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Jun 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-001306
Case No. 2023-CP-22-00007

Elizabeth M. Powers and Edward A. Powers; Martha C. Green; Steven E. Basson; James R. Sherman; Alexander V. Picard and Jessica L. Picard; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.,.....Appellants,

v.

Georgetown County; and Alliance for Economic Development for Georgetown County Respondents.

**RESPONDENT ALLIANCE FOR ECONOMIC DEVELOPMENT FOR
GEORGETOWN COUNTY’S MOTION TO DISMISS**

James K. Gilliam, SC Bar #76695
BURR & FORMAN LLP
104 South Main Street, Suite 700
Greenville, SC 29601
JGilliam@burr.com
(864) 271-4940

*Attorney for Respondent Alliance
for Economic Development for
Georgetown County*

Pursuant to Rule 240 of the South Carolina Appellate Rules and Rule 21 of the South Carolina Rules of Civil Procedure, Respondent the Alliance for Economic Development for Georgetown County (“**Alliance**”) moves the Court of Appeals for an Order dismissing it from this appeal. Respondent Georgetown County consented to the dismissal of the Alliance; however, the Appellants did not respond to the Alliance’s request for dismissal. Accordingly, the Alliance moves to be dismissed from this case.

BACKGROUND

The only reason the Alliance was named as a party in this case is because of its ownership of real property in Georgetown County, with such real property more specifically identified as Parcel Three of the Mercom Planned Development (“**Parcel Three of the Mercom PD**”). In November 2022, Georgetown County Council (“**County Council**”) approved an amendment to Parcel Three of the Mercom PD via Ordinances 22-36 and 22-37 (“**2022 Ordinances**”) that allowed for the construction of ninety residential units on Parcel Three of the Mercom PD, thirty percent of which would be designated for below market rate rents (or affordable housing).

Following the enactment of the 2022 Ordinances, the Appellants commenced this legal action to challenge the validity of the 2022 Ordinances. The Alliance and co-Respondent Georgetown County moved to dismiss Appellants’ Complaint. The circuit court granted these motions, and this appeal followed.

While this appeal was pending, the Alliance sold its interest in Parcel Three of the Mercom PD to One Georgetown Realty, LLC as reflected in the deed that is

attached as **Exhibit A** to this Motion. Because the Alliance no longer has an interest in the property that is the subject of this appeal, the Alliance no longer has any stake in the outcome of this appeal or the declaratory relief sought by the Appellants. Because it no longer has any stake in this litigation, the Alliance respectfully requests that it be dismissed from this appeal.

ARGUMENT

I. The Alliance should be dismissed from this appeal because it does not have an interest in the declaratory relief sought by the Appellants.

The Alliance’s interest in the relief sought by the Appellants under the South Carolina Uniform Declaratory Judgment Act (“the Act”) terminated when it sold the property in question. The Act requires that all parties to a declaratory judgment action have an interest in the declaratory relief sought. S.C. Code Ann. § 15-53-80. Interpreting the Act, South Carolina courts require not only an interest, but a substantial, direct, and legally protected interest in the relief sought. *Carolina Alliance for Fair Empl. v. South Carolina Dep’t of Labor, Licensing, & Regulation*, 337 S.C. 476, 487, 523 S.E.2d 795, 801 (Ct. App. 1999) (emphasis added).

The Alliance is a party to this declaratory judgment action only because it owned Parcel Three of the Mercom PD. That is no longer the case. The Alliance’s interest in the relief sought terminated when it sold the property—it no longer has any interest in the outcome of Appellants’ challenge to the validity of the 2022 Ordinances, much less a substantial, direct or legally protected interest. Thus, the Alliance is not a proper party to this action under S.C. Code Ann. § 15-53-80 and should be dismissed.

II. The Court of Appeals has authority to dismiss the Alliance from this appeal.

As mentioned above, the Alliance should be dismissed from this appeal because it no longer has an interest in the declaratory relief sought. It is necessary and appropriate for the Court of Appeals to dismiss the Alliance from this appeal to avoid the unjustness of the Alliance defending an action in which it has no claims or interest.

The Supreme Court and Court of Appeals have recognized broad authority under Rule 21 of the South Carolina Rules of Civil Procedure to drop or realign a party “at any stage of the action and on such terms as are just.” Rule 21, SCRPC (emphasis added); see *Branham v. Ford Motor Co.*, 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010); *Bauknight v. Buchanan*, 2020 S.C. App. Unpub. LEXIS 252, *5, 2020 WL 3989494 (2020); *Jones v. Rogers Townsend & Thomas, P.C.*, 2022 S.C. App. Unpub. LEXIS 391, *7, 2022 WL 2966387 (Ct. App. 2022). In *Jones v. Rogers Townsend & Thomas*, the Court of Appeals affirmed the circuit court’s decision to dismiss the trustee parties from the action because the plaintiff sought a declaratory judgment regarding the validity of an easement in which the trustee parties no longer claimed any interest. *Jones*, 2022 S.C. App. Unpub. LEXIS 391 at *9. This case is no different.

The Court should exercise its broad authority under Rule 21 to dismiss the Alliance from this action. The Alliance’s interest in this litigation ceased when it sold the property. The Alliance has no claims or interest in this litigation and the outcome of this appeal will have no binding or practical effect on it or the other parties to this

action. The only real impact will be the Alliance needlessly incurring attorney's fees and costs defending this action. Therefore, the Court should exercise its authority and dismiss the Alliance from this appeal. Respectfully, the Alliance requests that the Court take swift action to dismiss it from this appeal. This Court is scheduled to hear oral arguments in this case on Wednesday, June 11, 2025.

CONCLUSION

For the foregoing reasons, the Alliance requests that the Court of Appeals dismiss it from this appeal and grant it such other and further relief as this Court may deem just and proper under the circumstances.

BURR & FORMAN, LLP

/s/ James K. Gilliam

James K. Gilliam, SC Bar # 76695

Burr & Forman, LLP

104 Main Street, Suite 700 (29601)

Post Office Box 447

Greenville, SC 29602

jgilliam@burr.com

(864) 271-4940

*Attorney for Respondent Alliance for
Economic Development for Georgetown
County*

Greenville, South Carolina
June 6, 2025

Exhibit A

GEORGETOWN COUNTY, SC

Marlene McConnell

Register of Deeds

By: THERESA FREEMAN Clerk

2025005350

DEED

RECORDING FEES

\$15.00

STATE TAX

\$3120.00

COUNTY TAX

\$1320.00

06-05-2025

10:57 AM

BK:RB 4839 PG:284-288

Georgetown COUNTY ASSESSOR

Tax Map:

04-0203-189-02-00

Date: 06/05/2025

TRH

Prepared by:
Burr & Forman LLP
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577
File No.: 0044778.0000003

NO TITLE SEARCH PERFORMED BY PREPARING ATTORNEY

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY DEED
COUNTY OF GEORGETOWN)

THIS DEED is made this 2nd day of June, 2025, by and between Alliance for Economic Development for Georgetown County, a South Carolina non-profit corporation, hereinafter called Grantor, and One Georgetown Realty, LLC, whose address is 1691 Turnbull Avenue, North Charleston, SC 29405, hereinafter called collectively Grantee.

KNOW ALL MEN BY THESE PRESENTS that Grantor, for and in consideration of the sum of ONE MILLION TWO HUNDRED THOUSAND AND 00/100 (\$1,200,000.00) Dollars paid to Grantor by Grantee, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the matters set forth herein, unto Grantee, forever, the following described property to wit:

ALL AND SINGULAR, all that certain piece, parcel or tract of land lying, being and situate in Pawleys Island, Georgetown County, South Carolina, designated as Parcel 3 containing 14.449 acres on a "Plat Showing A 28.21 Acre Parcel Being Divided Into Parcels 1, 2 and 3" prepared for Waccamaw Land, LLC by Cunningham Land Surveying, LLC dated February 1, 2013 and recorded February 22, 2013 in Slide 750, at Page 1, Office of the Register of Deeds for Georgetown County, South Carolina, said Plat being made a part and parcel hereof by reference.

This being the identical property conveyed unto the Grantor herein by Deed of Waccamaw Land, LLC, a South Carolina Limited Liability Company, dated February 25, 2016 and recorded February 29, 2016 in Book 2748 at Page 238, in the Office of the Register of Deeds for Georgetown County, South Carolina.

TMS No.: 04-0203-189-02-00

Subject to all covenants, conditions, restrictions and easements found in the public records for Georgetown County.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

61135826 v1

CLEMENT RIVERS LLP
ATTORNEYS AT LAW
P.O. BOX 993
CHARLESTON, SC 29402-0993
2024-06-03

TO HAVE AND TO HOLD all and singular the said premises before mentioned, subject to the matters set forth herein, unto Grantee, forever.

AND, subject to those matters set forth herein, the Grantor does hereby bind itself, its heirs, successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee as hereinabove provided, against itself and its heirs, successors and no others.

[SEE NEXT PAGE FOR SIGNATURES]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

**AFFIDAVIT FOR TAXABLE
OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at/known as: **Parcel 3, 14.449 acres on Pedigru Drive, Pawleys Island, SC 29585 bearing County Tax Map Number 04-0203-189-02-00**, was transferred by **Alliance for Economic Development for Georgetown County to One Georgetown Realty, LLC.**
3. Check one of the following: The deed is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **\$1,200,000.00.**
 - (b) The fee is computed on the fair market value of the realty which is _____
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No **X** to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: **\$1,200,000.00.**
 - (b) Place the amount listed in item 5 above here: **\$0**
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: **\$1,200,000.00.**

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: **\$4440.00.**

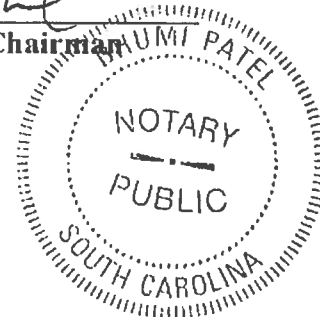
8. As required by Code Section 12-24-70, I state that I am a responsible person who was Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction:

Alliance for Economic Development for Georgetown County, a South Carolina non-profit corporation


BY: Will Howard, Chairman



SWORN to before me this
2nd day of June, 2025.


Notary Public for South Carolina
My commission expires: 5-4-2026

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lies or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars; (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation; (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quietclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quietclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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APPEAL FROM GEORGETOWN COUNTY
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Appellate Case No. 2023-001306
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Elizabeth M. Powers and Edward A. Powers; Martha C. Green; Steven E. Basson; James R. Sherman; Alexander V. Picard and Jessica L. Picard; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.,..... Appellants,

v.

Georgetown County; and Alliance for Economic Development for Georgetown County..... Respondents.

PROOF OF SERVICE

I, the undersigned legal practice assistant of the law offices of Burr & Forman, LLP, do hereby certify that on June 6, 2025, I have served all counsel in this action with a copy of the below by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2023-001306).

Documents Served: (1) Respondent Alliance for Economic Development for Georgetown County’s Motion to Dismiss

Counsel Served: Via E-Mail Only

H. Thomas Morgan, Jr. (SC Bar #73585)

Sydney Douglas (SC Bar #105744)

tommy@smithrobinsonlaw.com

sydney.douglas@smithrobinsonlaw.com

ATTORNEYS FOR RESPONDENT GEORGETOWN COUNTY

F. Patrick Hubbard (SC Bar #12614)

phubbard@law.sc.edu


ATTORNEY FOR APPELLANTS

Cynthia Ranck Person (SC Bar #105126)

kig.advocacy@gmail.com

ATTORNEY FOR APPELLANTS

BURR & FORMAN, LLP


Kailyn Beasley

Greenville, South Carolina

June 6, 2025

James K. Gilliam
jgilliam@burr.com
Direct Dial: (864) 552-9338
Direct Fax: (864) 250-2054

Poinsett Plaza
104 South Main Street
Suite 700
Greenville, SC 29601

Mailing Address
Post Office Box 447
Greenville, SC 29602

Office (864) 271-4940
Fax (864) 271-4015

BURR.COM

June 6, 2025

VIA FEDEX

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

**Re: Elizabeth M. Powers, et al., Appellants v. Georgetown County, et al.,
Respondents
Appellate Case No. 2023-001306**

Dear Ms. Kitchings:

I represent Respondent Alliance for Economic Development for Georgetown County (“Alliance”) in the above referenced appeal. On June 6, 2025, the Alliance filed a Motion to Dismiss with the Court of Appeals. Importantly, this appeal is scheduled to be heard by the Court of Appeals on Wednesday, June 11, 2025. The Alliance seeks dismissal from this case because it recently sold the property that is the subject of this appeal. I have included a copy of the deed evidencing this fact as Exhibit A to the Alliance’s Motion.

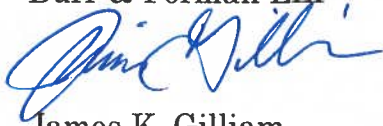
I would respectfully request that you notify the assigned panel as quickly as possible of the fact that the Alliance has sold this property and of this pending Motion. While the Alliance has moved to be dismissed from this appeal and is hopeful the Court will grant it such relief prior to oral argument, if, for whatever reason, the Court either denies the Alliance’s Motion or does not rule on it prior to oral argument, the Alliance will cede any argument time that it may be allotted to its co-Respondent, Georgetown County.

Thank you for your attention to this matter. The check representing the filing fee for the Alliance’s Motion to Dismiss, which again was filed on June 6, 2025, will be sent to the Court via FedEx on Monday, June 9, 2025.

The Honorable Jenny Abbott Kitchings
June 6, 2025
Page 2

Sincerely,

Burr & Forman LLP



James K. Gilliam
Partner

JKG