Plaintiffs filed an Opposition to Defendants' Motion to Strike on September 16, 2024. On October 15, 2024, the Court issued an Order granting Developer Defendants' Motion to Strike and directing Plaintiffs to file an Amended Complaint in compliance with said Order within fifteen (15) days of the Order.

On October 25, 2024, Plaintiffs filed a timely Motion to Alter or Amend the Order of October 15, 2024, pursuant to Rule 59(e), SCRCP, on the bases set forth therein, *inter alia*, that the Order improperly strikes matters from the Complaint that are relevant and critical to Plaintiffs' cause of action and effectively dismisses claims raised. Plaintiffs' Rule 59(e) Motion to Alter or Amend respectfully requests the Court to extend the deadline to file an Amended

Complaint imposed by the Order, until after such time as the Court rules on Plaintiffs' Rule 59(e) Motion to Alter or Amend. In an email to Counsel dated October 28, 2024, setting forth filing deadlines, the Court directed Plaintiffs to file an Amended Complaint by November 15, 2024, the same date Defendants' response to Plaintiffs' Rule 59(e) Motion to Alter or Amend is due, and before a decision will be rendered by the Court on Plaintiffs' motion.

Accordingly, as directed by the Court Order of October 15, 2024, and the subsequent email from the Court dated October 28, 2024, and without waiving any rights or objections, Plaintiffs file this Provisional Amended Complaint which eliminates causes of action Plaintiffs believe are viable and have been improperly stricken. In filing this Provisional Amended Complaint, Plaintiffs reserve all rights they would have if this Provisional Amended Complaint had not been filed, including but not limited to all rights to appeal, raise objections, further amend the Complaint or Provisional Amended Complaint, withdraw the Provisional Amended Complaint and proceed according to the original Complaint, or any other action that Plaintiffs could have taken but for the filing of this Provisional Amended Complaint.

Reserving all rights, objections, and actions as set forth above, Plaintiffs, by and through their attorneys, file this Provisional Amended Complaint seeking Declaratory Judgment against Defendants named herein as follows:

**INTRODUCTION & SUMMARY**

1. This Complaint involves challenge to an approval by Georgetown County Council of a rezoning application to allow residential development on a parcel of land along the Salt Marsh in Pawleys Island, Georgetown County, South Carolina, which was designated by the Georgetown County Comprehensive Plan as "Conservation Preservation."

2. On April 23, 2024, County Council approved this rezoning request by Ordinances 24-05 and 24-06. Changes were made to the proposed ordinance text and plan approved by County Council without being "first submitted to the planning commission for review and recommendation." This approach was a violation of the requirements of Section 6-29-760(A) of the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Enabling Act"), S.C. Code, Section 6-29-310, *et seq.*

3. The Georgetown County Comprehensive Land Use Plan does not permit residential or commercial development on land designated "Conservation Preservation," and severely restricts residential density increases in the South Waccamaw Neck where this parcel is located.

4. The land in question is known as "Magic Oaks," which consists of primarily forested land containing significant wetlands and which lies on the east side of Highway 17, between the iconic "Hammock Shops" on the north and "Village Shops" on the south, running in an easterly direction from Highway 17 to the Pawleys Island Salt Marsh.

5. Ordinance 24-05 changed an 8.3 acre parcel from a Conservation Preservation Comprehensive Plan designation, which allows no residential development, to Medium Density Residential, which permits up to 5 dwelling units per acre or up to 41 dwelling units on the 8.3 acre parcel. Ordinance 24-05 is attached hereto as Exhibit "1," and incorporated herein by reference.

6. Ordinance 24-06 approved Flexible Design District zoning for development of 27 homes and a public kayak launch on the Salt Marsh. Ordinance 24-06 is attached hereto as Exhibit "2," and incorporated herein by reference.

7. As indicated at Paragraph 2 above, Ordinances 24-05 and 24-06 were approved in violation of state law and local ordinances, and are null, void and of no force or effect for the following reasons as set forth in detail hereinafter:

- a. The pre-existing zoning that the ordinances purport to amend was void as *ultra vires* because it conflicted with the Enabling Act and was not capable of being amended.
- b. Georgetown County Council did not have authority to amend ordinances that were void and invalid as *ultra vires*.
- c. Changes were made to the proposed ordinance text and plan approved by County Council without being "first submitted to the planning commission for review and recommendation" in violation of the requirements of Section 6-29-760(A) of the Enabling Act, *to wit*:

Changes were made on April 4, 2024, and April 5, 2024, and other new information came to light that had not been reviewed or considered by Planning Commission. The April 4, 2024, changes involved drainage easements and public sidewalks. The April 4 and April 5 changes and the new information were after the February 15, 2024, Planning Commission public hearing and were not part of the plan reviewed, considered and recommended by Planning Commission as required by Section 6-29-760(A) of the Enabling Act which states as follows with respect to the procedure to be followed when enacting or amending zoning regulations or maps:

No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure

be first submitted to the planning commission for review and recommendation.

Instead of sending the matter back to Planning Commission for review, consideration and recommendation of the changes and new information, County Council approved the rezoning.

- d. Adjoining landowners disputed the wetlands delineation submitted by the Developer to County Council at Second Reading. The adjoining landowners requested permission to have an independent wetlands delineation conducted at their own expense. Tanner refused to allow access to the property to have an independent wetlands study performed. County Council refused to require him to do so and failed to submit the issue back to Planning Commission.
- e. Georgetown County Ordinance 611.216 requires that the property on which taverns, nightclubs or billiard halls are located must be at least 300 feet from any residentially zoned property. Approval of this rezoning for a residential use within 300 feet of existing taverns and nightclubs caused adjoining commercial landowners to be in violation of this ordinance, thereby substantially reducing the value of their land.
- f. Approval of Ordinances 24-05 and 24-06 was otherwise improper, arbitrary and capricious and deprived Plaintiffs of constitutional, due process, and other rights provided by law as set forth herein.

**PARTIES**

**Plaintiffs**

8. Plaintiff Emanuel Stikas, Trustee of the Stikas Revocable Living Trust, dated February 1, 2023, as amended, (hereinafter "Village Shops") is an adult individual residing in Georgetown County, South Carolina, with a mailing address of P.O. Box 1541, Pawleys Island, South Carolina, who owns a 1.52 acre parcel of land identified as Georgetown County Tax Map No. 04-0158-060-04-00, that directly adjoins the Magic Oaks parcel and is improved as a commercial complex known as the Village Shops, consisting of 10 units of commercial rental space. The Stikas family has owned and operated the parcel as the Village Shops since February 28, 2003, when it was acquired by Deed recorded in Deed Book 1359, Page 156, in the Office of Recorder of Deeds for Georgetown County.

9. Plaintiffs, Donald W. Reid and Katheryn W. Reid, husband and wife, (hereinafter "Reids"), are adult individuals who own and reside at 101 Marsh Alee Court, Pawleys Island, Georgetown County, South Carolina, on land that directly adjoins Magic Oaks, identified as Tax Map No. 04-0158-059-01-00, recorded in Deed Book 1277, Page 251, in the Office of Recorder of Deeds for Georgetown County on June 4, 2002.

10. Plaintiff, Elizabeth Gattshall Hawkins Martin, (hereinafter "Elizabeth Martin"), is an adult individual residing at 135 Haunted Trail, Pawleys Island, Georgetown County, South Carolina, who owns and resides on 2.9 acres of land that directly adjoins Magic Oaks, identified as Tax Map No. 04-0158-061-06-00, recorded in Deed Book 691, Page 296, in the Office of Recorder of Deeds for Georgetown County on April 23, 1996.

11. Plaintiff, Tall House Farm, L.P., is a Domestic Limited Partnership organized and existing pursuant to the laws of the State of Georgia, having a principal office at 6771 H.

Abercrombie Road, Murrayville, Georgia, 30564, which owns a home at 70 King Arthur's Court, Pawleys Island, Georgetown County, South Carolina, identified as Tax Map No. 04-0158-059-02-00, occupied by Jane E. White and Joseph Amerling, husband and wife, recorded in Deed Book 1292, Page 267, in the Office of Recorder of Deeds for Georgetown County on July 19, 2002.

**Defendants**

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

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

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

13. 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).

14. 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.

15. Defendant, David E. Tanner, (hereinafter "Tanner"), an adult individual residing at 10798 Ocean Highway, Pawleys Island, Georgetown County, South Carolina, was the owner

of Magic Oaks at the time of the zoning change application, pursuant to Deed dated April 10, 2004, recorded in Georgetown County Deed Book 1371, Page 296, and incorporated herein by reference.

16. Upon information and belief, Tanner inherited Magic Oaks from his employer, Wilson Reese Hart, who died on April 18, 1997. Tanner acquired title to the land by Deed of Distribution dated August 5, 1998, recorded in Deed Book 891, Page 122 on August 6, 1998 in the Office of the Register of Deeds of Georgetown County, South Carolina. Thereafter, on January 9, 1999, Tanner transferred the property to Samuel E. Tanner, Trustee, pursuant to an unrecorded Agreement dated December 21, 1998, by Deed recorded at Deed Book 939, Page 323 on January 12, 1999, in the Office of the Register of Deeds of Georgetown County, South Carolina. On April 9, 2003, Samuel E. Tanner, Trustee, pursuant to the same unrecorded Agreement dated December 21, 1998, transferred the property back to David Tanner by Deed recorded at Deed Book 1371, Page 296 on April 10, 2003, in the Office of the Register of Deeds of Georgetown County, South Carolina.

17. Prior to expiration of the 60 day period within which interested parties may challenge the validity of zoning amendments pursuant to Section 6-29-760(D) of the Enabling Act, Tanner executed a Deed on June 6, 2024, recorded in the Office of the Register of Deeds of Georgetown County, South Carolina on June 10, 2024, at Deed Book 4681, Page 258, transferring the property to Magic Oaks, LLC.

18. Defendant, Magic Oaks, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 1905 Main Street, Conway, South Carolina 29526, and is the current owner of the property as set forth above.

19. Defendant, RCB Land Holdings, LLC, (hereinafter "RCB") is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 1717 4th Ave., Unit H, Conway, South Carolina 29526. RCB was referenced as the developer in the zoning change application and plans submitted to the county.

**BACKGROUND**

**Conservation Preservation**

20. The Magic Oaks parcel, identified as Tax Map No. 04-0203-155-00-00, consists of a total of 19.03 acres that was at all times pertinent hereto designated in its entirety by the Georgetown County Comprehensive Land Use Plan and Maps as "Conservation Preservation" which permits no residential or commercial use or development.

21. Upon information and belief, the Conservation Preservation designation had been in place since original approval of the 2007 Georgetown County Comprehensive Land Use Plan and Maps and then was reapproved with the 2015 Comprehensive Land Use Plan update.

22. Under the provisions of the Comprehensive Land Use Plan, land designated as "Conservation Preservation" is not required to be in a Conservation Easement nor is there any other formal prerequisite or condition for the Conservation Preservation designation.

23. Upon information and belief, at all times pertinent hereto and for as long as Magic Oaks had been designated by the Comprehensive Plan as "Conservation Preservation," the owner received a substantial property tax benefit from having it classified as "Agricultural" which was consistent with the Conservation Preservation Comprehensive Plan designation.

**Pre-existing Zoning was *ultra vires***

24. Section 6-29-720(B) of the Enabling Act requires that [zoning regulations] *must* be made *in accordance with the comprehensive plan* for the jurisdiction. (emphasis added).

25. After Georgetown County Council approved the designation of Magic Oaks as "Conservation Preservation," in or around 2007, it failed to bring conflicting pre-existing residential and commercial zoning that had been in place on Magic Oaks since the 1970s, "into accordance with the Comprehensive Plan" as required by the Enabling Act.

26. The Introduction to the Georgetown County Comprehensive Plan, originally enacted in 1997, which was in effect at the time of this zoning and map change, states that:

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. (p. 1-4).

One of the most important implementation measures is the *immediate* preparation of revisions to the Georgetown County Zoning Ordinance ... 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. (pp. 1-5 and 1-6)

27. To the extent that pre-existing zoning on the Magic Oaks parcel conflicted with the Enabling Act requirement that zoning regulations "*must* be in accordance with the comprehensive plan," it is void and unenforceable as *ultra vires*.

28. As a consequence of Georgetown County's failure to follow the plain and unambiguous requirements of the Enabling Act and the mandates of its own Comprehensive Plan, the following outdated and conflicting zoning remained "on the books" for the Magic Oaks parcel that was completely irreconcilable with the Comprehensive Plan designation of "Conservation Preservation":

- a. 5.08 acres of "General Residential" zoning which allowed high density, multi-family residential development, and

- b. 3.22 acres of "General Commercial" zoning which allowed commercial development.

29. The remaining 10.73 acres of Magic Oaks were properly zoned Conservation Preservation consistently with the Comprehensive Plan.

**Tanner Rezoning Application**

30. On February 2, 2024, Tanner, by his agent, submitted a zoning change application and conceptual plan (hereinafter "Tanner Rezoning Application") requesting to change the 3.22 acres of General Commercial zoning and the 5.08 acres of General Residential zoning to an 8.3 acre Flexible Design District to construct 27 single family homes. A true and correct copy of said application and conceptual plan is attached hereto as Exhibit "3," and incorporated herein by reference.

**LAW APPLICABLE TO ZONING AMENDMENTS**

**South Carolina Enabling Act Requirements**

31. Enabling Act Section 6-29-760(A) states that:

No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation.

32. The South Carolina Enabling Act *requires* zoning and land development to be consistent with the Comprehensive Plan as evidenced by the following provisions:

- a. Section 6-29-720(B), requires that zoning regulations “*must* be made in accordance with the comprehensive plan for the jurisdiction.” (emphasis added).
- b. Section 6-29-720(A), provides that a zoning ordinance is to “implement the comprehensive plan.”

- c. Section 6-29-540, requires that the “location, character, and extent” of new development must be compatible “with the comprehensive plan of the community.”
- d. Section 6-29-1120(5) states that 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.

33. Enabling Act, Section 6-29-720(B), requires that zoning regulations “be made with a view to promoting the purposes set forth throughout this chapter," and Section 6-29-710, sets forth those purposes to include:

promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare ... to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets ... to protect and preserve scenic, historic, or ecologically sensitive areas ... to regulate the density and distribution of populations ... to further the public welfare in any other regard ...

**Georgetown County Requirements**

34. Georgetown County Ordinance 1701 requires as follows with respect to amending zoning ordinances:

“When the public necessity, convenience, general welfare or good zoning practice justifies such action and after the required review and report of the Planning Commission, the County Council may undertake the necessary steps to amend the Zoning Ordinance.”

35. Georgetown County Planning Commission Bylaws state in Article V, Section 2 that: "All zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan."

**COMPREHENSIVE PLAN REQUIREMENTS**

36. The Georgetown County Comprehensive Land Use Plan in effect at the time of

this zoning and map change, states that it “will serve as a basis for zoning map amendments [and] zoning code revisions ... so the future growth and development of Georgetown County can occur according to local goals and objectives.” (p. 1).

37. The Comprehensive Plan in effect at the time of this zoning and map change states as follows with respect to residential density and Land Use Goals for the South Waccamaw Neck where Magic Oaks is located:

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. (p. 23).

Density increases in new development should only be allowed if open space is provided by use of planning tools: as part of a Planned Development District, Transfer Development Rights, Cluster Development, or land placed in a Conservation Easement, etc. (p. 25) (emphasis added).

38. The Comprehensive Plan allows density increases only when there is a corresponding density decrease or elimination through use of one of the enumerated planning tools specifically designed to offset a density increase. In the present case, the request was to increase residential density on a parcel that allowed no residential density without providing a corresponding density decrease or elimination as required by the Comprehensive Plan.

39. Density restrictions were deliberately included in the Comprehensive Plan because the South Waccamaw Neck was then and is now facing unprecedented population growth resulting in critically overburdened infrastructure, increasing volumes of traffic that exceed road design capacity, increasing numbers of serious and life-threatening motor vehicle accidents, increasing flooding and stormwater problems as a consequence of clear cutting and

filling in wetlands, as well as other environmental and safety challenges resulting from overdevelopment of the limited geographic space of the South Waccamaw Neck.

40. These particular density restrictions were included to prevent the kinds of arbitrary increases in density requested in the Tanner zoning change application which proposed to increase residential density from zero (Conservation Preservation) to medium density without offering any need, reason, or public benefit, or otherwise meeting the requirements of the Comprehensive Plan.

41. The Tanner rezoning request was in direct conflict with the explicit and unambiguous language of the Comprehensive Plan text and maps.

42. A decision to change zoning to allow increased density over the current Comprehensive Plan designation in contravention of the Comprehensive Plan density restrictions sets a precedent for arbitrary land use decisions that serve only to promote the interests of a single landowner applicant.

43. The cumulative incremental impact of density increases in the South Waccamaw Neck has had, would have, and is having devastating and far-reaching negative consequences.

**PLANNING COMMISSION PUBLIC HEARING**

44. The Planning Commission public hearing was held on February 15, 2024.

45. The Planning Commission was improperly informed by the Planning Department that it was considering a request to "downzone" which would reduce residential density. In fact, the request proposed to substantially increase density by changing the Comprehensive Plan Map designation from "Conservation Preservation" to "Medium Density Residential."

46. Without reviewing, discussing or considering conformity or conflicts with the Comprehensive Plan text and maps as required by the South Carolina Enabling Act, Georgetown

County Ordinances, and its own Bylaws, the Planning Commission voted to recommend approval of the amendments based on the inaccurate characterization of this matter as a downzoning.

47. The Planning Commission did not review, discuss or consider relevant provisions of the Comprehensive Land Use Plan, including but not limited to the following:

- a. The parameters and significance of the Conservation Preservation designation of the Magic Oaks parcel.
- b. Provisions that specifically restrict residential density increases in the South Waccamaw Neck.
- c. Provisions that were inconsistent with the proposed zoning amendment.
- d. Provisions that were inconsistent with pre-existing zoning.

48. The Planning Commission did not discuss or consider whether the applicant demonstrated a "need" for the zoning change as required by the application or whether public necessity, convenience, general welfare or good zoning practice justified the requested amendments as required by state and local law.

49. The Planning Commission did not note the conflicts with the Comprehensive Plan in a report to Council as required by Georgetown County Ordinance 1701 and its Bylaws.

50. The decision by Planning Commission to recommend approval of the Tanner proposed amendments was arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

**COUNTY COUNCIL DECISION**

51. Proposed Ordinances for the Tanner rezoning were placed on the County Council agenda for First Reading on February 27, 2024. Second Reading was deferred from March 12,

2024, until April 9, 2024, and Third Reading was April 23, 2024.

**Second Reading**

52. On April 4 and April 5, 2024, after the Planning Commission Public Hearing and First Reading of County Council, but prior to Second and Third Readings, changes were made to the text and plan of the proposed ordinances. These changes were not part of the plan reviewed, considered and recommended by Planning Commission on February 15, 2024. A true and correct copy of the modified proposed plan along with the revised ordinance and Agenda Request Form outlining the revisions and modifications is attached hereto as Exhibit "4," and incorporated herein by reference.

53. According to Section 6-29-760(A) of the Enabling Act, these changes should have been sent back to Planning Commission for its review, consideration and recommendation as part of the whole plan and proposed ordinances before being considered by County Council. Instead, the modified rezoning proposal was improperly placed on the County Council agenda for Second and Third readings without input, consideration or recommendation by the Planning Commission.

54. Pursuant to procedure specifically set forth in the Enabling Act, County Council did not have authority to consider or approve the modified zoning amendment ordinances without a recommendation by Planning Commission.

55. County Council voted 6-1 to approve the proposed zoning change with modifications at Second Reading on April 9, 2024.

56. Approval of the Tanner rezoning by County Council is a violation of Plaintiffs' due process rights and has caused and will cause injury to Plaintiffs and their property as follows: Negative impact on character, aesthetics and enjoyment; additional stormwater and

flooding problems; increase in existing stormwater and flooding problems; decrease in value of property; increased traffic and burden on over-burdened existing infrastructure that is operating beyond.

**Third Reading**

57. At Third Reading on April 23, 2024, the Planning Director and the County Attorney advised Council in response to a question that the Comprehensive Plan is to be brought into compliance with zoning ordinances and that the Comprehensive Plan must be adjusted to accommodate zoning ordinances when they are "out of sync." Council was informed that it is the regular practice in Georgetown County to amend the Comprehensive Plan to accommodate zoning.

58. Council members were given instructions that were in direct conflict with the requirements of the Enabling Act.

59. Based on erroneous instructions, County Council voted 6-1 to approve Ordinances 24-05 and 24-06 which contained modifications that had not been reviewed or considered by Planning Commission.

60. The decision by Council and the underlying instructions which formed the basis of the decision were in direct conflict with the plain language of the Enabling Act, Georgetown County Ordinances and the mandates of the Georgetown County Comprehensive Land Use Plan

61. County Council did not review, discuss or consider relevant provisions of the Comprehensive Land Use Plan, including but not limited to the following:

- a. The parameters and significance of the Conservation Preservation designation of the Magic Oaks parcel.

- b. Provisions that specifically restrict residential density increases in the South Waccamaw Neck.
- c. Provisions that were inconsistent with the proposed zoning amendment.
- d. Provisions that were inconsistent with pre-existing zoning.

62. County Council did not discuss or consider whether the applicant demonstrated a "need" for the zoning change as required by the rezoning application or whether public necessity, convenience, general welfare or good zoning practice justified the requested amendments as required by state and local law.

63. County Council did not receive a report from Planning Commission noting the conflicts with the Comprehensive Plan as required by Georgetown County Ordinance 1701.

64. Without reviewing, discussing or considering conformity or conflicts with the Comprehensive Plan text and maps as required by the South Carolina Enabling Act and Georgetown County Ordinances, and without Planning Commission's review and recommendation of the plan modifications as required by Section 6-29-760(A) of the Enabling Act, County Council voted to approve the ordinances.

65. The following additional matters were brought to the attention of County Council which approved the rezoning without proper investigation or inquiry into the issues raised:

- a. Approval of this rezoning for a residential use within 300 feet of existing taverns and nightclubs would cause adjoining commercial landowners to be in violation of Georgetown County Ordinances.
- b. New information pertaining to the status of wetlands, investigation by the Army Corps of Engineers, the wetlands delineation submitted by the

developer, and the Conservation Preservation status of Magic Oaks that had not been reviewed or considered by Planning Commission.

- c. Adjoining landowners disputed the wetlands delineation submitted by the Developer's expert and requested permission to have an independent wetlands delineation conducted at their own expense. Tanner refused to allow the independent wetlands expert access to the property to have an independent wetlands study performed.

66. The decision by County Council to approve Ordinances 24-05 and 24-06 was unauthorized, improper, arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

**JURISDICTION, STANDING AND VENUE**

67. Paragraphs 1 through 66, above, are incorporated by reference as though fully set forth herein.

68. 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.

69. 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.

70. Plaintiffs have statutory standing to challenge these ordinances as follows:  
(a) South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-760(C), states that “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment.” All Plaintiffs are owners of land that adjoins

Magic Oaks; and (b) South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, states:

Any 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 affected by approval of Ordinances 24-05 and 24-06, and they have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions.

71. Alternatively and in addition, 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 this zoning change to allow a residential use and increase in residential density on property that directly adjoins land owned by them and that did not previously allow any residential use or density; (b) the injury was caused by the improper approval of the ordinances; and (c) the injury is redressable by a favorable decision of this court declaring that these ordinances are improper, null and void and requiring Georgetown County to perform its required duties.

72. 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.

**COUNT I**

**DECLARATORY JUDGMENT**

**Pre-existing Zoning was Void as ultra vires**

73. Paragraphs 1 through 72, above, are incorporated by reference as though fully set forth herein.

74. Plaintiffs seek declaratory judgment from this Court that:

- a. Ordinances 24-05 and 24-06 are invalid as they purport to amend pre-existing zoning that was void as *ultra vires* because it conflicted with the South Carolina Comprehensive Planning Enabling Act, (hereinafter “Enabling Act”), S.C. Code, Section 6-29-310, *et seq.*, and was not capable of being amended.
- b. Georgetown County Council did not have authority to amend ordinances that were void and invalid as *ultra vires*.

**COUNT II**

**DECLARATORY JUDGMENT**

**Violations of South Carolina Enabling Act**

75. Paragraphs 1 through 74, above, are incorporated by reference as though fully set forth herein.

76. Plaintiffs seek declaratory judgment from this Court that Georgetown County Council's approval of Ordinances 24-05 and 24-06 was a violation of Enabling Act provisions, including but not limited to the failure to comply with Section 6-29-760(A) and other provisions as set forth in paragraphs 31 - 33 above, rendering them null, void and of no force or effect.

**COUNT III**

**DECLARATORY JUDGMENT**

**Violations of Georgetown County Ordinances and Procedure**

77. Paragraphs 1 through 76, above, are incorporated by reference as though fully set forth herein.

78. Plaintiffs seek declaratory judgment from this Court that Georgetown County Council's approval of Ordinances 24-05 and 24-06 was a violation of Georgetown County Ordinances and procedure, including the requirement that Georgetown County comply with state law, including Section 6-29-760(A) of the Enabling Act, rendering them null, void and of no force or effect.

**COUNT IV**

**DECLARATORY JUDGMENT**

**Adjoining Commercial Landowners**

79. Paragraphs 1 through 78, above, are incorporated by reference as though fully set forth herein.

80. Plaintiffs seek declaratory judgment from this Court that Georgetown County Council's approval Ordinances 24-05 and 24-06 caused adjoining commercial landowners to be in violation of local ordinances as set forth in paragraphs 7(e) and 65(a), which constitutes a violation of constitutional due process and other rights.

**COUNT V**

**ATTORNEYS FEES FROM GEORGETOWN COUNTY**

81. Paragraphs 1 through 80, above, are incorporated by reference as though fully set forth herein.

82. 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.

83. 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. Ordinances 24-05 and 24-06 are null, void and of no force or effect as set forth herein.
- b. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County.
- c. Such other relief as the court deems just and appropriate.

Respectfully submitted,

/s/ F. Patrick Hubbard  
F. Patrick Hubbard (SC Bar #12614)

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Room 312  
Columbia, SC 29208  
(803) 422-6762  
phubbard@law.sc.edu  
ATTORNEY FOR PLAINTIFFS

November 15, 2024

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

KIGA  
P.O. Box 1922  
Pawleys Island, SC 29585  
(843) 325-7795  
kig.advocacy@gmail.com  
ATTORNEY FOR PLAINTIFFS

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )  
)

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL )  
CIRCUIT )  
C/A NUMBER: 2024-CP-22-00577

Emanuel Stikas, Trustee of the Stikas )  
Revocable Living Trust, dated February 1, )  
2023, d/b/a The Village Shops; Donald W. )  
Reid and Katheryn W. Reid, husband and )  
wife; Elizabeth Gattshall Hawkins Martin; )  
Tall House Farm, L.P., )  
Plaintiffs, )

**SUMMONS TO COUNTERCLAIMS )  
AND THIRD PARTY COMPLAINT )**

vs. )  
Georgetown County; David E. Tanner; )  
RCB Land Holdings, LLC; Magic Oaks, )  
LLC, )  
Defendants. )

\_\_\_\_\_)  
)  
)  
Magic Oaks, LLC, )  
Third Party Plaintiff, )

vs. )  
)  
Keep It Green, Inc., )  
Third Party Defendant )  
\_\_\_\_\_)

TO: THE ABOVE-NAMED PLAINTIFFS AND THIRD PARTY DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaims and Third Party Complaint on the subscribers at their office at 1000 29<sup>th</sup> Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaims and Third Party

**EXHIBIT H**

Claims within the time aforesaid, Defendants/Third Party Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Counterclaims and Third Party Complaint and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.  
Post Office Box 357  
Myrtle Beach, South Carolina 29578-0357  
(843)448-2400  
Attorneys for Magic Oaks, LLC and RCB Land  
Holdings, LLC

s/ Zachary J. Crowl  
David B. Miller, SC Bar #10296  
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina  
November 26, 2024

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )  
)

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL  
CIRCUIT  
C/A NUMBER: 2024-CP-22-00577

Emanuel Stikas, Trustee of the Stikas )  
Revocable Living Trust, dated February 1, )  
2023, d/b/a The Village Shops; Donald W. )  
Reid and Katheryn W. Reid, husband and )  
wife; Elizabeth Gattshall Hawkins Martin; )  
Tall House Farm, L.P., )  
Plaintiffs, )

**ANSWER TO AMENDED  
COMPLAINT; COUNTERCLAIMS;  
& THIRD PARTY COMPLAINT ON  
BEHALF OF DEFENDANTS MAGIC  
OAKS, LLC AND RCB LAND  
HOLDINGS, LLC**

vs. )  
Georgetown County; David E. Tanner; )  
RCB Land Holdings, LLC; Magic Oaks, )  
LLC, )  
Defendants. )

\_\_\_\_\_)  
)  
Magic Oaks, LLC, )  
Third Party Plaintiff, )

vs. )  
)  
Keep It Green, Inc., )  
Third Party Defendant )

Defendants, Magic Oaks, LLC and RCB Land Holdings, LLC (hereinafter “Defendants”)  
by and through their undersigned attorneys, would hereby answer the Amended Complaint of the  
Plaintiffs as follows:

**FOR A FIRST DEFENSE**  
(General Objection)

1. Each and every allegation of Plaintiffs’ Amended Complaint not hereinafter specifically admitted, modified, qualified, or denied is denied and strict proof demanded thereof.

**FOR A SECOND DEFENSE**  
(Reservation of Defenses and Claims)

2. The allegations of the prior Defense are incorporated herein and made a part and parcel of this Second Defense.
3. Defendants reserve the right to assert, and do not waive, any additional or further defenses and/or claims as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

**FOR A THIRD DEFENSE**  
(Specific Responses)

4. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Third Defense.
5. As to the allegations of Paragraph 1, it is admitted that Plaintiffs are challenging a valid approval by Georgetown County Council of a rezoning application to rezone a parcel of land in Pawleys Island, Georgetown County, South Carolina. The parcel was shown on the Comprehensive Plan as Conservation Preservation, but was zoned General Commercial and General Residential. The rezoning application sought to rezone the parcel to a Flexible Design District.
6. As to the allegations of Paragraph 2, it is admitted that on April 23, 2024, County Council validly approved the rezoning request by Ordinance 24-06 and validly approved Ordinance 24-05 to amend the Comprehensive Plan Future Land Use Map. The remaining allegations of Paragraph 2 are denied and strict proof demanded thereof.
7. The allegations of Paragraph 3 are denied and strict proof demanded thereof.
8. The allegations of Paragraph 4 are admitted with the exception that the land does not contain significant wetlands. The land in question was surveyed by The Brigman

Company for potential wetlands and minimal wetlands were found on the property. This survey was submitted to the United States Army Corps of Engineers for review and request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated “Based on a review of the information you submitted, the delineated boundaries depicted on the map titled ‘Delineation Concurrence Exhibit Tanner Property’ and dated January 22, 2024, are a reasonable representation of the aquatic resources located onsite.” Thus the allegations of Paragraph 4 regarding wetlands are false and strict proof demanded thereof.

9. As to the allegations of Paragraph 5, Ordinance 24-05 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
10. As to the allegations of Paragraph 6, Ordinance 24-06 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

Additionally, pursuant to the letter dated August 14, 2023 from i3, LLC, on behalf of the Hammock Shops, the Hammock Shops landowner is “unable to provide access to the South boundary of Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch”. Thus, the contingency upon which the public kayak launch was dependent will not occur and there will be no public kayak launch.

11. The allegations of Paragraph 7 are denied and strict proof demanded thereof. Pursuant to the Order of this Court dated October 15, 2024, Plaintiffs were instructed to strike any allegations in Paragraph 7(c) related to, arising from, or affected by the public kayak launch. Paragraph 7(c) of Plaintiffs’ Amended Complaint makes allegations related to, arising from, and affected by the public kayak launch. As such, these allegations should be stricken and these allegations are therefore denied and strict proof demanded thereof.

Furthermore, pursuant to this Court's Order dated October 15, 2024, the final paragraph of 7(c) which was originally part of paragraph 7(d) of Plaintiff's initial Complaint was ordered to be stricken in its entirety from the Complaint.

12. As to the allegations of Paragraphs 8, 9, 10, and 11, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
13. As to the allegations of Paragraph 12, the South Carolina Uniform Declaratory Judgments Act speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof. The remaining allegations of Paragraph 12 are denied and strict proof demanded thereof.
14. The allegations of Paragraph 13 are admitted.
15. As to the allegations of Paragraph 14, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.
16. Upon information and belief, the allegations of Paragraph 15 are admitted.
17. As to the allegations of Paragraph 16, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
18. As to the allegations of Paragraph 17, it is admitted that Tanner executed a Deed on June 6, 2024, recorded in the Office of the Register of Deeds of Georgetown County, South Carolina on June 10, 2024, at Deed Book 4681, Page 258, transferring the property to Magic Oaks, LLC. As to the remaining allegations of Paragraph 17, S.C. Code Ann. § 6-29-760(D) speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
19. The allegations of Paragraph 18 are admitted.

20. As to the allegations of Paragraph 19, it is admitted that RCB Land Holdings, LLC is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 1717 4<sup>th</sup> Avenue, Unit H, Conway, SC 2526. The remaining allegations of Paragraph 19 are denied and strict proof demanded thereof.
21. As to the allegations of Paragraph 20, it is admitted that the Magic Oaks parcel consists of a total of 19.03 acres and was previously shown on the Comprehensive Plan, Future Land Use Map as Conservation Preservation. The remaining allegations of Paragraph 20 are denied and strict proof demanded thereof.
22. As to the allegations of Paragraphs 21, 22, and 23, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
23. As to the allegations of Paragraph 24, S.C. Code Ann. § 6-29-720 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
24. The allegations of Paragraph 25 are denied and strict proof demanded thereof.
25. As to the allegations of Paragraph 26, the Georgetown County Comprehensive Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
26. The allegations of Paragraphs 27 and 28 are denied and strict proof demanded thereof.
27. As to the allegations of Paragraph 29, it is admitted that the remaining 10.73 acres of Magic Oaks remain zoned Conservation Preservation.
28. The allegations of Paragraph 30 are admitted.
29. As to the allegations of Paragraph 31, S.C. Code Ann. § 6-29-760(A) speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

30. As to the allegations of Paragraph 32, the South Carolina Enabling Act speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
31. As to the allegations of Paragraph 33, S.C. Code Ann. §§ 6-29-720(B) and 6-29-710 speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.
32. As to the allegations of Paragraph 34, Georgetown County Ordinance 1701 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
33. As to the allegations of Paragraph 35, the Georgetown County Planning Commission Bylaws speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.
34. As to the allegations of Paragraphs 36 and 37, the Georgetown County Comprehensive Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
35. As to the allegations of Paragraph 38 regarding the Georgetown County Comprehensive Plan, the Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof. The remaining allegations of Paragraph 38 are denied and strict proof demanded thereof. The application for rezoning did not increase residential density. The original zoning of the parcel was General Commercial and General Residential. The Application for Rezoning requested a change to a Flexible Design District which provides for less residential density than previously allowed under the original zoning.

36. The allegations of Paragraphs 39, 40, 41, 42, and 43 are denied and strict proof demanded thereof.
37. The allegations of Paragraph 44 are admitted.
38. The allegations of Paragraph 45 are denied and strict proof demanded thereof.
39. As to the allegations of Paragraph 46, it is admitted that the Planning Commission voted to recommend approval of the amendments. The remaining allegations of Paragraph 46 are denied and strict proof demanded thereof.
40. The allegations of Paragraphs 47, 48, 49, and 50 are denied and strict proof demanded thereof.
41. The allegations of Paragraph 51 are admitted.
42. Pursuant to the Order of this Court dated October 15, 2024, Plaintiffs were instructed to strike any allegations in Paragraph 52 related to, arising from, or affected by the public kayak launch. Paragraph 52 of Plaintiffs' Amended Complaint makes allegations related to, arising from, and affected by the public kayak launch. As such, these allegations should be stricken and these allegations are therefore denied and strict proof demanded thereof.
43. The allegations of Paragraph 53 and 54 are denied and strict proof demanded thereof.
44. The allegations of Paragraph 55 are admitted.
45. The allegations of Paragraph 56 are denied and strict proof demanded thereof.
46. As to the allegations of Paragraph 57, Defendants are without information to form a belief thereto and therefore deny the same and demand strict proof thereof.
47. The allegations of Paragraph 58 are denied and strict proof demanded thereof.

48. As to the allegations of Paragraph 59, it is admitted that County Council voted to approve Ordinances 24-05 and 24-06. The allegations that this approval was based on erroneous instructions are denied and strict proof demanded thereof.
49. The allegations of Paragraphs 60, 61, 62, and 63 are denied and strict proof demanded thereof.
50. As to the allegations of Paragraph 64, it is admitted that County Council voted to recommend approval of the ordinances. The remaining allegations of Paragraph 64 are denied and strict proof demanded thereof.
51. As to the allegations of Paragraph 65, it is admitted that County Council approved the rezoning. The remaining allegations of Paragraph 65 are denied and strict proof demanded thereof.
52. The allegations of Paragraph 66 are denied and strict proof demanded thereof.
53. Paragraph 67 is a pleading paragraph requiring no response. To the extent Paragraph 67 incorporates prior allegations, Defendants crave specific reference herein.
54. The allegations of Paragraphs 68 and 69 are admitted.
55. The allegations of Paragraphs 70, 71, and 72 are denied and strict proof demanded thereof.
56. Paragraph 73 is a pleading paragraph requiring no response. To the extent Paragraph 73 incorporates prior allegations, Defendants crave specific reference herein.
57. The allegations of Paragraph 74 are denied and strict proof demanded thereof.
58. Paragraph 75 is a pleading paragraph requiring no response. To the extent Paragraph 75 incorporates prior allegations, Defendants crave specific reference herein.
59. The allegations of Paragraph 76 are denied and strict proof demanded thereof.

- 60. Paragraph 77 is a pleading paragraph requiring no response. To the extent Paragraph 77 incorporates prior allegations, Defendants crave specific reference herein.
- 61. The allegations of Paragraph 78 are denied and strict proof demanded thereof.
- 62. Paragraph 79 is a pleading paragraph requiring no response. To the extent Paragraph 79 incorporates prior allegations, Defendants crave specific reference herein.
- 63. The allegations of Paragraph 80 are denied and strict proof demanded thereof.
- 64. Paragraph 81 is a pleading paragraph requiring no response. To the extent Paragraph 81 incorporates prior allegations, Defendants crave specific reference herein.
- 65. The allegations of Paragraphs 82 and 83 are denied and strict proof demanded thereof.

**FOR A FOURTH DEFENSE**  
(Failure to State a Claim)

- 66. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fourth Defense.
- 67. Plaintiffs fail to state a claim against Defendants upon which relief may be granted by this Court. The Complaint must be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FOR A FIFTH DEFENSE**  
(Failure to Appeal)

- 68. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fifth Defense.
- 69. Upon information and belief, Plaintiffs have failed to properly appeal this matter as required by the Georgetown County Ordinances and/or South Carolina law. The Complaint must be dismissed due to this procedural defect.

**FOR A SIXTH DEFENSE**

(Waiver and Estoppel)

70. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Sixth Defense.

71. Defendants plead waiver and estoppel as a complete and affirmative defense.

**FOR A SEVENTH DEFENSE**

(Unclean Hands)

72. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Seventh Defense.

73. Plaintiffs' claims are barred by the doctrine of unclean hands.

**FOR AN EIGHTH DEFENSE**

(Good Faith Reliance)

74. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Eighth Defense.

75. Defendants relied in good faith upon Georgetown County procedures and ordinances throughout the re-zoning process.

**FOR A NINTH DEFENSE**

(Justification and Compliance)

76. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Ninth Defense.

77. Any actions of the Defendants regarding the property at issue are justified by and in compliance with the Georgetown County ordinances and the zoning of the property both prior to and after the approval of Ordinance 24-05 and Ordinance 24-06.

**FOR A TENTH DEFENSE**  
(Attorney Fees Not Recoverable)

78. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Tenth Defense.
79. Plaintiffs' Complaint seeks attorney fees for claims upon which attorney fees may not be awarded against these answering Defendants.

**FOR AN ELEVENTH DEFENSE AND FIRST COUNTERCLAIM AGAINST ALL  
PLAINTIFFS**  
(Request for Judicial/Equitable Bond)

80. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
81. While Plaintiffs have not filed for injunctive relief or a temporary restraining order to stop development of the property, Plaintiffs' action challenges the very approvals necessary for the development of this neighborhood.
82. In this regard, without final resolution, it is unclear whether Magic Oaks, LLC may proceed with development.
83. Consequently, Magic Oaks, LLC is losing money each day it cannot proceed.
84. Magic Oaks, LLC respectfully requests that this Honorable Court require Plaintiffs to post a judicial/equitable bond during the pendency of this action. Magic Oaks, LLC requests the Court schedule a hearing to determine the amount of the bond necessary to compensate Magic Oaks, LLC for the accruing interest and lost profits resulting from the delay on construction due to this action.

**FOR A TWELFTH DEFENSE AND SECOND COUNTERCLAIM AGAINST ALL  
PLAINTIFFS**  
(Abuse of Process)

85. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
86. Plaintiffs have employed the legal process for the ulterior purpose of hindering and delaying Magic Oaks, LLC from developing the property at issue.
87. Plaintiffs' lawsuit and their filings since the commencement of this action are designed to delay development and effect an injunction without posting a bond to protect Magic Oaks, LLC.
88. Rather than file an injunction, Plaintiffs have instead weaponized the legal process to hinder development.
89. Plaintiffs' abuse of process has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, and other damages which may be identified in the course of this litigation.
90. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' abuse of process and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FOR A THIRTEENTH DEFENSE AND THIRD COUNTERCLAIM AGAINST ALL  
PLAINTIFFS**  
(Tortious Interference with Existing Contractual Relations)

91. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.

92. As part of the purchase of the property at issue, Magic Oaks, LLC obtained a loan from a third party secured by the property. The Mortgage and Security Agreement evidencing this loan is filed of public record.
93. Upon information and belief, Plaintiffs are aware of the Mortgage and Security Agreement between Magic Oaks, LLC and the third party.
94. Magic Oaks, LLC must develop the property to comply with its obligations of the Mortgage and Security Agreement.
95. Plaintiffs have filed this lawsuit to intentionally hinder and delay Magic Oaks, LLC from developing this property, thereby preventing Magic Oaks, LLC from complying with its obligations of the Mortgage and Security Agreement.
96. Plaintiffs' action is without justification and has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, and other damages which may be identified in the course of this litigation.
97. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with existing contractual relations, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FOR A FOURTEENTH DEFENSE AND FOURTH COUNTERCLAIM AGAINST ALL PLAINTIFFS**

(Tortious Interference with Prospective Contractual Relations)

98. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
99. Magic Oaks, LLC purchased the property at issue for the purpose of developing a residential neighborhood. The residential development will consist of 27 single family

lots which Magic Oaks will contract to sell to third parties for the purpose of constructing homes.

100. Plaintiffs are aware of Magic Oaks' residential development plans and the reasonable probability that the contractual relations with third parties for the sale and development of these lots will be realized.

101. Plaintiffs have filed this unfounded action to intentionally interfere with these prospective contractual relations and to hinder and delay the development altogether.

102. Plaintiffs' action has hindered and delayed Magic Oaks from acquiring these prospective contractual relations and has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.

103. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with prospective contractual relations, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT BY WAY OF  
COUNTERCLAIM AGAINST ALL PLAINTIFFS & THIRD PARTY CLAIM AGAINST  
KEEP IT GREEN, INC.**

104. Defendants reallege and incorporate by reference all Paragraphs above as if fully set forth herein.

105. This case is one in a series of lawsuits attempting to stop residential development in Georgetown County.

106. Plaintiffs are represented in this action by Keep It Green Advocacy, Inc. ("KIGA"), in-house counsel for Keep It Green, Inc. ("KIG"), a public interest group that

opposes land use and zoning changes that increase residential density in Georgetown County.

107. KIG has opposed many residential projects in Georgetown County upon virtually identical assertions raised in this matter. In fact, in the past two years, KIG has brought three other Georgetown County lawsuits as a named Plaintiff to stop residential development. Each of those actions have been dismissed pursuant to Court Orders Granting Defendants' Motions to Dismiss.<sup>1</sup> Notably, after three consecutive Orders of Dismissal, KIG has refrained from naming itself as a Plaintiff in this action, but has provided its in-house counsel to represent all Plaintiffs in this matter.
108. The gist of all of these lawsuits is the false and incorrect assertion that residential development in Georgetown County is incompatible with the Georgetown County Comprehensive Plan and thus in violation of state and local law. This lawsuit is no different.
109. The planned Magic Oaks development is a residential neighborhood proposing 27 single family lots with minimum lot sizes of 8,000 sq. ft., a 50' Open Space/Vegetative Buffer along Highway 17, pool and pool house, Reese and Sis Hart Memorial Pavilion, and the incorporation of low impact design techniques such as underground stormwater chambers and the use of pervious paving materials. The road and building footprints are designed to protect existing large trees.
110. Prior to the rezoning of the property at issue, the site was split zoned General Commercial and General Residential. The single-family use of this development through the rezoning to a Flexible Design District will have a significantly smaller impact on the

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<sup>1</sup> The KIG lawsuits which have been dismissed include C/A Nos. 2022-CP-22-00912; 2023-CP-22-000007; and 2023-CP-22-00210.

site (including impervious coverage, tree protection, and runoff) as compared to the potential commercial and multifamily uses that were allowed with the previous zoning.

111. Despite the fact that Defendants have gone through the proper local, state, and federal administrative channels and procedures to secure the necessary approvals to build this neighborhood, Plaintiffs and KIG seek to use this action as a vehicle to hinder and delay this residential development as they have attempted to do with numerous other developments in Georgetown County.

**Parties and Jurisdiction**

112. Magic Oaks, LLC is a limited liability company organized and existing under and by virtue of the laws of the State of South Carolina and is authorized to do business within the State.

113. Upon information and belief, KIG is a non-profit South Carolina corporation and is or may be liable to Magic Oaks, LLC for all or part of Plaintiffs' claims against Magic Oaks, LLC.

114. The property which is the subject of this action is located in Georgetown County, South Carolina.

115. Based upon the foregoing, this Honorable Court has jurisdiction, and venue is proper.

**Factual Allegations**

116. Prior to this action, the land at issue was split zoned General Commercial/General Residential and owned by Defendant David Tanner.

117. Magic Oaks, LLC entered into a contract with Mr. Tanner for the purchase of the property with the intent to build a residential development.

118. Prior to closing on the property, Magic Oaks and Mr. Tanner sought to rezone the property to accomplish these objectives.
119. Initially, Magic Oaks and Mr. Tanner filed an application to rezone the property to solely General Residential.
120. However, upon discussion with and recommendation of KIG, Magic Oaks and Mr. Tanner amended the application to apply instead for rezoning to a Flexible Design District in order to reduce density. KIG celebrated this collaboration on its website on February 13, 2024 stating:
- The FDD zoning includes saving trees, large natural buffers, open space, and being more aesthetically pleasing.**
- The current General Residential and General Commercial zoning that exists on this parcel would allow high density and up to 95 multi-family/single-family units without any zoning change. The requested change to a Flexible Design District would eliminate the possibility of high density and/or multi-family housing on an environmentally sensitive tract which would be a big win for the community.**
121. Earthworks Group in Murrells Inlet was hired to assist in the rezoning effort and Earthworks undertook to compile all necessary information and materials for the rezoning application.
122. Part of Earthworks' efforts included obtaining a wetlands study which was completed by the Brigman Company on January 22, 2024. As a result, the Brigman Company produced a full report with a Delineation Concurrence Exhibit and submitted the report to the United States Army Corps of Engineers with a request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated "Based on a review of the information you submitted, the delineated boundaries depicted on the map titled 'Delineation Concurrence Exhibit Tanner Property' and dated January 22, 2024, are a reasonable representation of

the aquatic resources onsite.” The United States Army Corps of Engineers is the final authority as to jurisdictional wetlands.

123. On February 2, 2024, the amended application for rezoning along with the Development Summary prepared by Earthworks was submitted to Georgetown County.
124. In accordance with Georgetown County procedure, the application was reviewed by Georgetown County Planning Department staff, who then produced a report, and sent the application and report to Georgetown County Planning Commission.
125. Planning Commission held a public hearing on the application on February 15, 2024. Planning Commission recommended approval to rezone and to amend the Future Land Use Map.
126. The application then went to Georgetown County Council for First Reading. First Reading occurred on February 27, 2024.
127. Second Reading of County Council occurred on April 9, 2024. During this reading, the staff report of the Georgetown County Planning Department was presented along with a detailed presentation of the project. After this presentation, the floor was open to residents of Georgetown County for public comment. Despite previous support, KIG and others spoke to voice their opinions and concerns about the development. The primary complaint was a request for another wetlands survey despite the fact that the United States Army Corp of Engineers had already issued its final opinion in the Delineation Concurrence. County Council voted 6-1 in favor of second reading approval of the rezoning and amendment to the Future Land Use Map.
128. County Council held its Third Reading on April 23, 2024. During Third Reading, a public hearing was held on the amendment to the Future Land Use Map and the public

was provided opportunity once again to comment. Many of the same issues previously raised were once again raised during the public hearing. Ultimately, County Council again voted in favor of the ordinances to rezone the property to a Flexible Design District and to amend the Future Land Use Map.

129. On April 23, 2024, Ordinance 24-05 to amend the Future Land Use Map regarding the property at issue from Conservation Preservation to Medium Density Residential was done, ratified, and adopted. Ordinance 24-06 to amend the official zoning map of Georgetown County regarding the property at issue from General Commercial and General Residential to a Flexible Design District was also done, ratified, and adopted that day.
130. On June 6, 2024, David Tanner executed a deed conveying the property to Magic Oaks and the deed was recorded in the Georgetown County Register of Deeds on June 10, 2024. In conjunction with the closing on the property, Magic Oaks obtained a loan from a third party secured by the land. On June 10, 2024, a Mortgage and Security Agreement to this effect was filed in the Georgetown County Register of Deeds.
131. Eight days later, KIG's in-house counsel, KIGA filed this lawsuit on behalf of the Plaintiffs in an effort to hinder and delay this development.

**FOR A FIFTEENTH DEFENSE, FIFTH COUNTERCLAIM AGAINST ALL  
PLAINTIFFS, AND FIRST THIRD PARTY CLAIM AGAINST KIG**  
(Civil Conspiracy)

132. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
133. KIG has brought numerous actions in Georgetown County for the sole purpose of hindering and delaying validly approved residential development.

134. Upon information and belief, KIG has conspired with Plaintiffs to bring another baseless lawsuit on its behalf to hinder and delay residential development and has provided Plaintiffs its in-house counsel to do so.

135. Magic Oaks has suffered damages as a direct result of Plaintiffs' and KIG's civil conspiracy in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.

136. Magic Oaks, LLC is entitled to judgment against the Plaintiffs and KIG, jointly and severally, for Plaintiffs' and KIG's civil conspiracy, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**FOR A SIXTEENTH DEFENSE AND SECOND THIRD PARTY CLAIM AGAINST KIG**  
(Aiding and Abetting in Abuse of Process)

137. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.

138. Upon information and belief, KIG has knowingly participated, aided, and abetted in Plaintiffs' abuse of process by, among other actions, providing Plaintiffs its in-house counsel to bring this baseless lawsuit and other filings to delay development and harm Magic Oaks, LLC.

139. Upon information and belief, KIG has advised, consented to, or subsequently ratified Plaintiffs' actions constituting abuse of process, rendering KIG liable as a joint tortfeasor.

140. KIG's aiding and abetting Plaintiffs' abuse of process has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, and other damages which may be identified in the course of this litigation.

141. Magic Oaks, LLC is entitled to judgment against KIG for KIG's aiding and abetting Plaintiffs' abuse of process and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

**WHEREFORE**, having fully answered Plaintiffs' Complaint, Defendants/Third Party Plaintiff pray for the following relief:

- (a) That Plaintiffs' Complaint be dismissed with prejudice and the relief requested therein be denied;
- (b) For an Order under the First Counterclaim granting Defendants' request that Plaintiffs post a judicial bond during the pendency of this action and for a hearing to determine the amount of the bond necessary to compensate Magic Oaks, LLC for the accruing interest and lost profits resulting from the delay on construction due to this action;
- (c) For a judgment under the Second Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' abuse of process, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;
- (d) For a judgment under the Third Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with existing contractual relations, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;
- (e) For a judgment under the Fourth Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with prospective

contractual relations, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;

- (f) For a judgment under the Fifth Counterclaim and First Third Party Claim in favor of Magic Oaks, LLC against the Plaintiffs and KIG, jointly and severally, for Plaintiffs' and KIG's civil conspiracy, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;
- (g) For a judgment under the Second Third Party Claim in favor of Magic Oaks, LLC and against KIG for KIG's aiding and abetting Plaintiffs' abuse of process, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action; and
- (h) Award to Defendants/Third Party Plaintiff and against Plaintiffs and Third Party Defendant any such other, further, and additional relief as this Honorable Court deems just and proper.

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Attorneys for Magic Oaks, LLC and RCB Land  
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s/ Zachary J. Crowl  
David B. Miller, SC Bar #10296  
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina  
November 26, 2024

**RECEIVED**

**Feb 18 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Honorable David P. Caraker, Jr., Circuit Court Judge

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Appellate Case No. 2025-000066

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Emmanuel Stikas, Trustee of the Stikas Revocable Living Trust, dated February 1, 2023, d/b/a The Village Shops; Donald W. Reid and Katheryn W. Reid, husband and wife; Elizabeth Gattshall Hawkins Martin; and Tall House Farm, L.P.,.....Appellants,

v.

Georgetown County; David E. Tanner; RCB Land Holdings, LLC; and Magic Oaks, LLC, .....Respondents,

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

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**PROOF OF SERVICE**

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I certify that I have served Respondents Magic Oaks, LLC and RCB Land Holdings, LLC’s Motion to Dismiss Appeal and Memorandum in Support along with all exhibits upon the parties below by emailing a copy of these documents to the email addresses associated with the Attorney Information System on February 18, 2025, and identified below. Consistent with Rule 262(c)(3), SCACR and section (d)(1) of the Supreme Court of South Carolina’s April 24, 2024 Amended Order, a copy of the email serving the documents is enclosed.

<p>F. Patrick Hubbard, Esq.  1525 Senate Street  Room 312  Columbia, SC 29208  <a href="mailto:phubbard@law.sc.edu">phubbard@law.sc.edu</a>  Cynthia Ranck Person, Esq.  KIGA P.O. Box 1922  Pawleys Island, SC 29585  <a href="mailto:kig.advocacy@gmail.com">kig.advocacy@gmail.com</a>  <i>Attorneys for Appellants &amp; Third Party Defendant</i></p>	<p>H. Thomas Morgan, Jr., Esq.  Sydney J. Douglas, Esq.  SMITH ROBINSON HOLLER DuBOSE  AND MORGAN, LLC  935 Broad Street  Post Office Drawer 39  Camden, SC 29021  <a href="mailto:tommy@smithrobinsonlaw.com">tommy@smithrobinsonlaw.com</a>  <a href="mailto:sydney.douglas@smithrobinsonlaw.com">sydney.douglas@smithrobinsonlaw.com</a>  <i>Attorneys for Respondent Georgetown County</i></p>
<p>Daniel W. Stacy, Jr.  OXNER &amp; STACY LAW FIRM, LLC  90 Wall Street, Unit B  Pawleys Island, SC 29585  <a href="mailto:dstacy@oxnerandstacy.com">dstacy@oxnerandstacy.com</a>  <i>Attorney for Respondent David E. Tanner</i></p>	

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s/ Zachary J. Crowl  
David B. Miller, SC Bar #10296  
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Myrtle Beach, South Carolina  
February 18, 2025

## Crowl, Zachary J.

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**From:** Crowl, Zachary J.  
**Sent:** Tuesday, February 18, 2025 12:04 PM  
**To:** KIG Advocacy; Hubbard, Patrick; Tommy Morgan; Sydney Douglas; Dan Stacy  
**Cc:** Miller, David Brunson; Carrigg, Vickie  
**Subject:** Emanuel Stikas, et al. v. Georgetown County, et al., Appellate Case No. 2025-000066  
**Attachments:** Motion to Dismiss Appeal.pdf; Ex. A - Summons & Complaint.pdf; Ex. B - Answer, Counterclaims, & Third Party Complaint.pdf; Ex. C - Motion to Strike.pdf; Ex. D - Aff of Tripp Nealy.pdf; Ex. E - Judge Caraker Order.pdf; Ex. F - Memo in Opposition.pdf; Ex. G - Amended Summons & Complaint.pdf; Ex. H - Answer to Amended Complaint.pdf

Good afternoon everyone,

Please see the attached Motion to Dismiss along with Exhibits which will be filed with the Court of Appeals today.

Thank you,  
Zach



**Zachary James Crowl**

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