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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

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

Circuit Court Case No. 2024 CP 2200577

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.,

Appellants,

v.

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

Respondents.

APPELLANTS' RETURN IN OPPOSITION TO THE MOTION TO DISMISS
OF RESPONDENTS RCB LAND HOLDINGS, LLC, AND MAGIC OAKS, LLC

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March 12, 2025

INTRODUCTION

Respondents Magic Oaks, LLC, and RCB Land Holdings, LLC, filed a Motion to Dismiss Appellants' appeal of the Trial Court's Order dated October 15, 2024, which struck out material allegations from Plaintiffs' (Appellants') Complaint, and determined on the merits that Plaintiffs' claim was "moot and immaterial." The Order precludes Plaintiffs from presenting evidence to support their claim, essentially dismissing the cause of action at issue. Respondents' Motion to Dismiss includes a request for sanctions pursuant to Rule 269, SCARC.

Appellants oppose Respondents' Motion to Dismiss and request for sanctions as follows.

BACKGROUND

Plaintiffs' Cause of Action

Appellants are Plaintiffs (adjoining landowners) in a Declaratory Judgment action, filed on June 18, 2024, (Exhibit "1"), challenging the validity of two zoning ordinances approved by Georgetown County Council on April 23, 2024. (Complaint, pars. 1-2). One of several causes of action raised in the Complaint claims that the approved zoning ordinances were void from their inception due to *ultra vires* acts of County Council in failing to follow a provision in 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.*, which states:

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.

(Complaint, pars 2, 7(c), 52-55, 59, 75-76).

The zoning ordinances pertain to a proposed housing development called "Magic Oaks." Plaintiffs' Complaint alleges that on February 15, 2024, Planning Commission held a public

hearing at which it reviewed and recommended approval of the proposed ordinance text, plan, and map for Magic Oaks. Nearly two months later, on April 4 and 5, 2024, the developer made changes to the proposed ordinance text, plan, and map. These changes included the addition of a public kayak launch and items related to the public kayak launch. The changes were *not* part of the original proposed ordinance text, plan, and map reviewed, considered, and recommended by Planning Commission on February 15, 2024. Without going back to the Planning Commission for review of the plan modifications, the "changed plan" was submitted to County Council for approval at Second Reading on April 9, 2024, and for final approval at Third Reading on April 23, 2024. (Complaint, pars. 2, 7(c), 52-55, 59).

According to Enabling Act, Section 6-29-760(A), the "changed plan" should have been submitted to the Planning Commission before being considered or approved by County Council. The changes were not submitted to the Planning Commission. Instead, County Council voted for final approval of the "changed" ordinance text, plan, and map for Magic Oaks at its meeting on April 23, 2024. The Complaint alleges that this failure by County Council to follow Section 6-29-760(A) of the Enabling Act resulted in an *ultra vires* decision that rendered the zoning ordinances void from their inception as of April 23, 2024. (Complaint, pars 2, 7(c), 52-55, 59, 75-76).

"Changed Plan" is Material to Plaintiffs' Cause of Action

A critical element of Plaintiffs' cause of action is the "change" to the plan that was improperly considered and approved by County Council without review or approval by Planning Commission as required by the Enabling Act. This "change" was the addition of a public kayak launch and items related to the public kayak launch. (Complaint, par. 7(c), 52).

Defendants' Motion to Strike

On August 23, 2024, Defendants (Respondents) filed a Motion to Strike, (Exhibit "2"), all references in Plaintiffs' Complaint to the public kayak launch. Defendants filed an Affidavit and Letter in support of their motion. Plaintiffs filed a Memorandum in Opposition. (Exhibit "3"). After hearing, the Trial Court issued an Order dated October 15, 2024, (Exhibit "4"), granting the Motion to Strike, striking all references to the public kayak launch, and finding that those references as well as the alleged failure to resubmit the amended plan to Planning Commission were "moot and immaterial" as follows:

[T]his 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.

(Order, p. 3) (emphasis added).

The Trial Court's Order made a final decision on the merits that Plaintiffs' (Appellants') claim, based on the *ultra vires* acts of County Council in failing to submit the "changed plan" to Planning Commission per the requirement of the Enabling Act, was "moot and immaterial." The Order further struck necessary and material elements of Plaintiffs' claim from the Complaint. This decision prevents Appellants from producing evidence of the "changed plan," which forms the basis of their cause of action. The effect of the Order is a decision on the merits that prevents Appellants from litigating their claim, essentially dismissing the cause of action at issue.

On October 25, 2024, Appellants filed a Rule 59(e) Motion to Alter or Amend Judgment, (Exhibit "5"), which was denied without hearing and without further explanation by an abbreviated Form 4 Order on December 27, 2024. (Exhibit "6"). Appellants filed a timely Notice of Appeal on January 5, 2025, which is the subject of this motion.

Contemporaneous with the filing of Appellants' Return in Opposition to Respondents' Motion to Dismiss, Appellants filed their Initial Brief which is incorporated herein by reference as if fully set forth, and raises the following issues in this appeal:

The Trial Court erred in granting Defendants' Rule 12(f), SCRPC, Motion to Strike by:

- A. Failing to consider and apply applicable law, striking properly pleaded and substantially relevant allegations from Plaintiffs' Complaint that were essential elements of Plaintiffs' cause of action, effectively dismissing the cause of action;
- B. Exceeding the proper scope of inquiry in a Rule 12(f) Motion to Strike, considering contested factual matters beyond the face of the Complaint, and making findings of fact that serve as a final determination of the cause of action in question; and
- C. Precluding Plaintiffs from litigating their claim that Georgetown County Council exceeded its power by adopting the changed ordinance text, plan, and map without complying with the statutory provision in Section 6-29-760(A) of the Enabling Act.

APPLICABLE RULES AND PROCEDURE

The right to appeal is governed by S.C. Code Ann., §14-3-330 (1976). Appellants submit that §§14-3-330(1), (2)(a) and (2)(c) provide authority for immediate appeal in this case:

§14-3-330(1): Allows an appeal of "[a]ny 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" (emphasis added).

§14-3-330(2)(a): Allows an appeal of "[a]n 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*" (emphasis added).

§14-3-330(2)(c): Allows an appeal of "[a]n order affecting a substantial right made in an action *when such order (c) strikes out* an answer or any part thereof or *any pleading in any action*" (emphasis added).

Order Involves the Merits
§14-3-330(1)

"The question of whether an order is immediately appealable is determined on a case-by-case basis." *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). "An order 'involves the merits,' as that term is used in Section 14-3-330(1) and is immediately appealable *when it finally determines some substantial matter forming the whole or part of some cause of action or defense.*" *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006) (emphasis added). *See also, Brown v. County of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) ("To involve the merits of a case, the order must 'finally determine some substantial matter forming the whole or a part of some cause of action or defense.'"); *Stone, supra*, at 868, 869-870 (2019) ("An order involves the merits under §14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense.").

In the case of *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005), the court determined that "the circuit court finally determined a substantial matter forming a part of the Hospital's defense, and thus, the order is appealable." *Id.* at 174, 442 (citations omitted) (internal quotation marks omitted). *Cooke* is on point with the case at bar. Here, as in *Cooke*, the Trial Court made a finding that served as the final determination of a substantial matter forming the basis of Plaintiffs' cause of action involving the *ultra vires* acts of County Council. Accordingly, the Order involves the merits and is immediately appealable.

Order Affects a Substantial Right
§14-3-330(2)

The court in *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014), explained the circumstances in which an order is immediately appealable because it "affects a substantial right:"

An order affects a substantial right and is immediately appealable when it (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*.

Id. at 458, 163. (emphasis added) (citations omitted) (internal quotation marks omitted).

Section 14-3-330(2)(c) cites "striking out a pleading" as one of the specific instances that affects a substantial right and gives rise to immediate appeal. In addressing whether a trial court's granting of a Rule 12(f) Motion to Strike is immediately appealable, the Court of Appeals in *Thornton v. South Carolina Elec. & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), stated:

An order affects a substantial right by striking a pleading if the order *removes a material issue from the case, thereby preventing the issue from being litigated on the merits*, and preventing the party from seeking to correct any errors in the order during or after trial. 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 304, 479 (emphasis added). The court went on to point out the reason *why* an Order that strikes out material portions of a cause of action is immediately appealable:

If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, *because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading*, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings.

Id. at 303-304, 479 (emphasis added). *See also, Miles v. Charleston Light & Water Co.*, 87 S.C. 254, 69 S.E. 292 (1910).

The Trial Court Order in the present case fits these parameters. By finding 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 by striking these references from Plaintiffs' Complaint, the Trial Court essentially eliminated that cause of action. Without the presence of these claims in their Complaint, Plaintiffs are prevented from presenting evidence to establish the basis of their *ultra vires* cause of action. The Court Order made a decision on the merits that "remove[d] a material issue from the case thereby preventing the issue from being litigated on the merits." *Thornton* at 304, 479

Accordingly, the Order is immediately appealable as it struck matters that affect a substantial right and made a final determination regarding the cause of action at issue.

MOTION FOR SANCTIONS

As part of their Motion to Dismiss, Respondents request this court to impose sanctions pursuant to Rule 269, SCACR, alleging that this appeal is "frivolous or taken solely for the purpose of delay."

In support of their motion, Respondents inundated the court with more than 100 pages of documents, the majority of which are not related to this appeal in any way. Moreover, Respondents have made inappropriate representations to the court about matters that are not of record, including personal commentary about unrelated cases and clients of Keep It Green Advocacy (KIGA), a charitable organization that represents Appellants. These representations are irrelevant to the issue before the court and in many instances are wholly inaccurate.

KIGA is a nonprofit organization that provides free legal representation to individuals and groups that fall within its charitable mission of protecting the rights of adjoining landowners and citizens of the Waccamaw Neck in local land use cases where proper law and/or procedure has allegedly not been followed. Most of the parties represented by KIGA are individual adjoining landowners, often heirs' property owners from minority communities, many of whom

could not afford to hire a private attorney to protect their property rights without the free legal services provided by KIGA. Respondents' mischaracterizations of KIGA's charitable mission and their comments about clients and pending cases are misplaced.

With regard to this request for sanctions, the KIGA legal team is made up of multiple experienced attorneys, including the undersigned, who have thoroughly researched Appellants' claims, including the issues in this appeal, and found them to be reasonable and well-founded. Appellants filed a Declaratory Judgment action in Circuit Court raising what counsel for Appellants believe are legitimate and well-pleaded claims with a solid foundation in law and fact. Respondents filed a Motion to Strike material parts of those claims. Respondents' Motion to Strike was granted by the Trial Court resulting in the elimination of Appellants' cause of action as detailed above. Counsel for Appellants believe this decision was improper and erroneous under the law of South Carolina for the reasons specifically detailed in Appellants' Initial Brief. It is reasonable for Appellants to appeal an improper decision that prevents them from litigating their claim on the merits. Ironically, any delay in this case was brought about by Respondents' filing a Motion to Strike material matters during the pleadings stage of the case rather than simply allowing Appellants to litigate their claims on the merits.

CONCLUSION

WHEREFORE, for the foregoing reasons, Appellants respectfully request this Honorable Court to:

1. Deny the Respondents' Motion to Dismiss this appeal; and
2. Deny the Respondents' Request for Sanctions pursuant to Rule 269, SCACR.

(Signature Page to follow.)

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

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

Circuit Court Case No. 2024 CP 2200577

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.,

Appellants,

v.

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

Respondents.

EXHIBITS TO
APPELLANTS' RETURN IN OPPOSITION TO THE MOTION TO DISMISS
OF RESPONDENTS RCB LAND HOLDINGS, LLC, AND MAGIC OAKS, LLC

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March 12, 2025

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Exhibit 6	Form 4 Court Order, December 11, 2024

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

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

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

Respectfully submitted,

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

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

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)

1525 Senate Street
Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR PLAINTIFFS

June 18, 2024
Pawleys Island, South Carolina

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

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

Future Land Use (FLU) Map



Legend

- County Parcels
- Streets
- FUTURE_LAN**
 - COMMERCIAL
 - CONSERVATION PRESERVATION
 - INDUSTRIAL
 - LOW DENSITY RESIDENTIAL
 - MEDIUM DENSITY RESIDENTIAL
 - HIGH DENSITY RESIDENTIAL
 - PUBLIC/SEMI-PUBLIC
 - TRANSITIONAL



PLANNING DEPARTMENT
 117 S. 1st Street, Suite 200
 St. Petersburg, FL 33701
 (727) 424-2500

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)


ORDINANCE NO. 24-06

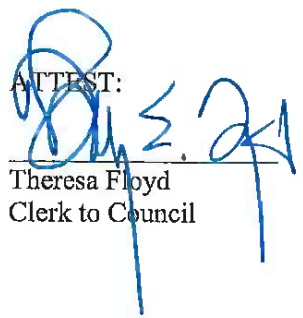
AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF GEORGETOWN COUNTY, REGARDING 8.3 ACRES OF TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM GENERAL COMMERCIAL (GC) AND GENERAL RESIDENTIAL (GR) TO A FLEXIBLE DESIGN DISTRICT (FDD).

BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED TO AMEND THE ZONING MAP OF GEORGETOWN COUNTY, SPECIFICALLY TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM GENERAL COMMERCIAL (GC) AND GENERAL RESIDENTIAL (GR) TO FLEXIBLE DESIGN DISTRICT (FDD), AS REFLECTED ON THE ATTACHED LAND PLAN DATED 4/5/24, NARRATIVE DATED 4/15/24, AND WITH THE FOLLOWING CONDITIONS:

1. An amendment to the Future Land Use (FLU) map from CP to Medium Density Residential.
2. Signage for the development will comply with the zoning ordinance allowance for subdivisions.
3. Parking for the amenities area will be a pervious surface.
4. Final approvals and/or permits from Midway Fire, Georgetown County Stormwater, OCRM, SCDOT, Georgetown County Public Works, and GCWSD.


DONE, RATIFIED AND ADOPTED THIS 23rd DAY OF APRIL, 2024.


 _____ (SEAL)
 Louis R. Morant
 Chairman, Georgetown County Council

ATTEST:

 Theresa Floyd
 Clerk to Council

This Ordinance, No. 24-06, has been reviewed by me and is hereby approved as to form and legality.

(as amended 4/9/24)



John D. Watson
Georgetown County Attorney

First Reading: February 27, 2024

Second Reading: April 9, 2024

Third Reading: April 23, 2024



**FLEXIBLE DESIGN DISTRICT
DEVELOPMENT SUMMARY
MAGIC OAKS FDD
PAWLEYS ISLAND, SC
EW #231147**

January 25, 2024

PREPARED FOR:

RCB LAND HOLDINGS LLC

PREPARED BY:

**The EARTHWORKS Group
11655 HIGHWAY 707
MURRELLS INLET, SC 29576
843-651-7900
www.earthworksgroup.com**

*Revised 4/15/24
via Dan Park email
HR*

**The EARTHWORKS Group
Project Development Summary
Magic Oaks FDD**

EXECUTIVE SUMMARY

The EARTHWORKS Group has been retained by RCB Land Holdings LLC to design a new single family residential community known as "Magic Oaks" FDD, located north of the intersection of Highway 17 and Haunted Trail. The property is adjacent to the Hammock Shops and the Village Shops, approximately 0.5 miles north of North Causeway Road on Highway 17.

Identification	19.03 acres is being proposed for development into 27 single family lots in a single phase.
Tax Map Number	Parent tax map for this parcel is 04-0158-060-00-00
Owner of Record	David E. Tanner 10798 Ocean Hwy Pawleys Island, SC 29585
Land Area	19.03 acres total 7.90 acres uplands 0.40 acres freshwater wetlands (approximately) 10.73 acres saltwater wetlands
Current Zoning	General Commercial, General Residential and Conservation Preservation
Requested zoning	Flexible Design District
Current Use	Single family residential
Proposed Use	27 Single family residences with an amenity area
Flood Zone	Zone "X-shaded", "AE-13", "Coastal AE (LIMWA)", "AE-14", "VE-14" and "VE-15" Community FIRM map #45043C0378 G dated May 09, 2023
Total Lots	27 lots
Density	Gross density 3.42 Units per acre of upland Net density 4.06 Units per acre of upland

Magic Oaks FDD Project Development Summary

PROPOSED DEVELOPMENT

The proposed project will include the following

- 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 (Amenity Area)
- Reese and Sis Hart Memorial Pavilion (Included with the Amenity)
- Private Kayak launch for residents of the community
- The incorporation of low impact design techniques such as underground stormwater chambers and the use of pervious paving materials.

SITE LAYOUT

The general site layout can be seen in the attached conceptual site plan. There are 27 residential lots and an amenity area located along a 50' wide private road easement. The road is proposed to be 22 feet in width and have a minimum of a 30 ft radius on the inside of the turns in order to allow for fire truck access. The building setbacks for the lots are as follows:

- 20' front setback
- 10' side setback
- 15' rear setback
- 15' corner setback
- *• 35' max building height or as allowed by article 8 section 806 of the zoning ordinance

Front Setbacks are designed to allow the houses to be closer to the street and allow a minimum of one car length in front of the house for parking. Rear Setbacks are designed to allow more space at the rear to preserve trees for a buffer from the adjacent commercial areas.

TREES

The road and building footprints are designed to protect existing large trees. Utilities will be bored under the root zone wherever feasible to minimize any damage to the trees. Several heritage species were identified and protected by incorporating them into the amenity area or excluding them from the lot areas as part of the common area to protect them. Lots in the front of the development have larger trees at the rear of the lots that would be kept as part of the buffer from the adjacent commercial properties.

The proposed 50' Open Space/vegetative buffer along Highway 17 is outside of any lots and will remain vegetated in perpetuity. The clearing of underbrush and landscaping and fencing will still be permitted within the 50' buffer to increase the privacy of the homes and minimize road noise.

Magic Oaks FDD Project Development Summary

UTILITIES

There are existing utilities for the current residence that will need to be disconnected and removed. Water and sewer will be tied into at highway 17 and we have provided an additional 10' easement along the front of the lots for any additional utilities to be run such as internet cables.

WETLANDS

There are two small wetlands on the site located along the edges of the parcel and development of the site does not require wetland impacts. These areas appear to be depressions adversely impacted by runoff from adjacent commercial developments and roads. A final jurisdictional determination (JD) letter request has been submitted to ACOE and will be included as part of the Land Disturbance permitting application. A 10' buffer will be established on wetlands to protect them.

STORMWATER

This project will utilize underground retention meet regulatory standards to treat storm water on site. Underground retention will eliminate the need for stormwater ponds and save trees that may have otherwise been removed to establish storm water retention. This project will meet or exceed all regulations in regards to stormwater. Earthworks will work directly with county staff and DHEC throughout this process. Existing drainage ditches that carry offsite runoff from upstream sources will be maintained and incorporated into the storm water management system.

ADJACENT COMMERCIAL USES

The front portion of the site is adjacent to the Hammock Shops and the Village Shops, which are commercial developments with restaurants and bars which currently meet zoning requirements for such establishments. Potential impacts such as noise and odors may be present during operational hours that may necessitate fencing or screening on the residential side to minimize impacts to new residential structures. The developer and future owners of this property acknowledge that there are existing commercial uses adjacent to the property and the existing commercial businesses are properly zoned and allowed to operate within all county and state laws. This acknowledgement will be included with community documents during the development process.

BENEFITS

The proposed improvements will reduce the impacts generally associated with development of commercial projects and help to preserve the character of the area. The site is currently split zoned (General Commercial and General Residential) and the proposed single-family use 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 are allowed within the current zoning.

HISTORICAL

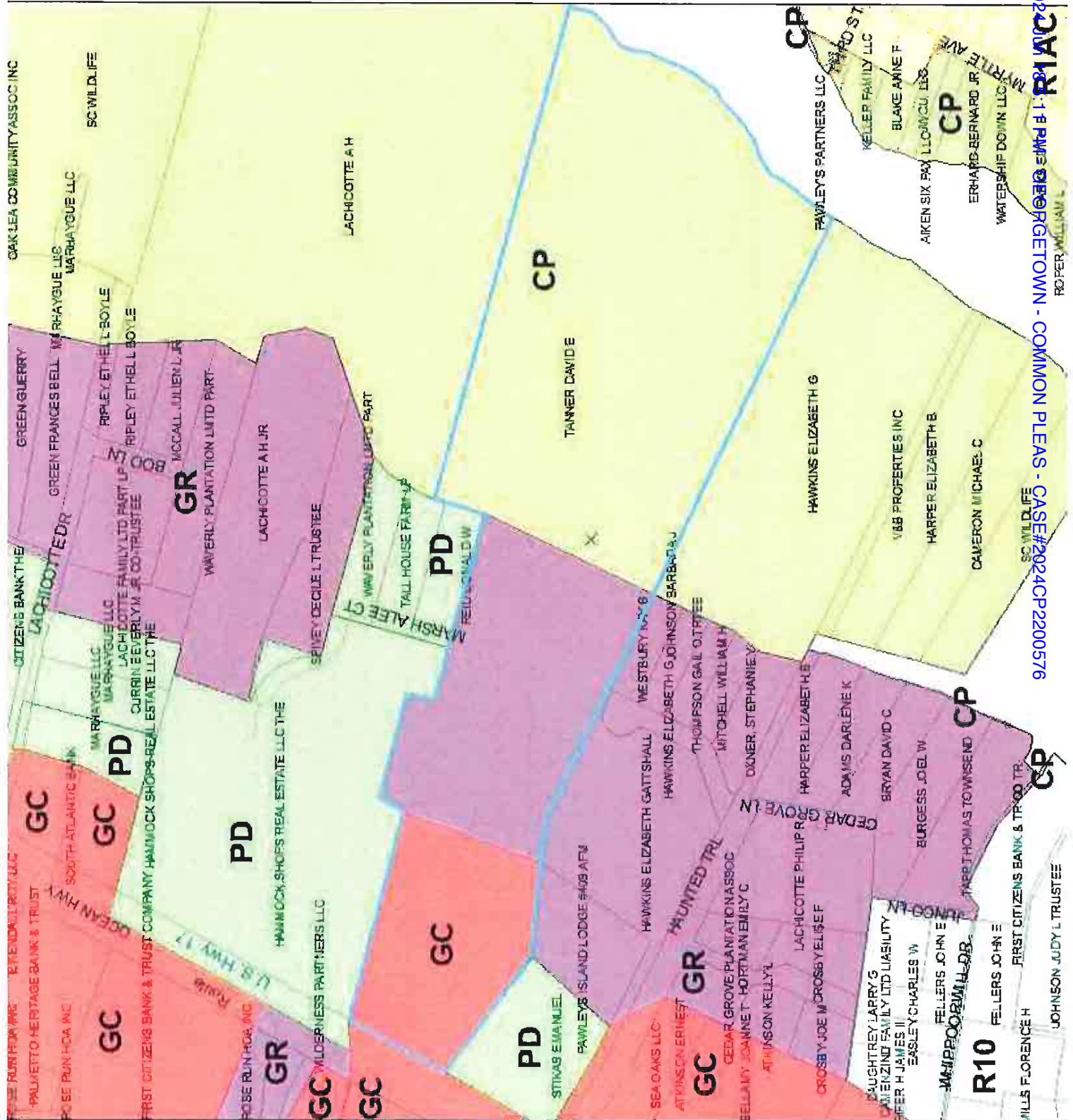
There is an existing memorial to Reese Hart located on this site that has been incorporated into the Amenity Area in order to protect and enhance his legacy along with the beauty of the large oaks.

Current Zoning Map

Legend	
	Streets
	County Parcels
Zoning Districts	
DISTRICT	
	CP
	FA
	FDD
	GC
	GR
	HI
	LI
	MR10
	NC
	OC
	PD
	R1/2
	R1/2AC
	R10
	R1AC
	R3/4AC
	RC
	RR
	RS
	VR10

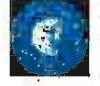
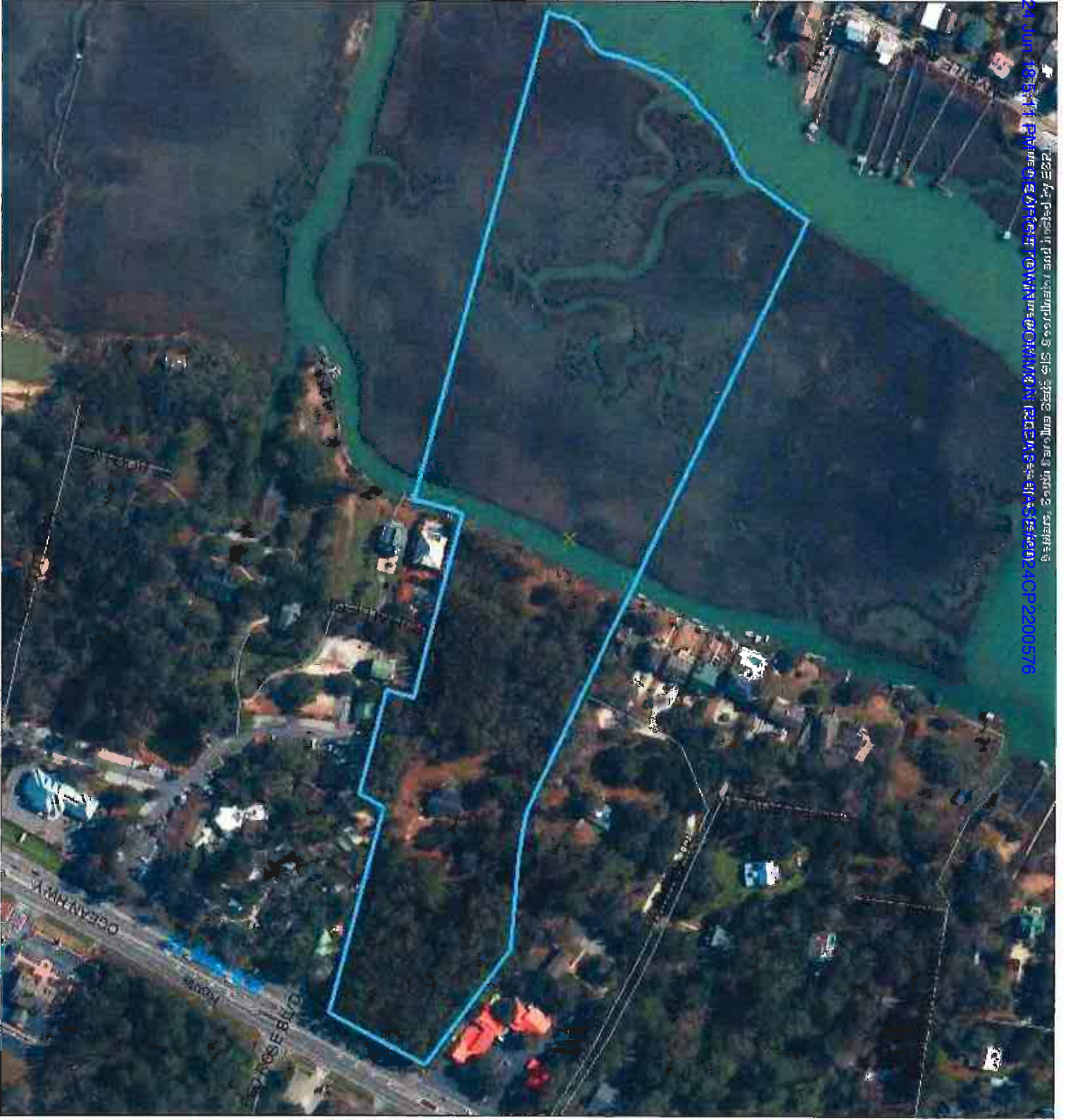


DATE: 05/01/2024
 TIME: 10:00 AM
 USER: JEFFREY
 PROJECT: ZONING MAP



ELECTION DISTRICT: 11
 COUNTY: COMMON PLEAS
 CASE#: 2024CP2200576
 DATE: 05/01/2024
 TIME: 10:00 AM
 USER: JEFFREY
 PROJECT: ZONING MAP

Aerial Photo Map



DISCLAIMER: This map is a photographic representation of each parcel's location. It is not intended to be used as a legal document. The information is provided for informational purposes only. The user assumes all responsibility for the accuracy of the information.

0 25 110 220 330 440
2024 Jun 18 10:38 AM
Parcel Information System
Parcel ID: 22000576
Map Date: 06/18/2024

Map created and hosted by Esri
Esri, South Korea, and Esri Japan

From: [Roberts, Jennifer M CIV USARMY \(USA\)](#)
To: trioonealy@gmail.com
Cc: coates@thebrldomancompany.com; OCRMPermitting@ghbc.sc.gov; [Bracey, Wiley C CIV USARMY CESAC \(USA\)](#)
Subject: SAC-2021-576 Tanner Property Delineation Concurrence
Date: Friday, April 5, 2024 11:39:48 AM
Attachments: [SAC-2012-576 Wetland Map.pdf](#)

Dear Mr. Tanner:

This is in response to your request for a Delineation Concurrence (SAC-2012-00576), received in our office on January 25, 2024, for an 18.99-acre site identified as Tax Map Sequence (TMS) #04-0158-060-00-00, located east of and adjacent of Highway 17, in the Town of Pawleys Island, Georgetown County, South Carolina (Latitude: 33.4413°N, Longitude: -79.1210°W).

The review area is part of an overall project known as Tanner Property. 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.

This information is sufficient for planning and permitting purposes with our office. Unless otherwise requested, no further correspondence will be forthcoming regarding this request.

In all future correspondence, please refer to file number SAC-2012-00576. A copy of this letter is being forwarded to State and/or Federal agencies for their information. If you have any questions, please contact Jennifer Roberts, Project Manager, at (843) 365-1726, or by email at Jennifer.M.Roberts@usace.army.mil.

Respectfully,

Jennifer Roberts
Regulatory Project Manager
US Army Corps of Engineers, Charleston District
(843) 365-1726
1949 Industrial Park Road #140
Conway, SC 29526

FOR INTERNAL USE ONLY	
Case Number: <u>2023-00043</u>	Fee Paid: <u>✓MGM</u>
Date Submitted: <u>2/2/24</u> <i>(complete)</i>	Received By: <u>MGM</u>



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

APPLICATION FOR REZONING TO ANY PLANNED DEVELOPMENT

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

Name of Proposed Development: Magic Oaks

**Note: All Planned Developments shall have a minimum of two acres and must be a mixed used development (not applicable for FDD's).*

Property Information:

TMS Number: 04-0158-060-00-00

Street Address: 10798 Ocean Hwy Pawleys Island

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

Lot / Block / Number: N/A

Current Zoning Classification: GC/GR

Existing Use: Single Family

Proposed Use: Single Family

Number of Acres: 19.03 Acres *Total*
8.3 rezoned

Property Owner of Record:


Name: David E. Tanner

Address: 10798 Ocean Hwy

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

Telephone/Fax: 843-222-2877

E-mail: dave.tanner00@yahoo.com

Signature of Owner / Date:  1-24-24

Contact Information: Name: David Tanner Phone 843-222-2877

I have appointed the individual or firm listed below as my representative in conjunction with this matter related to the Planning Commission of proposed new construction or improvements to the structures on my property.

Agent of Owner:

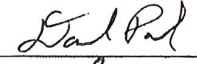
Name: Earthworks Group (Daniel Park)

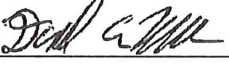
Address: 11655 highway 707 PO Box 201

City / State / Zip Code: Murrells Inlet, SC 29575

Telephone/Fax: (843) 651-7900

E-mail: Dpark@earthworksgroup.com / Tasmith@earthworksgroup.com

Signature of Agent/ Date:  01-24-2024

Signature of Owner /Date:  1-24-24

Conceptual Plan requirements include the following:

- One-24x36, one 11x17, along with a specified digital version (PDF) for initial review. *Nine (9) 24x36 sets will be required prior to distribution*
- Scaled Site Plan:
 - Location map, owners names, location of structures, types of uses, total acreage, lot sizes, traffic patterns, screening and buffering borders, building heights, density, layout of sidewalks and parking areas, open spaces labeled and title block.
 - Environmental Plan:
 - Contours, drainage plan, flood prone areas, marsh area or wetlands and any other principle geographic features.
- Water and Sewer Plan:
 - Shall meet the requirements of the Georgetown County Water and Sewer District extension policy.
- Utilities Plan:
 - Layout and easements for other utilities.
- Tree Plan and other information required by staff.

Upon approval of the conceptual plan by County Council, the zoning map will be changed accordingly.

Final Plan requirements include the following:

- Scaled Detailed Site Plan:
 - Includes everything submitted on the concept plan plus phase of development with timetable, ingress and egress lanes, setbacks, lot sizes, street names, type of pavement, exact dimensions of structures, public access and open space, density, final layout of sidewalks and pathways and title block.
- Environmental Plan:
 - Includes everything submitted on the concept plan plus dumpster location and erosion control methods.
- Water and Sewer Plan:
 - Includes everything submitted on the concept plan plus the sign-off on the plans.
- Utilities Plan:
 - Includes everything submitted on the concept plan.
- Exterior Appearance:
 - Need to submit elevations of the proposed buildings.
- Soil, trees, and other information required by staff.

Fee Schedule: Planned Developments.

PD and FDD	\$1,000.00 + \$10.00/acre Residential & \$25.00/acre Commercial
Major Changes	\$250.00 + \$10.00/acre Residential & \$25.00/acre Commercial &

Adjacent Property Owners Information required:

1. The person requesting the amendment to any Planned Development must submit to the planning office, at the time of application submittal, stamped envelopes addressed with name of each resident within **four hundred feet (400)** of the subject property. The following return address must appear on the envelope: **“Georgetown County Planning Commission, 129 Screven Street, Georgetown, SC 29440.”**
2. A list of all persons (and related Tax Map Numbers) to whom envelopes were addressed to must also accompany the application.

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed rezoning rests with the applicant.

Please submit this **completed application** and appropriate **fee** to **Georgetown County Planning Division at 129 Screven Street, Suite222, Georgetown, S.C. 29440**. If you need any additional assistance, please call our office at 843-545-3158.

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

A sign is going to be placed on your property informing residents of an upcoming meeting concerning this particular property. This sign belongs to Georgetown County and will be picked up from your property within five (5) days of the hearing.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ORDINANCE NO. 24-06

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF GEORGETOWN COUNTY, REGARDING 8.3 ACRES OF TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM GENERAL COMMERCIAL (GC) AND GENERAL RESIDENTIAL (GR) TO A FLEXIBLE DESIGN DISTRICT (FDD).

BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED TO AMEND THE ZONING MAP OF GEORGETOWN COUNTY, SPECIFICALLY TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM GENERAL COMMERCIAL (GC) AND GENERAL RESIDENTIAL (GR) TO FLEXIBLE DESIGN DISTRICT (FDD), AS REFLECTED ON THE ATTACHED LAND PLAN DATED ~~8/21/23~~ 4/5/24, NARRATIVE DATED 1/25/24 AND WITH THE FOLLOWING CONDITIONS:

1. An amendment to the Future Land Use (FLU) map from CP to Medium Density Residential.
2. Signage for the development will comply with the zoning ordinance allowance for subdivisions.
3. Parking for the amenities area will be a pervious surface.
4. Final approvals and/or permits from Midway Fire, Georgetown County Stormwater, OCRM, SCDOT, Georgetown County Public Works, and GCWSD.

DONE, RATIFIED AND ADOPTED THIS _____ DAY OF _____, 2024.

Louis R. Morant (SEAL)
Chairman, Georgetown County Council

ATTEST:

Theresa Floyd
Clerk to Council

This Ordinance, No. 24-06, has been reviewed by me and is hereby approved as to form and legality.

John D Watson
Georgetown County Attorney

First Reading: _____

Second Reading: _____

Third Reading: _____



Item Number: 9b
Meeting Date: 4/9/2024
Item Type: Ordinance

Agenda Request Form
Georgetown County Council

DEPARTMENT: Planning Department

ISSUE UNDER CONSIDERATION:

Ordinance No. 24-06 - An Ordinance to Amend the Official Zoning Map of Georgetown County, Regarding 8.3 Acres of TMS #04-0158-060-00-00, Located Along US Hwy 17 in Pawleys, from General Commercial Along US Hwy 17 in Pawleys Island, From General Commercial (GC) and General Residential (GR) to a Flexible Design District.

CURRENT STATUS:

The property is currently split zoned between General Commercial (GC) [3.22 ac], General Residential (GR) [5.08 ac], and Conservation Preservation (CP) [10.73 ac] and is located in the heart of Pawleys Island area of Georgetown County, SC. The tract currently has one house on it that will be demolished.

POINTS TO CONSIDER:

- 1 The applicant filed a request to rezone approximately 8.3 acres of a 19.03 acre tract of Mr. Tanner's property from General Commercial (GC) and General Residential (GR) to a FDD to allow for a single-family subdivision of twenty-seven (27) new residential lots.
2. The property under consideration for rezoning is located at 10798 Hwy 17 in Pawleys Island.
3. The surrounding zoning includes General Commercial (GC) to the west along Hwy 17, a commercial Planned Development to the north and south, also some other single-family residential areas to the north and south (GR zoned), and an area of Pawleys salt-water marsh zoned Conservation Preservation to the east (see Zoning & Aerial Map).

4. Proposed Dimensional Standards for the Magic Oaks FDD are as follows:

<u>Setbacks:</u>	<u>Min Lot Area:</u>	<u>Min Lot Width:</u>	<u>Max Height:</u>
*Front – 20'	8,000 sq. ft.	**60'	35'
Sides – 10'			
Rear – 15'			

*There is a mandatory 90' setback off U.S. Hwy 17 (Section 409 of the Zoning Ordinance). Also, a change in zoning to FDD will give flexibility in the positioning of the proposed homes/structures to reduce the impact on the larger trees located throughout the site, as well as provide a larger buffer from the adjoining commercial uses near Hwy 17. **Lots 15 and 16 will utilize squared off property lines for yard and setback requirements to save a 52" grand oak tree in a common/open area.

5. Lot sizes range from 8,000 sq. ft. to 15,800 sq. ft. Proposed lots along the marsh are keeping in line with the size of adjacent marsh-front parcels to the north and south.
6. Staff does not consider this as spot zoning since the applicant's rezoning request is more than two (2) acres of contiguous land and is adjacent to other single-family residential areas.
7. The FDD zoning district has the intent to provide opportunities to create more desirable environments for single or mixed-use developments through the application of flexible and diversified land development standards under a comprehensive review process, while protecting the natural and human environments (also see Benefits in the Magic Oaks FDD project summary narrative).
8. The property is located in Flood Zones VE, AE, and X. Houses built closer to the marsh that are eastward of the Limit of Moderate Wave Action (LiMWA) line will be within a Coastal A Zone, which has stricter building code standards and height requirements that must be met during construction.
9. No Traffic Impact Analysis (TIA) study is warranted for this development because it doesn't meet the threshold of 500 ADT. $27 \text{ home sites} \times 10 \text{ ADT} = 270 \text{ ADT}$.
10. The Future Land Use (FLU) map designates this entire 19.03 acre tract as Conservation Preservation (see FLU map attached). A change to the FLU map would be warranted for this proposed development. Staff researched deeds for this property and could not find any deed restrictions that would have made this tract of land designated as Conservation Preservation in its entirety. Only the acreage of salt marsh should be designated this way because a single-family house already exists on the uplands. This is possibly a Future Land Use (FLU) mapping error in GIS.
11. A FLU map change would be required from Conservation Preservation to Medium Density Residential for the 8.3 acres of upland to support the zoning change to FDD. The proposed project and draft plans for 27 single-family lots shows a Gross Density of 3.42 units per acre, and a Net Density of 4.06 units per acre. This Net density meets density standards to be classified as Medium Density per our Land Use Regulations (see attached Site Plan). The current GR zoning for the middle portion of the tract would allow for multi-family up to 16 units per acre OR lots with a minimum of 6,000 sq. ft.
12. Buffers are not required for single-family residential property per Chart 2 of Sec. 1201.9, however, the developer has shown a proposed 50' Coastal Wetland Protection Buffer listed on the site plan to limit habitable structures near the salt marsh (see notes on Plan). Also the developer has provided a wetlands determination report and proposes a voluntary 10' wetland buffer to all freshwater wetlands on site.
13. A tree survey was provided and it listed numerous protected trees and several grand trees on this tract. A variance from the Zoning Board of Appeals (ZBA) would need to be granted to remove any grand trees. The applicant plans on saving more tree canopy than the minimum requirements of Sec. 1301.13 (Pres of Tree Canopy) to beautify the development. The plans show approximately 49 protected trees to be saved or 1,034" measured at DBH. This exceeds our new Tree Regulations requirements.
14. Rezoning must be heard and voted on through three (3) readings by County Council. The final plat for this major subdivision development will need to be approved by the

Planning Department prior to any land disturbance or permits. If a Major Change occurs on the approved FDD plan, then it must be taken back through PC and Council with a public hearing.

15. Further permits/approvals from Midway Fire, Georgetown County Stormwater, Santee Cooper, Georgetown County Water and Sewer District (GCWSD), Zoning, and Public Works will be needed before final approval and land disturbance may begin.

16. All lots will have frontage and driveway access from a newly created 50' private right-of-way street. The applicant intends for the development to be gated. A South Carolina Department of Transportation (SCDOT) encroachment permit will be needed for ingress/egress off U.S. Hwy 17.

17. The developer's sketch plan indicates leaving a 50' existing vegetative buffer on the front of the property near Hwy 17 suppressing the highway traffic noise and to "camouflage" the view of the homes from the street. An amenities center with a pavilion/meeting space, pool, open space, and visitor parking will be provided, as well as a private kayak launch near the marsh. The property owner envisions a thoughtfully designed project with beautiful homes and as many trees left as possible. The low impact design of incorporating the stormwater retention under the street in the right-of-way will remove any unsightly drainage ponds, allow for the retention of more trees, and will help add to the overall esthetics of the neighborhood.

18. There is a small area that will be located within the amenities space that has cremains, both human and animal. SCDHEC has no jurisdiction or regulations over cremains. This space will be fenced and left as a memorial.

19. In conclusion, this rezoning is in line with the area, yard, and height requirements of other zoning districts along Hwy 17 through Pawleys Island. The typical land use pattern for the area shows Conservation Preservation (CP) over the marsh and inlet, General Residential (GR) inland and along the marsh front, and General Commercial (GC) up towards the highway for commercial uses. This rezoning to FDD will eliminate multi-family, townhomes, and commercial uses on this property and will be keeping with adjacent residential lot sizes along the marsh. If the FDD rezoning is approved, staff recommends the following conditions:

1. An amendment to the Future Land Use (FLU) map from CP to Medium Density Residential is required.
2. Signage for the development will comply with the zoning ordinance allowance for subdivisions;
3. Parking for the amenities area will be a pervious surface; and,
4. Final approvals and/or permits from Midway Fire, GC Stormwater, DHEC-OCRM, SCDOT, GC Public Works, and GCWSD.

20. After hearing staff's report, information from the applicant, and public input from some neighboring property owners, the Planning Commission made a motion to approve the rezoning request to a FDD, with a vote of 5-1 in favor of the motion.

21. UPDATE: A revised conceptual plan is included showing the following:

- a. A 10' wide sidewalk along the front of the property to allow for access to the neighboring commercial properties.
- b. Sidewalks on both sides of the new proposed street.

c. The proposed 15' kayak launch access has been moved from the center of the property to the northern boundary to allow for public access from the adjoining property.

d. In order to incorporate these changes, the ordinance should be amended to reflect the revised plan date of 4/5/2024.

FINANCIAL IMPACT:

N/A

OPTIONS:

1. Approve as recommended by the Planning Commission.
2. Defer for 30 days pending further requested information.
3. Remand back to the Planning Commission for more information.
4. Deny the rezoning request.

STAFF RECOMMENDATIONS:

Staff recommends approving the rezoning of 8.3 acres to FDD, with conditions, as recommended by the Planning Commission on 2/15/24....

ATTORNEY REVIEW:

No

ATTACHMENTS:

1. Ordinance No. 24-06 (as amended for 2nd reading consideration)
2. Revised LAND_PLAN_FOR_FDD dated 4/5/24 (Ordinance No. 24-06)
3. Aerial_Photo_Map
4. FLU_Map
5. Current_Zoning
6. GC.SURVEY_TOPO_AND_TREE
7. Tanner_Rezoning_to_FDD_Application_Packet
8. 231147.2024.0405.CIV.COUNTY.LAND PLAN FDD REZONING updated

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;)	
Tall House Farm, L.P.,)	
)	DEFENDANTS RCB LAND
Plaintiffs,)	HOLDINGS, LLC AND MAGIC
)	OAKS, LLC'S MOTION TO STRIKE
vs.)	PURSUANT TO RULE 12(f), SCRPC
)	
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,
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

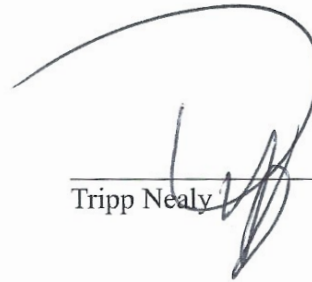
Myrtle Beach, South Carolina
August 23, 2024

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	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Emanuel Stikas, Trustee of the Stikas	:	CASE NO.
Revocable Living Trust, dated	:	
February 1, 2023, d/b/a The Village	:	PLAINTIFFS' MEMORANDUM IN
Shops; Donald W. Reid and Katheryn	:	OPPOSITION TO MOTION TO STRIKE
W. Reid, husband and wife; Elizabeth	:	OF DEFENDANTS RCB LAND
Gattshall Hawkins Martin; Tall House	:	HOLDINGS, LLC, AND MAGIC OAKS,
Farm, L.P.,	:	LLC
	:	
Plaintiffs	:	Declaratory Judgment
	:	
v.	:	Jury Trial Demanded
	:	
Georgetown County; David E. Tanner;	:	
RCB Land Holdings, LLC; Magic	:	
Oaks, LLC	:	
	:	
Defendants	:	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE OF DEFENDANTS RCB LAND HOLDINGS, LLC, AND MAGIC OAKS, LLC

Plaintiffs, by and through their attorneys, oppose the Motion to Strike of Defendants RCB Land Holdings, LLC, and Magic Oaks, LLC, as follows:

Background

1. Plaintiffs are adjoining landowners who filed a Declaratory Judgment Action challenging the approval by Georgetown County Council of the rezoning of land along the Salt Marsh in Pawleys Island, designated by the Comprehensive Plan as "Conservation Preservation," to a Flexible Design District for residential development.

2. Among other claims, Plaintiffs allege that County Council's approval was procedurally improper because the rezoning included changes and additions to the text, maps, and development plan that were not first reviewed or considered by Planning Commission as

required by Section 6-29-720(A) of the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Enabling Act"), S.C. Code, Section 6-29-310, *et seq.*, which states:

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.

3. Plaintiffs' Complaint alleges that nearly two months *after* Planning Commission reviewed and recommended the original rezoning text, plan and maps at a public hearing, changes were made to the text, plan, and maps that included the addition of a public kayak launch, a 15-foot-wide public right-of-way that ran along the entire length of the southern boundary of the property of two Plaintiffs and other private property, new drainage easements, and public sidewalks. These modifications were *not* part of the original plan, text, and maps reviewed, considered, and recommended by Planning Commission.

4. Plaintiffs' Complaint claims that it was improper for Council to approve the modified text, plan, and maps without first having the changes reviewed, considered, and recommended by Planning Commission as required by the Enabling Act, thereby rendering its decision void.

Allegations about Public Kayak Launch are Not Moot or Immaterial

5. The motion requests the Court to strike all paragraphs of Plaintiffs' Complaint relating to the public kayak launch on the basis that the paragraphs are "moot and immaterial" because an alleged "contingency," (that is not a matter of record), supposedly did not occur, (also not a matter of record), and, thus, the public kayak launch will not come to fruition.

6. This request is without merit and Plaintiffs submit that the Motion to Strike should be denied for the following reasons:

a. The legal issue raised in Plaintiffs' Complaint relating to the public kayak launch is that it was *improper* for County Council to consider and vote on modified text, maps, and plans thereby rendering its decision void. Whether or not the public kayak launch does or does not ultimately happen and whether or not the public kayak launch was subject to a contingency is not relevant to the claim that the decision was *improper* in the first place. In other words, the legal claim is not about the *existence* of the public kayak launch, it is about *improper process*.

b. This procedural impropriety is not rendered moot even if the public kayak launch does not ultimately come to fruition. It cannot properly be presumed that Council's decision would have been the same without inclusion of the public kayak launch and other modifications to the text, plan, and maps, as this Motion to Strike suggests. If the decision had been made according to *proper* procedure, there are a multitude of possible alternative outcomes, and we do not know which one would have prevailed. For example, if Council had considered and voted on the text and maps that were approved by Planning Commission, *i.e.*, those *without* the public kayak launch and other changes, Council may not have approved the rezoning. Likewise, if the modified text and maps had gone back to Planning Commission to consider the public kayak launch and other changes, Planning Commission may not have approved them. Thus, the claim of procedural impropriety is not rendered moot regardless of the ultimate fate of the public kayak launch.

c. Notwithstanding that the existence or non-existence of a contingency is irrelevant to Plaintiffs' claim, there is no "contingency" that actually appears as part of the record. Even if there were, the question whether or not the parameters of that contingency

were met are issues of fact that are not of record and are not properly considered in a pretrial Motion to Strike pursuant to SCRPC, Rule 12(f).

Law to be Applied

7. The issue in a Motion to Strike under SCRPC, Rule 12(f) is whether the subject matter is relevant to the cause of action alleged in the Complaint, and "if the allegation has any substantial relation to the cause of action or defense alleged, it is relevant and should not be stricken." *Lucas v. Garrett*, 208 S.C. 292, 295, 38 S.E.2d 18, 20 (1946); *See also, Poole v. Combined Utility System of City of Easley*, 269 S.C. 271, 274, 237 S.E.2d 82, 84 (1977) (Trial court properly refused to strike complaint's allegation that was relevant to the cause of action raised.)

8. 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, [or] municipal ordinance may have determined any question of construction or validity arising under the ... statute, [or] ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.

9. "A cause of action under the Declaratory Judgments Act is established by showing the existence of a *justiciable controversy*, defined as a real and substantial controversy which is appropriate for judicial determination." *Farmer v. CAGC Insurance Company*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. of App. 2018) (citations omitted) (emphasis added). *See also Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 566, 155 S.E.2d 618, 621 (1967), and *Jowers v. South Carolina Department of Health and Environmental Control*, 423 S.C. 343, 354 815 S.E.2d 446, 452 (2018). A justiciable controversy is "an existing controversy or at least the ripening seeds of a controversy." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C.

414, 423-424, 593 S.E.2d 462, 467 (2004) (citations omitted). “The Act is to be *liberally construed* and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (2013) (citations omitted) (emphasis added).

10. Plaintiffs’ Complaint alleges that their rights and legal relations have been affected by the improper approval of Ordinances 24-05 and 24-06, as detailed above, and asks the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions. The allegations referencing the public kayak launch are an integral and relevant part of Plaintiffs’ claim.

Effect of this Motion to Strike is Motion to Dismiss

11. Although this motion is characterized as a "Motion to Strike," the relief requested would have the effect of entirely dismissing Plaintiffs’ Declaratory Judgment claim relative to the improper nature of County Council’s approval of a modified plan.

12. In the context of a Motion to Dismiss, “[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states *any* valid claim for relief.” *Doe v. Marion*, 373 S.C. 390, 398, 645 S.E.2d 245, 247-48 (2007). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on *any* theory, then dismissal under Rule 12(b)(6) is *improper*.” *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). (emphasis added).

13. As set forth above, one of Plaintiffs’ claims in this Declaratory Judgment Action is that County Council did not have authority to approve modifications, including the public

kayak launch, that were not first reviewed by Planning Commission. References to the addition of the public kayak launch are a relevant and necessary part of this claim.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Honorable Court to deny the Motion to Strike of RCB Land Holdings, LLC, and Magic Oaks, LLC.

Respectfully submitted,

/s/ F. Patrick Hubbard
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September 16, 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,)

**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."¹ 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), SCRCR 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

¹ 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), SCRCR, 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	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Emanuel Stikas, Trustee of the Stikas	:	CASE NO. 2024 CP 2200577
Revocable Living Trust, dated	:	
February 1, 2023, d/b/a The Village	:	PLAINTIFFS' MOTION TO ALTER OR
Shops; Donald W. Reid and Katheryn	:	AMEND JUDGMENT PURSUANT TO
W. Reid, husband and wife; Elizabeth	:	SCRCP, RULE 59(e)
Gattshall Hawkins Martin; Tall House	:	
Farm, L.P.,	:	Declaratory Judgment
	:	
Plaintiffs	:	
v.	:	Jury Trial Demanded
	:	
Georgetown County; David E. Tanner;	:	
RCB Land Holdings, LLC; Magic	:	
Oaks, LLC	:	
	:	
Defendants	:	

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

Pursuant to Rule 59(e), SCRCP, Plaintiffs respectfully request this Honorable Court to alter and/or amend its Order of October 15, 2024, as follows: (1) Deny the Motion to Strike of Defendants RCB Land Holdings, LLC, and Magic Oaks, LLC. (2) Extend the time set forth in the Order of October 15, 2024, within which Plaintiffs have to file an Amended Complaint until after an Order is issued on this motion.

Plaintiffs' motion is made on the following bases as set forth hereinafter:

- I. The Order exceeds the proper scope of inquiry.
- II. The Order improperly strikes matters relevant to causes of action properly raised in Plaintiffs' Complaint.
- III. The Order improperly strikes matters on which Plaintiffs' causes of action are dependent, effectively dismissing those causes of action.

Plaintiffs' Memorandum in Opposition to Defendants' Motion to Strike filed on September 16, 2024, is incorporated herein by reference, and Plaintiffs respectfully state further as follows in support of this motion:

I. ORDER EXCEEDS PROPER SCOPE OF INQUIRY

Rule 12(f), SCRCP, states: "Upon motion pointing out the defects complained of ... the court may order stricken from any pleading any insufficient defense or any *redundant, immaterial, impertinent or scandalous matter.*" (emphasis added). By its own terms, a Rule 12(f) Motion to Strike is limited to defects in the pleading itself, *i.e.*, "redundant, immaterial, impertinent or scandalous matter" within the four corners of the Complaint.

South Carolina courts have long held that the proper inquiry in the context of a Motion to Strike is whether the Complaint contains matters that are immaterial or impertinent to the causes of action raised in the Complaint. "[I]f the allegation has *any substantial relation* to the cause of action or defense alleged, it is relevant and should not be stricken." *Lucas v. Garrett*, 208 S.C. 292, 295, 38 S.E.2d 18, 20 (1946) (emphasis added); *See also, Poole v. Combined Utility System of City of Easley*, 269 S.C. 271, 274, 237 S.E.2d 82, 84 (1977).

A pretrial Rule 12(f) Motion to Strike is *not* a proper vehicle to evaluate the merits of claims alleged in Plaintiffs' Complaint, or to consider outside evidence, or to make factual determinations about whether a cause of action may or may not ultimately prevail, fail, or be rendered moot based on outside evidence. Pleadings have not been closed, discovery has not been conducted, testimony has not been taken, evidence has not been challenged or properly presented for consideration as a matter of record.

The Order improperly considered outside evidence which included events that took place *after* the occurrences giving rise to Plaintiffs' cause of action, *after* the zoning ordinances in

question were alleged to have been rendered void, and *after* the Complaint itself was filed. This evidence relates to the *merits* of Plaintiffs' claims and the defenses asserted by the Developer Defendants, not to the relevance of the allegations at issue or any defect or impropriety in the pleading.

II. PLAINTIFFS' CAUSE OF ACTION

A. County Council's *Ultra Vires* Act Rendered Ordinances Void

Section 6-29-720(A) of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (hereinafter "Enabling Act"), clearly and unambiguously states:

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.

Plaintiffs' Complaint alleges that Georgetown County Council's failure to comply with these mandatory provisions of Section 6-29-720(A) of the Enabling Act by improperly considering a plan that had been amended to include a public kayak launch after an unamended version of the plan had been previously reviewed and approved by Planning Commission, was an *ultra vires* act rendering the zoning ordinances *void* as of the moment they were approved on April 23, 2024. (Plaintiffs' Complaint, pars. 2, 6, 7, 31, 52-56, 58-60, 66, 75-76).

B. Legal Effect of "Void" Ordinances

By definition, something that is "void" has no legal effect from inception. "It is ineffectual so that nothing can cure it." (*Black's Law Dictionary, 4th Ed.; Westlaw Practical Law*). In this case, Plaintiffs' Complaint alleges that the zoning ordinances were rendered void from their inception on April 23, 2024, due to the *ultra vires* acts of County Council in not following state law with respect to consideration of an amended plan that included the public kayak launch.

Even if it were proper for the Court to consider evidence outside of the Complaint, which it is not, void ordinances cannot be resurrected by events that occur *after* they have been rendered void. Subsequent evidence demonstrating that the public kayak launch will not ultimately be constructed in the future does not change the fact that County Council *did not have the power or authority* to approve the ordinances in the first place rendering them substantively void upon their inception. Ordinances that were void as of April 23, 2024, are not capable of being retroactively revived, rectified, reversed or rendered moot by a letter from a neighboring landowner dated August 14, 2024, or an Affidavit dated September 16, 2024, making assurances about the future status of the public kayak launch.

An additional consequence of the Order's improper consideration and acceptance of substantive outside evidence that the public kayak launch will not be built, is that this constitutes a "major change" to the Flexible Design District Ordinance of which the public kayak launch is a specific part. This change, in and of itself, invalidates the underlying ordinance and requires a public hearing and zoning ordinance amendment to be valid. (*See The Zoning Ordinance of Georgetown County, South Carolina, 631, 631.13, 631.132*).

C. References to Public Kayak Launch are Relevant

The proper inquiry in this matter is as follows: Does reference to the public kayak launch have "any substantial relation" to the cause of action alleged in Plaintiffs' Complaint? If so, "it is relevant and should not be stricken." *Lucas* at 295, 20. Council's consideration of the public kayak launch is at the very heart of Plaintiffs' cause of action which makes it relevant. This should have been the end of the inquiry and the Motion to Strike should have been denied on this basis.

**III. ORDER EFFECTIVELY DISMISSES
PLAINTIFFS' CAUSE OF ACTION**

The Court Order strikes all allegations of Plaintiffs' Complaint regarding the public kayak launch and failure to resubmit the amended plan to Planning Commission. This has the effect of dismissing essential elements of Plaintiffs' cause of action regarding the *ultra vires* nature of the ordinance approval process which rendered the ordinances void. The Court Order also improperly strikes Paragraph 7(d) which raises other claims relevant to Plaintiffs' cause of action.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Honorable Court to alter or amend the Court Order dated October 15, 2024, as follows:

- (1) Deny Defendants' Motion to Strike.
- (2) Extend the time within which Plaintiffs have to file an Amended Complaint until after an Order is issued on this motion.

Respectfully submitted,

/s/ F. Patrick Hubbard
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October 25, 2024

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP2200577

Emanuel Stikas et al
PLAINTIFF(S)

Georgetown County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's motion to reconsider is respectfully denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/27/2024 .

Village Shops
Emanuel Stikas Tr
F. Patrick Hubbard for Keep It Green Inc,Emanuel Stikas,Katheryn W Reid,Donald W Reid,Tall House Farm Lp,Elizabeth Gattshall Hawkins Martin
Stikas Revocable Living Trust Dated February 1 2023
Keep It Green, Inc.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Georgetown Common Pleas

Case Caption: Emanuel Stikas , plaintiff, et al VS Georgetown County , defendant,
et al
Case Number: 2024CP2200577
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ David P. Caraker, Jr.

RECEIVED

Mar 12 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

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

Circuit Court Case No. 2024 CP 2200577

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.,

Appellants,

v.

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

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that the APPELLANTS' RETURN IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS APPEAL and EXHIBITS was served this 12th day of March, 2025, upon Respondents by emailing a copy of same to the primary email address of counsel of record listed in the AIS system as set forth below. Copies of said emails are attached hereto in accordance with SC Appellate Court Rules and related orders.

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March 12, 2025



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Emanuel Stikas, et al. v. Georgetown County, et al., Appellate Case No. 2025-000066

1 message

KIG Advocacy <kig.advocacy@gmail.com>

Wed, Mar 12, 2025 at 7:00 AM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>, Sydney Douglas <Sydney.Douglas@smithrobinsonlaw.com>, "Crowl, Zachary J." <ZCrowl@bellamylaw.com>, "Miller, David Brunson" <DMiller@bellamylaw.com>, Dan Stacy <dstacy@oxnerandstacy.com>

Cc: "Hubbard, Patrick" <phubbard@law.sc.edu>

Dear Counsel:

Attached please find the following which are hereby served on you and will be filed in the Court of Appeals today:

- (1) Appellants' Initial Brief
- (2) Appellants' Designation of Matter to be Included in the Record on Appeal
- (3) Appellants' Return in Opposition to Respondents' Motion to Dismiss
- (4) Exhibits to Appellants' Return in Opposition to Respondents' Motion to Dismiss

Thank you for your kind attention.

Very truly yours,
Cindy Person
Pat Hubbard
ATTORNEYS FOR APPELLANTS

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director





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4 attachments

-  **Stikas - Appellants' Initial Brief 03.12.2025f.pdf**
214K
-  **Stikas - Appellants' DOM 03.12.2025f.pdf**
66K
-  **Stikas - Appellants' Return in Opposition to MTD 03.12.2025f.pdf**
151K
-  **Stikas - Exhibits to Appellants' Return 03.12.2025f.pdf**
8926K