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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

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

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Circuit Court Case No. 2024 CP 2200577

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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.

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

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APPELLANTS' FINAL REPLY BRIEF

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July 30, 2025

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## **PRELIMINARY MATTERS**

In their Statement of Facts, Respondents Magic Oaks, LLC, and RCB Land Holdings, LLC, made multiple representations to the court about matters that are not of record, including personal commentary about parties, unrelated cases, the clients and mission of the undersigned public charitable legal organization that represents Appellants and provides *pro bono* legal services to the community in land use cases. These representations are irrelevant to the issues before the court, and the majority are wholly inaccurate. Respondents' mischaracterizations and comments are clearly intended to have a negative and possibly prejudicial effect. As such, these comments have no place in an appellate legal brief.

## **ARGUMENT**

### **1. Standard of Inquiry**

Respondents' Initial Briefs devote a great deal of time to matters that go far beyond the proper scope of inquiry in a Rule 12(f), SCRPC, Motion to Strike. The proper standard is whether the allegations have any "substantial relation" to the cause of action. If so, they are "relevant and should *not* be stricken." *Lucas v. Garrett*, 208 S.C. 292, 295, 38 S.E.2d 18, 20 (1946) (emphasis added). A Motion to Strike is limited to defects in the pleading. It is *not* a vehicle to evaluate the merits of claims, address disputed facts, or make factual determinations. As set forth in pages 16-18 of Appellants' Initial Brief, it is reversible error for the trial court to go beyond the limited inquiry permitted in a Rule 12(f) Motion to Strike and make a decision about disputed facts that affect a claim or defense.

Respondents spend the majority of their briefs discussing an alleged "failed contingency" and other disputed facts. Their arguments completely misapprehend the nature of the cause of action at issue. Plaintiffs' Complaint claims that the challenged ordinances were void *from*

*inception* as of April 23, 2024, because County Council did not have authority to approve a "changed plan" that had not first been reviewed by Planning Commission as required by Subsection 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. (emphasis added).

A critical element of this claim is the "change" to the plan that was improperly considered and approved by County Council.

The "change" was the addition of a public kayak launch and related items. Specifically, on February 15, 2024, Planning Commission considered Plan "A," which consisted of 27 single-family residences in a gated community along the Pawleys Island Salt Marsh with a *private* kayak launch for use only by residents of that gated community. According to Plan "A," the private kayak launch would be located in the center of the gated community to provide residents with access to the salt marsh.

Planning Commission reviewed and approved Plan "A." (Complaint, Exhibit "3") (ROA, p. 54). County Council, however, never considered Plan "A." Instead, Plan "A" was changed to Plan "B," (Complaint, Exhibit "2") (ROA, p. 41), which completely eliminated the private kayak launch for residents only and added a new and considerably larger *public* kayak launch located in a completely different area of the proposed development. In addition to the changes in nature, size and location of the kayak launch, this new public kayak launch was to be accessed from adjacent land by way of a "Public Kayak Launch Access" that ran along the northern boundary of the Magic Oaks property and shared a common boundary with one of the Plaintiffs.

According to Subsection 760(A) of the Enabling Act, after Plan "A" was changed to Plan "B," it should have been sent back to Planning Commission for "review and recommendation" before Council was authorized to consider and approve it. This did not happen. Instead, on April 23, 2024, Plan "B" was considered and finally approved by County Council *without* Planning Commission's review and recommendation in violation of Subsection 760(A).

Respondents' briefs fail to address the statutory requirements of Subsection 760(A). Instead of acknowledging the undisputed fact that County Council did not follow those statutory requirements, Respondents make a creative effort to cure this defect by retroactively changing the facts to suit an expeditious narrative. They begin by arguing that approval of the public kayak launch was subject to a "contingency." Appellants can find no contingency or conditional approval that appears in the ordinance, text, plan, or anywhere else. (Complaint, Exhibit "2") (ROA, pp. 39-41). In fact, the alleged "contingency" is notably absent from the list of conditions set forth in the text of the ordinance. (Complaint, Exhibit "2") (ROA, p. 39). The plan very simply states "access to public kayak launch through adjoining property." This is not a contingency nor does any language in the ordinance, plans, or other records suggest that approval was conditioned upon or subject to a contingency. (Complaint, Exhibit "2") (ROA, p. 41). Appellants personally attended and have transcripts of every public meeting relating to this rezoning. Appellants are aware of no contingency or conditional approval.

Appellants stated in their Initial Brief that this alleged "contingency" does not appear of record and is, at best, a matter of disputed fact or argument that goes to the *merits* of Respondents' defense. (Appellants' Initial Brief, pp. 20-21). It is not a matter to be considered or resolved in a pretrial Rule 12(f) Motion to Strike. In response, Respondents Magic Oaks and RCB Land Holdings make a serious accusation in their Initial Brief at page 12:

Appellants' contention that this contingency is not a matter of record is a *complete misrepresentation of fact*. The contingency was clearly identified in the development plan which is part of Georgetown County Ordinance No. 24-06 and even attached as an Exhibit to Appellants' Complaint. (emphasis added).

Respondents characterize the contingency as "clearly identified" in the development plan; however, they never quote it. Appellants invite and encourage the court to review the referenced ordinance text and attached plan. (Complaint, Exhibit "2") (ROA, pp. 39-41).

Respondents further claim that the public kayak launch will not be constructed because of this "failed contingency." They argue that because it will not be constructed, all references to the public kayak launch were properly stricken from the Complaint as "moot and immaterial."

Respondents clearly do not understand Appellants' claim which is as follows: The event that rendered the ordinances void was the unauthorized approval of the "changed plan" (Plan "B") by County Council. This unauthorized event that rendered the ordinance void cannot be retroactively "undone" by things that allegedly happened after the fact. It does not matter whether there was a "failed contingency." Nor does it matter that the public kayak launch will not be built. Appellants claim that the ordinances were void on April 23, 2024. These two matters of extrinsic evidence that happened after the fact do not change Appellants' claim.

The existence or non-existence of a contingency and whether it has been met are contested *factual* matters that relate to the merits of Defendants' defense. They are not appropriately addressed in the context of a Rule 12(f) Motion to Strike. The proper inquiry is limited to whether the allegations in question are *relevant* to Plaintiffs' cause of action. This question was not considered.

The trial court's Order states: "[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." (emphasis added) (ROA, p. 7). This decision prevents Appellants from producing evidence of the "changed plan," which is not only relevant, but forms the entire basis of this particular cause of action, *i.e.*, the failure to satisfy Subsection 760(A). The effect of the Order is a decision on the merits that prevents Appellants from litigating their claim, essentially dismissing the claim of failure to follow Subsection 760(A).

## **2. Amended Complaint Not Relevant**

Respondents' argue that the trial court's Order does not have the effect of a dismissal because Plaintiffs' Amended Complaint has the same number and style of causes of action as the original Complaint. The Amended Complaint has no relevance to this appeal. However, Respondents Magic Oaks and RCB Land Holdings, raised it in their brief, so Appellants will address it as follows.

By way of background, as part of its Order granting Defendants' Motion to Strike, the trial court directed Plaintiffs to file an Amended Complaint prior to the trial court's decision on Plaintiffs' pending Rule 59(e), SCRCF, Motion to Alter or Amend and prior to a potential appeal of the decision to the Court of Appeals. Accordingly, Plaintiffs had no choice but to file a "Provisional" Amended Complaint under protest that specifically included the following language:

On October 15, 2024, the Court issued an Order granting Developer Defendants' Motion to Strike and directing Plaintiffs to file an Amended Complaint in compliance with said Order within fifteen (15) days of the Order.

...

[A]s directed by the Court ... and without waiving any rights or objections, Plaintiffs file this Provisional Amended Complaint which eliminates causes of action Plaintiffs believe are viable and have been improperly stricken. In filing this Provisional Amended Complaint, Plaintiffs reserve all rights they would have if this Provisional Amended Complaint had not been filed, including but not limited to all rights to appeal, raise objections, further amend the Complaint or Provisional Amended Complaint, withdraw the Provisional Amended Complaint and proceed according to the original Complaint, or any other action that

Plaintiffs could have taken but for the filing of this Provisional Amended Complaint.

(Amended Complaint, pp. 1-2) (ROA, pp. 132-133).

The issue before this court is not about the number or styling of causes of action that Appellants are able to raise in an Amended Complaint compared to an original Complaint, it is about the trial court *eliminating the ability of Appellants to introduce evidence* to support their Subsection 760(A) claim. In this case, by striking all references to the public kayak launch, the court has eliminated the ability of Plaintiffs to introduce facts that support their claim that the ordinances are void because County Council improperly considered and approved a changed plan in violation of Subsection 760(A) of the Enabling Act. The trial court's Order effectively precludes Plaintiffs from litigating this claim on the merits regardless of the number or styling of remaining causes of action.

### **3. Other Issues**

Respondent Georgetown County's Initial Brief characterizes the addition of the public kayak launch, *i.e.*, change from Plan "A" to Plan "B," as a "minor change." (Respondent Georgetown County's Initial Brief, p. 1). Subsection 760(A) of the Enabling Act does not differentiate between major and minor changes. It plainly states that *no change* may be made unless it is first submitted to Planning Commission.

Respondents Magic Oaks and RCB Land Holdings seem to argue that they have an automatic right to proceed with the Flexible Design District development without constructing the public kayak launch and without further approval. Along the same lines, Respondent Georgetown County claims that "the failed contingency would cause the plans to utilize the private kayak launch as originally planned instead." (Respondent Georgetown County's Initial Brief, p. 3).

To eliminate a kayak launch altogether would constitute yet another change to the original plan, *i.e.*, Plan "C" (no kayak launch). Such a plan was never reviewed or approved by either the Planning Commission or the County Council. The plan with a private kayak launch, (Plan "A"), was never considered or approved by County Council nor did it ever become part of any ordinance. It could not be built without approval. There is no authority for either of these propositions particularly where, as in this case, the zoning ordinance in question is a Flexible Design District which means that the zoning district is the plan itself. The ordinance cannot be changed at the whim of the developer without prior proper approval by Planning Commission and County Council.

#### **4. Opposition to Respondents' Renewed Motion to Dismiss**

In their Initial Brief, Respondents RCB Land Holdings, LLC, and Magic Oaks, LLC, renewed their Motion to Dismiss this appeal per this Court's Order dated March 25, 2025, denying the Motion to Dismiss without prejudice to further argue the issue in Initial Briefs. On March 12, 2025, Appellants filed a Return in Opposition to Respondents' Motion to Dismiss, (hereinafter "Opposition"), which is incorporated herein by reference as though fully set forth.

Appellants' position is summarized as follows: The right to appeal is governed by S.C. Code Ann., §14-3-330 (1976). As set forth in Appellants' Opposition, Sections 14-3-330(1), (2)(a) and (2)(c) provide authority for immediate appeal in this case. The trial court's Order found that "Plaintiffs' allegations regarding the public kayak launch *and* the alleged failure to resubmit the amended plan to Planning Commission are *moot and immaterial.*" By striking these references from the Complaint, Plaintiffs are prevented from presenting evidence to establish the basis of the cause of action relating to Enabling Act Subsection 760(A).

While the trial court's Order did not specifically characterize its decision as a "dismissal," the effect was a decision on the merits that "remove[d] a material issue from the case thereby preventing the issue from being litigated on the merits." The Order was a final determination of a substantial matter forming the basis of Plaintiffs' cause of action involving the unauthorized acts of County Council which were contrary to Subsection 760(A). Accordingly, the Order is immediately appealable because it involves the merits, strikes matters that affect a substantial right, and makes a final determination regarding the cause of action as discussed herein

### CONCLUSION

For the foregoing reasons, Appellants respectfully request this court to deny Respondents' Renewed Motion to Dismiss, reverse the trial court's decision granting Respondents' Motion to Strike, and permit Appellants to litigate their cause of action on the merits.

Respectfully submitted,

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