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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.

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

RECORD ON APPEAL

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HOLDINGS, LLC & MAGIC OAKS, LLC

July 11, 2025

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Orders/Judgments

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:

Motion to Strike by Attorney Crowl - Granted as far as anything referring to the public kayak launch. Attorney Crowl to prepare the order.

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 09/27/2024 .

Village Shops
Emanuel Stikas Tr
F. Patrick Hubbard for 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.

Electronically signed on 2024-09-27 09:24:51 page 3 of 3

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;	)	ORDER GRANTING DEFENDANTS
Tall House Farm, L.P.,	)	RCB LAND HOLDINGS, LLC AND
Plaintiffs,	)	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. Crawl, 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), SCRCP and based on the grounds set forth above. On September 16, 2024 Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Strike. Also, on September 16, 2024, Defendants filed an Affidavit of Tripp Nealy, Individually and on Behalf of RCB Land Holdings, LLC and Magic Oaks, LLC in support of

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

IT IS SO ORDERED!

[Prepared for electronic signature]

ROA 7



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.

Electronically signed on 2024-10-15 09:13:09 page 4 of 4

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.

Electronically signed on 2024-12-27 11:44:02 page 3 of 3

Pleadings

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,

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

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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
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ATTORNEY FOR PLAINTIFFS

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

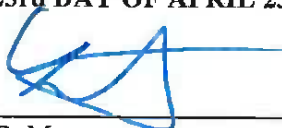
ORDINANCE NO. 24-05

AN ORDINANCE TO AMEND THE COMPREHENSIVE PLAN, FUTURE LAND USE MAP, REGARDING 8.3 ACRES OF TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM CONSERVATION PRESERVATION TO MEDIUM DENSITY RESIDENTIAL

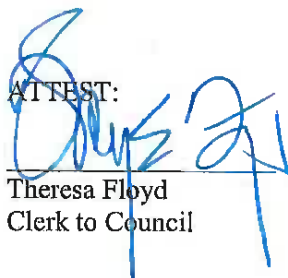
BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED:

To amend the Comprehensive Plan, Future Land Use Map, to reflect the redesignation of tax map parcel 04-0158-060-00-00, located along U.S. Hwy 17 in Pawleys Island, from conservation preservation to medium density residential, as reflected on the attached map.

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



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

ATTEST:

Theresa Floyd
Clerk to Council

This Ordinance, No. 24-05, has been reviewed by me and is hereby approved as to form and legality.


John D. Watson
Georgetown County Attorney

First Reading: February 27, 2024
Second Reading: April 9, 2024
Third Reading: April 23, 2024



1. *University of Maryland* (1997). *University of Maryland*. Retrieved from <http://www.um.edu>

Legend

Specimen Number

5400 255

FUTURE LAN

CONVINCAL

CONSERVATION PRESERVATION

NEULSTRA

LOW DENSITY RESIDENTIAL

MEDIUM DENSITY RESIDENTIAL

HIGH DENSITY RESIDENTIAL

PUBLIC-SEMI-PUBLIC

TRANSITIONAL

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).

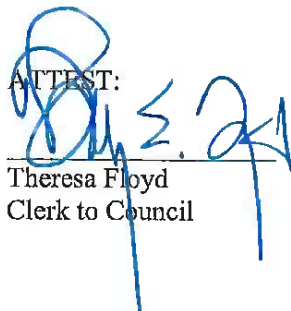
BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED TO AMEND THE ZONING MAP OF GEORGETOWN COUNTY, SPECIFICALLY TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM GENERAL COMMERCIAL (GC) AND GENERAL RESIDENTIAL (GR) 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.



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.

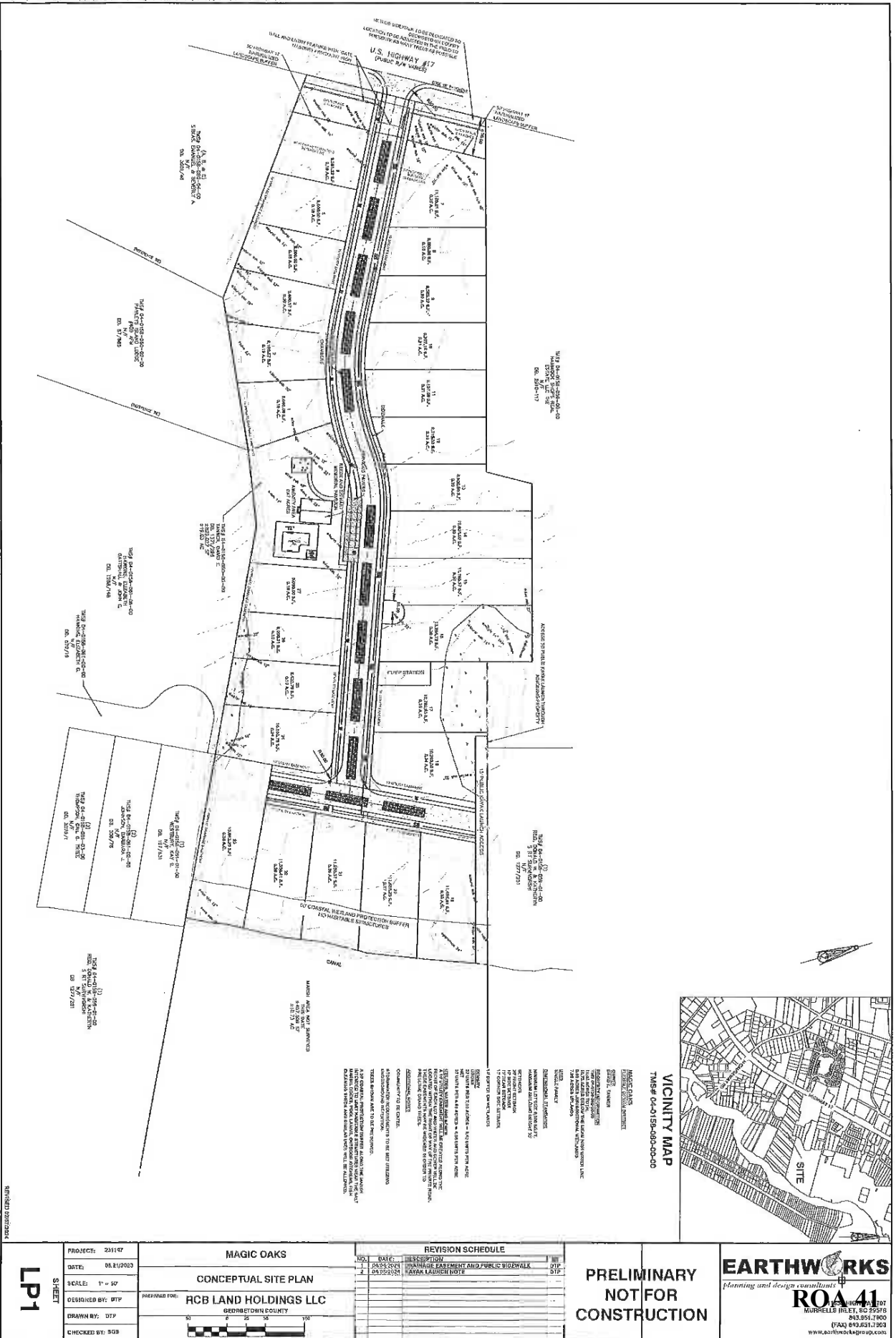


John D. Watson
Georgetown County Attorney

First Reading: 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
HRR*

**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.

DECLASS. AUTHORITY: 25 USC 552



Aerial Photo Map



DISCLAIMER: This map is a computer-generated image and should not be used as a substitute for a professional survey. The map is for informational purposes only and does not constitute a warranty of any kind. The map is subject to change without notice.

From: [Roberts, Jennifer M CIV USARMY \(USA\)](#)
To: [triponealy@gmail.com](#)
Cc: [coates@thebridgemancompany.com](#); [OCRMPermitting@gher.sc.gov](#); [Bracev, 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



TBC
THE BRIGMAN CO.

Delineation Concurrence Exhibit

Tanner Property
TMS# 04-0158-060-00-00
Pawleys Island, Georgetown County, SC
January 22, 2024



ROA349

FOR INTERNAL USE ONLY

Case Number: 2023-00043 Fee Paid: ✓ MGA
Date Submitted: 2/2/24 Received By: MGA
(complete)



**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:

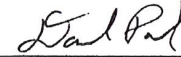
Name: Earthworks Group (Daniel Park)

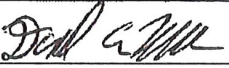
Address: 11655 highway 707 PO Box 201

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.

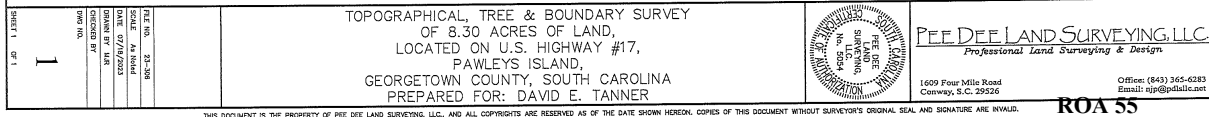
It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed rezoning rests with the applicant.

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) C/A NO.: 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.) **DEFENDANT GEORGETOWN COUNTY’S**
Reid and Katheryn W. Reid, husband and) **ANSWER TO COMPLAINT**
wife; Elizabeth Gattshall Hawkins Martin;)
Tall House Farm, L.P.,)
)
Plaintiffs,)
vs.)
)
Georgetown County; David E. Tanner; RCB)
Land Holdings, LLC; Magic Oaks, LLC,)
)
Defendants.)

**TO: CYNTHIA RANCK PERSON, ESQ. AND F. PATRICK HUBBARD, ESQ.,
ATTORNEYS FOR PLAINTIFFS, AND PLAINTIFFS:**

Defendant Georgetown County (hereinafter collectively “Defendant”) hereby answers Plaintiffs’ complaint and allege as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained. Further, the answering Defendant specifically denies that it violated any constitutional or statutory right belonging to Plaintiffs. Finally, Defendant expressly denies that Plaintiffs are entitled to a jury trial on these declaratory judgment causes of action.

2. Paragraphs 1, 2, 3, and 4 are denied and Defendant demands strict proof thereof.

3. As to Paragraphs 5 and 6, Defendant craves reference to Ordinances 24-05 and 24-06. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

4. As to Paragraph 7, including subparagraphs a-g, Defendant denies the allegations and demands strict proof thereof.

5. As to Paragraphs 8, 9, 10, and 11, Defendant craves reference to public records in Georgetown County Register of Deeds office and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

6. Defendant denies the allegations and craves reference to South Carolina Code, Section 15-53-80 and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

7. Defendant Georgetown County admits that it 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). Defendant denies the remaining allegations set forth in Paragraph 13 of the Complaint.

8. Defendant denies the allegation in Paragraph 14 and demands strict proof thereof.

9. Defendant denies the allegations set forth in Paragraphs 15, 16, 17, 18, and 19, as it is without knowledge or information sufficient to form beliefs as to the truths of those allegations.

10. Defendant denies the allegations in Paragraphs 20, 21, 22, and 23 of the Complaint and craves reference to public records in the Georgetown County Register of Deeds office and to ordinances of the Georgetown County Council and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

11. As to Paragraph 24, Defendant denies the allegation and craves reference to Statute/Section 6-29-720(B) of the Enabling Act and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

12. As to Paragraphs 25, 26, 27, and 28, including all subparagraphs, Defendant denies the allegations and demands strict proof thereof.

13. Paragraphs 29 and 30 are admitted upon information and belief.

14. Paragraphs 31, 32, and 33, including all subparagraphs, Defendant denies the allegations and craves reference to the South Carolina Enabling Act. All allegations deemed unaddressed by the foregoing are denied and Defendant demands strict proof thereof.

15. As to Paragraph 34, Defendant craves reference to Georgetown County Ordinance 1701 and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

16. As to Paragraph 35, Defendant craves reference to the Georgetown County Planning Commission Bylaws, Article V, Section and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

17. As to Paragraphs 36 and 37, Defendant craves reference to the Georgetown County Comprehensive Land Use Plan and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

18. Paragraphs 38, 39, 40, 41, 42, and 43 of the Complaint are denied, and Defendant demands strict proof thereof.

19. Paragraph 44 is admitted.

20. As to Paragraphs 45, 46, 47, 48, 49, and 50, including all subparagraphs, Defendant denies the allegations and demands strict proof thereof.

21. Paragraph 51 is admitted.

22. Paragraphs 52, 53, and 54 are denied, and Defendant demands strict proof thereof.

23. Paragraph 55 is admitted.

24. As to Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66, including all subparagraphs, Defendant denies the allegations and demands strict proof thereof.

25. Paragraph 67 does not require a response but if one is required Defendants deny the same and demand strict proof thereof.

26. Paragraph 68 is denied, and Defendant demands strict proof thereof.

27. Paragraph 69 is admitted.

28. Paragraphs 70, 71, and 72, including all subparagraphs, are denied, and Defendant demands strict proof thereof.

29. As to Paragraphs 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83, including all subparagraphs, Defendant denies the allegations, and demands strict proof thereof.

30. Plaintiffs' Prayer for Relief is denied in its entirety, and Defendant demands strict proof thereof.

FOR A SECOND DEFENSE

31. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

32. Plaintiffs' Complaint fails to state a claim for which relief shall be granted pursuant

to Rule 8 and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, must be dismissed as a matter of law.

FOR A THIRD DEFENSE

33. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

34. Defendant denies that any constitutional rights of Plaintiffs have been violated and denies that it is, in any way, responsible for any willful, arbitrary, capricious, or malicious acts toward Plaintiffs such that Plaintiffs' Complaint must be dismissed as a matter of law.

FOR A FOURTH DEFENSE

35. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

36. That Defendant expressly denies that any acts or failures to act, as described in the Complaint, were committed or omitted maliciously, in bad faith, or in a grossly negligent manner, and, therefore, Defendant is immune from suit.

FOR A FIFTH DEFENSE

37. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

38. That at all times relevant hereto, the Defendant was engaged in the performance of its official duties, and at no time violated any clearly established constitutional rights which were known or should have been known to it; and therefore, it is entitled to immunity as a matter of law.

FOR A SIXTH DEFENSE

39. All admissions, denials, and allegations set forth above are incorporated herein as

if repeated verbatim.

40. Defendant pleads qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

FOR A SEVENTH DEFENSE

41. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

42. Georgetown County is a political subdivision of the State of South Carolina, and as such is immune from liability for any and all losses allegedly resulting from action taken pursuant to comprehensive planning and zoning processes and other governmental functions in accordance and as set forth in the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.*, as amended and all of the exceptions.

43. Defendant specifically pleads, but is not limited to, provisions of South Carolina Code §15-78-60(1)(2)(3)(4)(5)(12)(13)(16)(20)(23) as a complete bar to the recovery by the Plaintiffs herein.

44. Therefore, Defendant pleads South Carolina Code of Laws, §15-78-10, *et seq.*, as a complete bar to Plaintiffs' claims.

FOR AN EIGHTH DEFENSE

45. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

46. Defendant enjoys sovereign immunity and legislative immunity for its acts in passing the ordinances at issue in this lawsuit and, therefore, are immune from suit.

FOR A NINTH DEFENSE

47. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

48. Plaintiffs have not negated every conceivable rational basis for Defendant's treatment of the subject property nor shown how Defendant lacked a rational basis for its decision regarding the passing of the Ordinances and, as such, Plaintiffs' Complaint must be dismissed as a matter of law.

FOR A TENTH DEFENSE

49. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

50. Defendant at no time violated any clearly established constitutional rights of the Plaintiffs which were known or should have been known to them, and therefore, Defendant is entitled to immunity.

FOR AN ELEVENTH DEFENSE

51. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

52. Defendant pleads qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

FOR A TWELFTH DEFENSE

53. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

54. To the extent any of Plaintiffs' claims or requests for relief could be interpreted as requesting declaratory relief, Plaintiffs' Complaint fails to state any justiciable claims.

FOR A THIRTEENTH DEFENSE

55. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

56. Defendant's investigation into the facts of this case has not been completed and, therefore, Defendant reserves any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant prays that Plaintiffs' Complaint be dismissed with prejudice, for the costs of this action, attorney's fees, and for such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

**SMITH ROBINSON HOLLER DuBOSE
AND MORGAN, LLC**

By: s/H. Thomas Morgan, Jr.

H. Thomas Morgan, Jr., SC Bar No. 73585

Sydney J. Douglas, SC Bar No. 105744

ATTORNEYS FOR DEFENDANT GEORGETOWN
COUNTY

935 Broad Street

Post Office Drawer 39

Camden, South Carolina 29021

(803) 432-1992

tommy@smithrobinsonlaw.com

sydney.douglas@smithrobinsonlaw.com

August 21, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
		C/A NUMBER: 2024-CP-22-00577
Emanuel Stikas, Trustee of the Stikas	)	
Revocable Living Trust, dated February 1,	)	
2023, d/b/a The Village Shops; Donald W.	)	
Reid and Katheryn W. Reid, husband and	)	
wife; Elizabeth Gattshall Hawkins Martin;	)	SUMMONS TO COUNTERCLAIMS
Tall House Farm, L.P.,	)	AND THIRD PARTY COMPLAINT
Plaintiffs,	)	
vs.	)	
Georgetown County; David E. Tanner;	)	
RCB Land Holdings, LLC; Magic Oaks,	)	
LLC,	)	
Defendants.	)	
Magic Oaks, LLC,	)	
Third Party Plaintiff,	)	
vs.	)	
Keep It Green, Inc.,	)	
Third Party Defendant	)	

TO: THE ABOVE-NAMED PLAINTIFFS AND THIRD PARTY DEFENDANT

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

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

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

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

Myrtle Beach, South Carolina
August 23, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
		C/A NUMBER: 2024-CP-22-00577
Emanuel Stikas, Trustee of the Stikas	)	
Revocable Living Trust, dated February 1,	)	
2023, d/b/a The Village Shops; Donald W.	)	
Reid and Katheryn W. Reid, husband and	)	
wife; Elizabeth Gattshall Hawkins Martin;	)	ANSWER, COUNTERCLAIMS, &
Tall House Farm, L.P.,	)	THIRD PARTY COMPLAINT ON
Plaintiffs,	)	BEHALF OF DEFENDANTS MAGIC
vs.	)	OAKS, LLC AND RCB LAND
	)	HOLDINGS, LLC
Georgetown County; David E. Tanner;	)	
RCB Land Holdings, LLC; Magic Oaks,	)	
LLC,	)	
Defendants.	)	
	)	
_____	)	
	)	
Magic Oaks, LLC,	)	
Third Party Plaintiff,	)	
vs.	)	
	)	
Keep It Green, Inc.,	)	
Third Party Defendant	)	
_____	)	

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

FOR A FIRST DEFENSE
(General Objection)

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

FOR A SECOND DEFENSE
(Reservation of Defenses and Claims)

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

FOR A THIRD DEFENSE
(Specific Responses)

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

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

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

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

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

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

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

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

FOR A FOURTH DEFENSE
(Failure to State a Claim)

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

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

FOR A FIFTH DEFENSE
(Waiver and Estoppel)

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

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

FOR A SIXTH DEFENSE
(Attorney Fees Not Recoverable)

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

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

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

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

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

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

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

(Request for Judicial Bond)

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

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

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

(Tortious Interference with Existing Contractual Relations)

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

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

(Tortious Interference with Prospective Contractual Relations)

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

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

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

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

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

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

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

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

Parties and Jurisdiction

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

Factual Allegations

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

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

115. Prior to closing on the property, Magic Oaks and Mr. Tanner sought to rezone the property to accomplish these objectives.

116. Initially, Magic Oaks and Mr. Tanner filed an application to rezone the property to solely General Residential.

117. However, upon discussion with and recommendation of KIG, Magic Oaks and Mr. Tanner amended the application to apply instead for rezoning to a Flexible Design District in order to reduce density. KIG celebrated this collaboration on its website on February 13, 2024 stating:

The FDD zoning includes saving trees, large natural buffers, open space, and being more aesthetically pleasing.

The current General Residential and General Commercial zoning that exists on this parcel would allow high density and up to 95 multi-family/single-family units without any zoning change. The requested change to a Flexible Design District would eliminate the possibility of high density and/or multi-family housing on an environmentally sensitive tract which would be a big win for the community.

118. Earthworks Group in Murrells Inlet was hired to assist in the rezoning effort and Earthworks undertook to compile all necessary information and materials for the rezoning application.

119. Part of Earthworks' efforts included obtaining a wetlands study which was completed by the Brigman Company on January 22, 2024. As a result, the Brigman Company produced a full report with a Delineation Concurrence Exhibit and submitted the report to the United States Army Corps of Engineers with a request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated "Based on a review of the information you

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

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

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

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

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

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

130. Defendants reallege and incorporate by reference all paragraphs above as if fully set forth herein.
131. KIG has brought numerous actions in Georgetown County for the sole purpose of hindering and delaying validly approved residential development.
132. Upon information and belief, KIG has conspired with Plaintiffs to bring another baseless lawsuit on its behalf to hinder and delay residential development and has provided Plaintiffs its in-house counsel to do so.
133. Magic Oaks has suffered damages as a direct result of Plaintiffs' and KIG's civil conspiracy in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.
134. Magic Oaks, LLC is entitled to judgment against the Plaintiffs and KIG, jointly and severally, for Plaintiffs' and KIG's civil conspiracy, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

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

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

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

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

s/ Zachary J. 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 GEORGETOWN) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2024-CP-22-00577

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

Plaintiffs,)

vs.)

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

Defendants.)
)

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

TO: THE ABOVE-NAMED PLAINTIFFS AND THIRD-PARTY DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Counterclaims and Third Party Complaint on the subscribers at their office at 90 Wall Street, Unit B, Pawleys Island, South Carolina 29585, and to file your answer with the Clerk of Court for Georgetown County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaims and Third Party Complaint within the time aforesaid, Defendant in this action will apply to the Court for judgment by default for the relief demanded in the Counterclaims and Third-Party Complaint and a judgment will be rendered against you.

OXNER & STACY LAW FIRM, LLC

s/Daniel W. Stacy, Jr.

90 Wall Street, Unit B

Pawleys Island, South Carolina 29585

Telephone: (843) 235-6747

Facsimile: (843) 235-6650

Email: dstacy@oxnerandstacy.com

Attorney for Defendant, David E. Tanner

August 27, 2024

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2024-CP-22-00577
Emanuel Stikas, Trustee of the Stikas	)	
Revocable Living Trust, dated February 1,	)	
2023, d/b/a The Village Shops; Donald W.	)	
Reid and Katheryn W. Reid, husband and	)	
Wife; Elizabeth Gattshall Hawkins Martin;	)	
Tall House Farm, L.P.,	)	
	)	
Plaintiffs,	)	ANSWER AND COUNTERCLAIMS
	)	ON BEHALF OF DEFENDANT,
vs.	)	DAVID E. TANNER
	)	
Georgetown County; David E. Tanner;	)	
RCB Land Holdings, LLC; Magic Oaks,	)	
LLC,	)	
	)	
Defendants.	)	
	)	

Defendant, David E. Tanner (hereinafter "Defendant"), by and through his undersigned attorney, would hereby answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE
(General Objection)

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

FOR A SECOND DEFENSE
(Reservation of Defenses and Claims)

2. The allegations of the prior Defense are incorporated herein and made a part and parcel of this Second Defense.

3. Defendants reserve the right to assert, and do not waive, any additional or further defenses and/or claims as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

FOR A THIRD DEFENSE
(Specific Responses)

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

5. As to the allegations of Paragraph 1, it is admitted that Plaintiffs are challenging a valid approval by Georgetown County Council of a rezoning application to rezone a parcel of land in Pawleys Island, Georgetown County, South Carolina. The parcel was shown on the Comprehensive Plan as Conservation Preservation, but was zoned General Commercial and General Residential. The rezoning application sought to rezone the parcel to a Flexible Design District.

6. As to the allegations of Paragraph 2, it is admitted that on April 23, 2024, County Council validly approved the rezoning request by Ordinance 24-06 and validly approved Ordinance 24-05 to amend the Comprehensive Plan Future Land Use Map. The remaining allegations of Paragraph 2 are denied and strict proof demanded thereof.

7. The allegations of Paragraph 3 are denied and strict proof demanded thereof.

8. The allegations of Paragraph 4 are admitted with the exception that the land does not contain significant wetlands. The land in question was delineated by The Brigman Company for potential wetlands and minimal wetlands were found on the property. This delineation was submitted to the United States Army Corps of Engineers for review and request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated “Based on a review of the information you submitted, the delineated boundaries depicted on the map titled ‘Delineation Concurrence Exhibit Tanner Property’ and dated January 22, 2024, are a reasonable representation of the aquatic resources

located onsite.” Thus, the allegations of Paragraph 4 regarding wetlands are false and strict proof demanded thereof.

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

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

11. The allegations of Paragraph 7 are denied and strict proof demanded thereof.

12. As to the allegations of Paragraphs 8, 9, 10, and 11, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.

13. As to the allegations of Paragraph 12, the South Carolina Uniform Declaratory Judgment Act speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof. The remaining allegations of Paragraph 12 are denied and strict proof demanded thereof.

14. The allegations of Paragraph 13 are denied.

15. As to the allegations of Paragraph 14, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.

16. Upon information and belief, the allegations of Paragraph 15 are admitted.

17. As to the allegations of Paragraph 16, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.

18. As to the allegations of Paragraph 17, it is admitted that Defendant Tanner executed a Deed on June 6, 2024, recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on June 10, 2024, in Deed Book 4681 at Page 258, transferring the property to Magic Oaks, LLC. AS to the remaining allegations of Paragraph 17, S.C. Code Ann. §6-29-760(D)

speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

19. The allegations of Paragraph 18 are admitted.

20. As to the allegations of Paragraph 19, to Defendant's knowledge, are admitted as to the status of RCB Land Holdings, LLC. The remaining allegations of Paragraph 19 are denied and strict proof demanded thereof.

21. As to the allegations of Paragraph 20, it is admitted that the subject parcel consists of a total of 19.03 acres and was previously shown on the Comprehensive Plan, Future Land Use Map as Conservation Preservation. The remaining allegations of Paragraph 20 are denied and strict proof demanded thereof.

22. As to the allegations of Paragraphs 21, 22, and 23, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.

23. As to the allegations of Paragraph 24, S.C. Code Ann. § 6-29-720 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

24. The allegations of Paragraph 25 are denied and strict proof demanded thereof.

25. As to the allegations of Paragraph 26, the Georgetown County Comprehensive Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

26. The allegations of Paragraphs 27 and 28 are denied and strict proof demanded thereof.

27. As to the allegations of Paragraph 29, it is admitted that the remaining 10,73 acres of Magic Oaks remain zoned Conservation Preservation.

28. The allegations of Paragraph 30 are admitted.

29. The allegations of Paragraph 31 are denied and strict proof demanded thereof.

30. As to the allegations of Paragraph 32, the South Carolina Enabling Act speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

31. As to the allegations of Paragraph 33, S.C. Code Ann. §§ 6-29-720(B) and 6-29-710 speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.

32. As to the allegations of Paragraph 34, Georgetown County Ordinance 1701 speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

33. As to the allegations of Paragraph 35, the Georgetown County Planning Commission Bylaws speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.

34. As to the allegations of Paragraphs 36 and 37, the Georgetown County Comprehensive Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

35. As to the allegations of Paragraph 38 regarding the Georgetown County Comprehensive Plan, the Plan speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof. The remaining allegations of Paragraph 38 are denied and strict proof demanded thereof. The application for rezoning did not increase residential density. The original zoning of the parcel was General Commercial and General Residential. The Application for Rezoning requested a change to a Flexible Design District which provides for less residential density than previously allowed under the original zoning.

36. The allegations of Paragraphs 39, 40, 41, 42, and 43 are denied and strict proof demanded thereof.

37. The allegations of Paragraph 44 are admitted.

38. The allegations of Paragraph 45 are denied and strict proof demanded thereof.

39. As to the allegations of Paragraph 46, it is admitted that the Planning Commission voted to recommend approval of the amendments. The remaining allegations of Paragraph 46 are denied and strict proof demanded thereof.

40. The allegations of Paragraphs 47, 48, 49, and 50 are denied and strict proof demanded thereof.

41. The allegations of Paragraph 51 are admitted.

42. As to the allegations of Paragraph 52, it is admitted that the plan was amended to include a public kayak launch. However, the inclusion of the public kayak launch was contingent upon access through adjoining property. Such access will not be provided; thus, the public kayak is not part of the plan and this issue is moot.

43. the allegations of Paragraph 53 are denied and strict proof demanded thereof. The inclusion of the public kayak launch was contingent upon access through adjoining property. Such access will not be provided; thus, the public kayak launch site is not part of the plan and this issue is moot.

44. the allegations of Paragraph 54 are denied and strict proof demanded thereof.

45. The allegations of Paragraph 55 are admitted.

46. The allegations of Paragraph 56 are denied and strict proof demanded thereof.

47. As to the allegations of Paragraph 57, Defendant is without information to form a belief thereto and therefore denies the same and demands strict proof thereof.

48. The allegations of Paragraph 58 are denied and strict proof demanded thereof.

49. As to the allegations of Paragraph 59, it is admitted that County Council voted to approve Ordinances 24-05 and 24-06. The allegations that this approval was based on erroneous instructions are denied and strict proof demanded thereof.

50. The allegations of Paragraphs 60, 61, 62, and 63 are denied and strict proof demanded thereof.

51. As to the allegations of Paragraph 64, it is admitted that County Council voted to recommend approval of the amendments. The remaining allegations of Paragraph 64 are denied and strict proof demanded thereof.

52. As to the allegations of Paragraph 65, it is admitted that County Council approved the rezoning. The remaining allegations of Paragraph 65 are denied and strict proof demanded thereof.

53. The allegations of Paragraph 66 are denied and strict proof demanded thereof.

54. Paragraph 67 is a pleading paragraph requiring no response. To the extent Paragraph 67 incorporated prior allegations, Defendant craves specific reference herein.

55. The allegations of Paragraphs 68 and 69 are admitted.

56. The allegations of Paragraphs 70, 71, and 72 are denied and strict proof demanded thereof.

57. Paragraph 73 is a pleading paragraph requiring no response. To the extent Paragraph 73 incorporates prior allegations, Defendant craves specific reference herein.

58. The allegations of Paragraph 74 are denied and strict proof demanded thereof.

59. Paragraph 75 is a pleading paragraph requiring no response. To the extent Paragraph 75 incorporates prior allegations, Defendant craves specific reference herein.

60. The allegations of Paragraph 76 are denied and strict proof demanded thereof.

61. Paragraph 77 is a pleading paragraph requiring no response. To the extent Paragraph 77 incorporates prior allegations, Defendant craves specific reference herein.

62. The allegations of Paragraph 78 are denied and strict proof demanded thereof.

63. Paragraph 79 is a pleading paragraph requiring no response. To the extent Paragraph 79 incorporates prior allegations, Defendant craves specific reference herein.

64. The allegations of Paragraph 80 are denied and strict proof demanded thereof.

65. Paragraph 81 is a pleading paragraph requiring no response. To the extent Paragraph 81 incorporates prior allegations, Defendant craves specific reference herein.

66. The allegations of Paragraphs 82 and 83 are denied and strict proof demanded thereof.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

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

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

FOR A FIFTH DEFENSE
(Waiver and Estoppel)

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

70. Defendant pleads waiver and estoppel as a complete and affirmative defense.

FOR A SIXTH DEFENSE
(Attorney Fees Not Recoverable)

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

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

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

73. Defendant realleges and incorporates by reference all paragraphs above as if fully set forth herein.

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

75. On August 14, 2024, the owner of the Hammock Shops informed Defendant that it is "unable to provide access to the South boundary of the Hammock Shops Real Estate for the intended purpose of a public boardwalk and kayak launch."

76. Thus, the contingency upon which the public kayak launch was dependent will not occur.

77. As such, Plaintiffs' allegations regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission for review are moot and immaterial, and must be stricken from the Complaint. This includes Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59.

78. Defendants Magic Oaks, LLC and RCB Land Holdings, LLC have filed a Motion to Strike this matter pursuant to Rule 12(f), SCRCP prior to filing this Answer, and Defendant Tanner supports such motion.

FOR AN EIGHTH DEFENSE AND SECOND COUNTERCLAIM AGAINST ALL
PLAINTIFFS
(Abuse of Process)

79. As alleged in Paragraph 17 of Plaintiffs' Complaint, Defendant Tanner executed the deed on June 6, 2024, and recorded in the Register of Deeds for Georgetown County, South Carolina, on June 10, 2024, in Deed Book 4681 at Page 258 transferring the property to Magic Oaks, LLC. Plaintiffs were aware of this transfer as evidenced by their pleadings, and elected to name Defendant Tanner as a defendant in this matter. Defendant Tanner serves no purpose in this litigation as he is not the owner of the property as of the filing of the Summons and Complaint by Plaintiffs, and further, there are numerous allegations levied by Plaintiffs; not one allegation levied against Defendant Tanner allege any unauthorized or inappropriate conduct on his behalf. Request was made to have Defendant Tanner removed from this lawsuit and Plaintiffs refused. Failure of Plaintiffs to relieve Defendant Tanner as a defendant in this case is an abuse of process containing an ulterior purpose by Plaintiffs, and a willful act in use of the process not proper in the conduct of the proceeding. The ulterior purpose is to cause unnecessary and inappropriate expense, time and difficulty for Defendant Tanner by refusing to remove him from the lawsuit in which no allegations are made against him for property he no longer owns (at the time of the filing), and the willful act in the use of the process not proper in the conduct of the proceeding is continuing to force him to act as a defendant in this suit when no allegations him are made. A declaratory judgment act referenced in Plaintiffs' Complaint does not require the inclusion of Defendant Tanner as a party and the Court will soon receive a motion have him stricken as a defendant.

FOR AN NINTH DEFENSE AND THIRD COUNTERCLAIM AGAINST ALL
PLAINTIFFS

(Tortuous Interference with the Existing Contractual Relations)

80. Defendant realleges and incorporates by reference all paragraphs above as if fully set forth herein.

81. As part of the purchase of the Property at issue, Defendant Tanner has, as part of his agreement with Defendants, Magic Oaks, LLC, and RCB Land Holdings, LLC, an agreement to acquire a marsh front lot and having home built on said lot by Defendant, Magic Oaks, LLC, and Defendant RCB Land Holdings, LLC. Plaintiffs have filed this lawsuit to hinder and delay Magic Oaks, LLC from developing this property, thus providing an unknown delay in Defendant Tanner's capacity to acquire a marsh front lot and have a home built on it. Plaintiffs' actions are without justification and have caused damage to Defendant Tanner in the form of an unwarranted and baseless delay in the completion of his home.

82. Defendant Tanner is entitled to judgment against Plaintiffs, jointly and severally, for Plaintiffs' tortuous interference with the existing contractual relations, and to an award of actual damages, together with pre-judgment interest, punitive damages and the costs of this action.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant Tanner prays for the following relief:

- (a) That Plaintiffs' Complaint be dismissed with prejudice and the relief requested therein be denied;
- (b) For an Order under the First Counterclaim granting Defendants Magic Oaks, LLC, and RCB Land Holdings, LLC's Motion to Strike Plaintiffs' allegations in Paragraphs 2, 7c, 7d, 52, 53, 54, 56, and 59 regarding the public kayak launch and the alleged failure

to resubmit the amended plan to Planning Commission for review as moot and immaterial;

- (c) For a judgment under the Fifth Counterclaim in favor of Magic Oaks, LLC against the Plaintiffs, jointly and severally, for Plaintiffs' nuisance, and for an award of actual damages together with prejudgment interest, punitive damages, and costs of this action;
- (d) For a judgment under the Eighth Defense and Second Counterclaim in favor of Defendant Tanner against the Plaintiffs, jointly and severally, for Plaintiffs' abuse of process, and for an award of attorney's fees, together with prejudgment interest, punitive damages, and costs of this action; and
- (e) Award to Defendant Tanner and against Plaintiffs any such other, further and additional relief as this Honorable Court deems just and proper.

OXNER & STACY LAW FIRM, LLC

s/Daniel W. Stacy, Jr.
90 Wall Street, Unit B
Pawleys Island, South Carolina 29585
Telephone: (843) 235-6747
Facsimile: (843) 235-6650
Email: dstacy@oxnerandstacy.com
Attorney for Defendant, David E. Tanner

September 11, 2024
Pawleys Island, South Carolina

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.,	)	
Plaintiffs,	)	DEFENDANTS RCB LAND
	)	HOLDINGS, LLC AND MAGIC
vs.	)	OAKS, LLC'S MOTION TO STRIKE
Georgetown County; David E. Tanner;	)	PURSUANT TO RULE 12(f), SCRPC
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



Re: Hammock Shop Adjacent Development

Magic Oaks, LLC

C/O Tripp Nealy

1905 Main Street

Conway, SC 29526

Dear Mr. Nealy,

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

Thank you for presenting us with this opportunity.

Best Regards,

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

Kevin Heaton

i3, LLC

955 E Main Street Suite E Box 92

Lexington, SC 29072

STATE OF SOUTH CAROLINA)
)
COUNTY OF 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

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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

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

Plaintiffs,

vs.

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

Defendants.

**DEFENDANT GEORGETOWN
COUNTY'S NOTICE TO JOIN
DEFENDANTS RCB LAND
HOLDINGS, LLC AND MAGIC
OAKS, LLC'S MOTION TO STRIKE**

Magic Oaks, LLC,

Third Party Plaintiff,

vs.

Keep It Green, Inc.,

Third Party Defendant

Defendant Georgetown County hereby gives notice, by and through it undersigned counsel, to the Court and to all parties, that Georgetown County joins in and adopts the Motion to Strike pursuant to Rule 12(f), SCRPC filed by Defendants RCB Land Holdings, LLC ("RCB") and Magic Oaks, LLC ("Magic Oaks"). Defendant Georgetown County joins RCB and Magic Oaks' Motion on the basis that Plaintiffs' allegations regarding the public kayak launch are moot and immaterial because the contingency upon which the public kayak launch was dependent will not occur.

In accordance with the foregoing, counsel for Defendant Georgetown County respectfully

ROA 114

notifies the Court and all parties that Georgetown County joins in RCB and Magic Oaks' Motion to Strike and respectfully requests the Court GRANT the relief requested therein.

RESPECTFULLY SUBMITTED,

**SMITH ROBINSON HOLLER DuBOSE
AND MORGAN, LLC**

By: s/H. Thomas Morgan, Jr.
H. Thomas Morgan, Jr., SC Bar No. 73585
Sydney J. Douglas, SC Bar No. 105744
ATTORNEYS FOR DEFENDANT
GEORGETOWN COUNTY
935Broad Street
Post Office Drawer 39
Camden, South Carolina 29021
(803) 432-1992
tommy@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com

September 18, 2024

ROA 115

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.	:	
	:	
Georgetown County; David E. Tanner;	:	Jury Trial Demanded
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 SCRCP, Rule 12(f).

Law to be Applied

7. The issue in a Motion to Strike under SCRCP, 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	:	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	:	Jury Trial Demanded
	:	
v.	:	
	:	
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,

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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.,	)	
Plaintiffs,	)	DEFENDANTS RCB LAND
	)	HOLDINGS, LLC AND MAGIC
vs.	)	OAKS, LLC'S MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFFS'
Georgetown County; David E. Tanner;	)	MOTION TO ALTER OR AMEND
RCB Land Holdings, LLC; Magic Oaks,	)	JUDGMENT
LLC,	)	
Defendants.	)	
	)	
_____	)	
	)	
Magic Oaks, LLC,	)	
Third Party Plaintiff,	)	
	)	
vs.	)	
	)	
Keep It Green, Inc.,	)	
Third Party Defendant	)	
	)	
_____	)	

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

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

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

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

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

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

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

II. Plaintiffs’ Allegations Regarding the Kayak Launch are Irrelevant

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

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

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

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

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

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

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Myrtle Beach, South Carolina
November 6, 2024

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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	:	SUMMONS TO PROVISIONAL
Shops; Donald W. Reid and Katheryn	:	AMENDED COMPLAINT
W. Reid, husband and wife; Elizabeth	:	
Gattshall Hawkins Martin; Tall House	:	Declaratory Judgment
Farm, L.P.,	:	
	:	Jury Trial Demanded
Plaintiffs	:	
v.	:	
	:	
Georgetown County; David E. Tanner;	:	
RCB Land Holdings, LLC; Magic	:	
Oaks, LLC	:	
Defendants	:	

SUMMONS TO PROVISIONAL AMENDED COMPLAINT

TO: THE ABOVE NAMED DEFENDANTS

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

Respectfully submitted,

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November 15, 2024

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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	:	PROVISIONAL AMENDED
Shops; Donald W. Reid and Katheryn	:	COMPLAINT
W. Reid, husband and wife; Elizabeth	:	
Gattshall Hawkins Martin; Tall House	:	Declaratory Judgment
Farm, L.P.,	:	
	:	
Plaintiffs	:	Jury Trial Demanded
	:	
v.	:	
	:	
Georgetown County; David E. Tanner;	:	
RCB Land Holdings, LLC; Magic	:	
Oaks, LLC	:	
	:	
Defendants	:	

PROVISIONAL AMENDED COMPLAINT

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

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

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

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

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

INTRODUCTION & SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTIES

Plaintiffs

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

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

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

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

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

Defendants

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

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

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

13. Defendant Georgetown County (hereinafter “County”), 129 Screven Street, Georgetown, South Carolina, is one of the forty-six counties of the State of South Carolina and is a body politic incorporated pursuant to the South Carolina Constitution, Article VII, Sec. 9, South Carolina Code Ann. § 4-1-10 (Supp. 2015).

14. Defendant Georgetown County is comprised of and/or controls the Georgetown County Council, the Georgetown County Planning Commission and the Georgetown County Planning Department, its agents, representatives and employees.

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

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

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

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

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

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

BACKGROUND

Conservation Preservation

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

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

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

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

Pre-existing Zoning was *ultra vires*

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

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

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

In order for local ordinances regulating land use *to be valid*, they *must* be adopted in accordance with a locally adopted plan ... [and] once the Plan is adopted, no [development] ... may be constructed or authorized ... until the location, character and extent of it have been submitted to the planning commission for review and comment as to the *compatibility of the proposal with the comprehensive plan* for the community. (p. 1-4).

One of the most important implementation measures is the *immediate* preparation of revisions to the Georgetown County Zoning Ordinance ... the actual governing laws and ordinances *must change* to reflect the goals and action items within the Plan. Once the Plan is adopted, the planning staff *will immediately* commence work on changes to the Zoning Ordinances. (pp. 1-5 and 1-6)

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

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

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

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

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

Tanner Rezoning Application

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

LAW APPLICABLE TO ZONING AMENDMENTS

South Carolina Enabling Act Requirements

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

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

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

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

- c. Section 6-29-540, requires that the “location, character, and extent” of new development must be compatible “with the comprehensive plan of the community.”
 - d. Section 6-29-1120(5) states that one of the specifically articulated legislative intents of Article 7 is to “assure” that proposed development is “in harmony with the comprehensive plan” of the municipality or county.
33. Enabling Act, Section 6-29-720(B), requires that zoning regulations “be made with a view to promoting the purposes set forth throughout this chapter," and Section 6-29-710, sets forth those purposes to include:

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

Georgetown County Requirements

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

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

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

COMPREHENSIVE PLAN REQUIREMENTS

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

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

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

The overriding issue in the Pawleys-Litchfield area is population density. The general concept of allowing higher density to prevent sprawl is no longer applicable in this area. The key now is to limit the number of new residential units that are added so that the impacts of additional development (i.e. increased traffic congestion, increased storm water runoff, greater pressures on our overall infrastructure) are minimized as much as possible. (p. 23).

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

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

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

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

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

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

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

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

PLANNING COMMISSION PUBLIC HEARING

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

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

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

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

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

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

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

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

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

COUNTY COUNCIL DECISION

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

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

Second Reading

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

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

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

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

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

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

Third Reading

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION, STANDING AND VENUE

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

68. This court has jurisdiction to hear these claims arising under the South Carolina Uniform Declaratory Judgments Act, South Carolina Comprehensive Planning Enabling Act, the common law of South Carolina and other law.

69. Venue is proper in Georgetown County as the property in question is situated in Georgetown County and all pertinent actions took place in Georgetown County.

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

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

Any person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

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

71. Alternatively and in addition, Plaintiffs have constitutional standing to challenge these ordinances pursuant to Article III of the United States Constitution inasmuch as (a) they have suffered an injury by virtue of this zoning change to allow a residential use and increase in residential density on property that directly adjoins land owned by them and that did not previously allow any residential use or density; (b) the injury was caused by the improper approval of the ordinances; and (c) the injury is redressable by a favorable decision of this court declaring that these ordinances are improper, null and void and requiring Georgetown County to perform its required duties.

72. Alternatively and in addition, Plaintiffs have standing to challenge these ordinances pursuant to the public importance doctrine inasmuch as the decision in this case has potentially far-reaching, widespread, devastating and irreversible negative impact on the public welfare by serving as a precedent for similar rezoning and land development decisions that would impact many acres in the Waccamaw Neck, and future guidance by this court is necessary to determine the validity of Georgetown County’s repeated disregard of the requirements of the South Carolina Planning Act and the Comprehensive Plan in the Waccamaw Neck.

COUNT I

DECLARATORY JUDGMENT

Pre-existing Zoning was Void as ultra vires

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

74. Plaintiffs seek declaratory judgment from this Court that:

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

COUNT II

DECLARATORY JUDGMENT

Violations of South Carolina Enabling Act

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

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

COUNT III

DECLARATORY JUDGMENT

Violations of Georgetown County Ordinances and Procedure

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

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

COUNT IV

DECLARATORY JUDGMENT

Adjoining Commercial Landowners

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

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

COUNT V

ATTORNEYS FEES FROM GEORGETOWN COUNTY

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

82. Defendant Georgetown County acted without substantial justification with respect to the claims set forth herein and there is no special circumstance that would make the award of attorneys fees unjust. Citizens should not be forced to spend time and money or engage the services of attorneys in order to obtain the county's compliance with law.

83. S.C. Code 15-77-300 permits the award of attorneys fees in this circumstance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter judgment in their favor as set forth herein, declare as follows that:

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

Respectfully submitted,

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

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

November 15, 2024

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

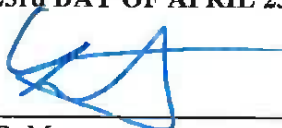
ORDINANCE NO. 24-05

AN ORDINANCE TO AMEND THE COMPREHENSIVE PLAN, FUTURE LAND USE MAP, REGARDING 8.3 ACRES OF TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM CONSERVATION PRESERVATION TO MEDIUM DENSITY RESIDENTIAL

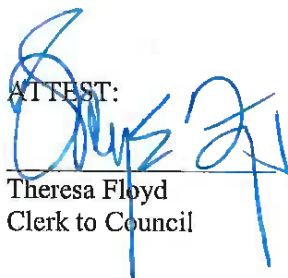
BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED:

To amend the Comprehensive Plan, Future Land Use Map, to reflect the redesignation of tax map parcel 04-0158-060-00-00, located along U.S. Hwy 17 in Pawleys Island, from conservation preservation to medium density residential, as reflected on the attached map.

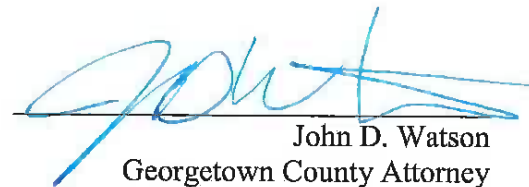
DONE, RATIFIED AND ADOPTED THIS 23rd DAY OF APRIL 23, 2024.



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

ATTEST:

Theresa Floyd
Clerk to Council

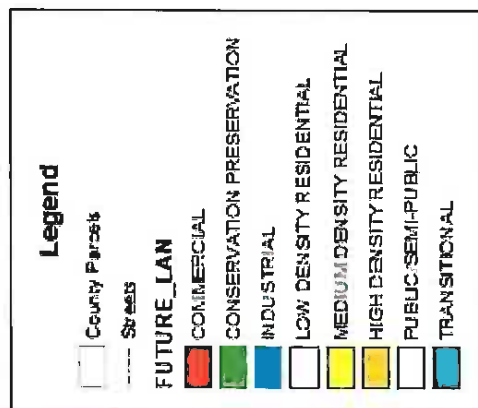
This Ordinance, No. 24-05, has been reviewed by me and is hereby approved as to form and legality.


John D. Watson
Georgetown County Attorney

First Reading: February 27, 2024
Second Reading: April 9, 2024
Third Reading: April 23, 2024

Exhibit 1

ROA 155



1. *Journal of the American Medical Association*, 2001; 286: 2671-2676.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ORDINANCE NO. 24-06

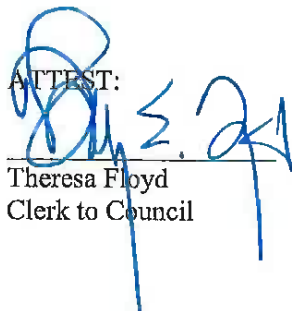
AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF GEORGETOWN COUNTY, REGARDING 8.3 ACRES OF TMS NUMBER 04-0158-060-00-00, LOCATED ALONG U.S. HWY 17 IN PAWLEYS ISLAND, FROM GENERAL COMMERCIAL (GC) AND GENERAL RESIDENTIAL (GR) TO A FLEXIBLE DESIGN DISTRICT (FDD).

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.

Exhibit 2

ROA 157

(as amended 4/9/24)

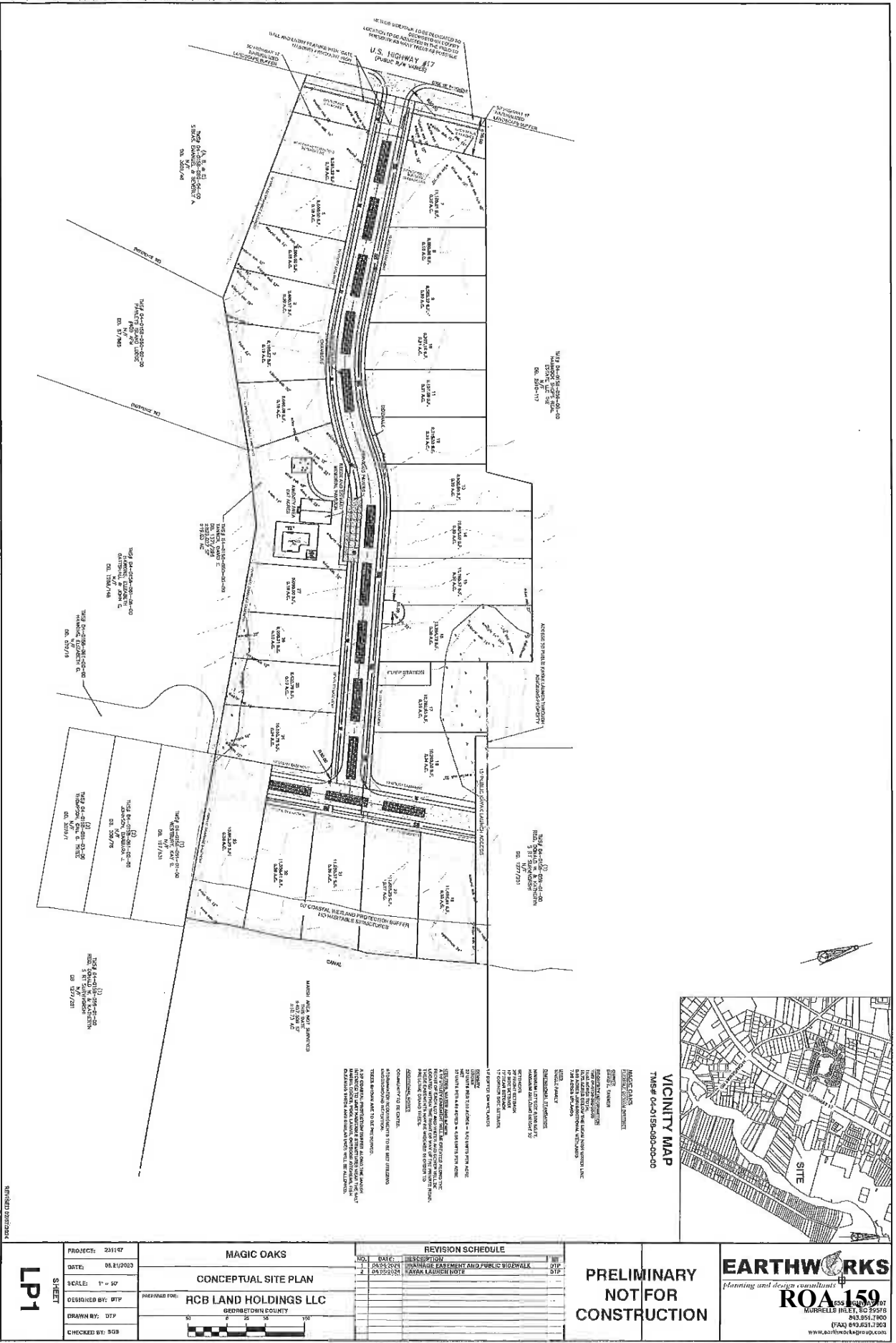


John D Watson
Georgetown County Attorney

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
JER*

**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

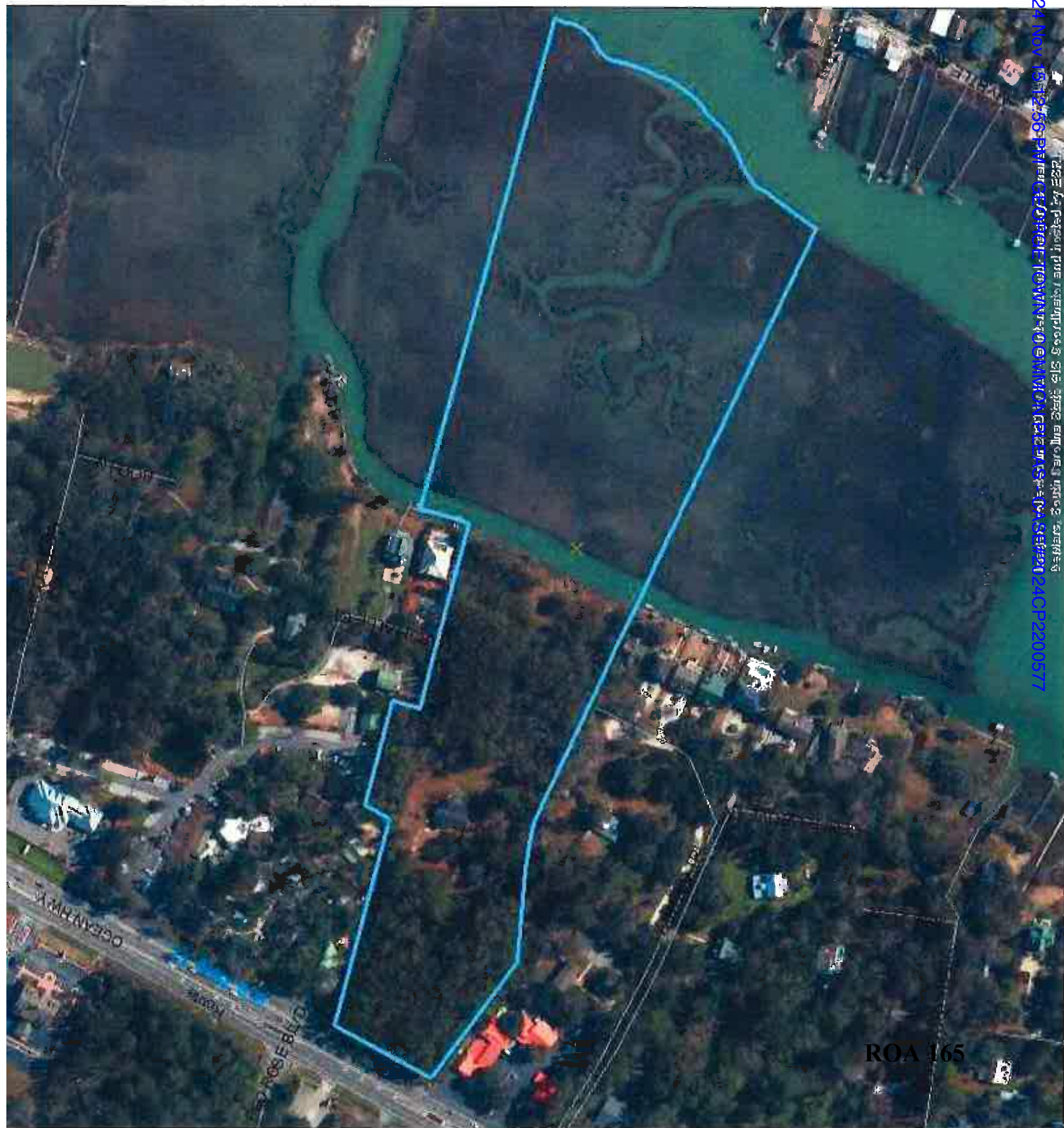
There is an existing memorial to Reese Hart located on this site that has been incorporated into the Amenity Area in order to protect and enhance his legacy along with the beauty of the large oaks.

Year	1990	2000	2010	2020
Population (millions)	5.3	6.1	7.0	7.8
GDP (trillions of dollars)	1.5	10.0	15.0	20.0
Life expectancy (years)	47	54	60	67
Urban population (%)	15	30	45	60
Healthcare spending (GDP %)	5	10	15	20
Renewable energy (%)	1	5	10	15
Internet usage (%)	0	10	30	50
Carbon emissions (Gt)	15	25	35	45





ROA 165



Aerial Photo
Map

From: [Roberts, Jennifer M CIV USARMY \(USA\)](#)
To: [triponealy@gmail.com](#)
Cc: [coates@thebridgemancompany.com](#); [OCRMPermitting@ghsc.sc.gov](#); [Bracev, 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



TBC
THE BRIGMAN CO.

Delineation Concurrence Exhibit

Tanner Property
TMS# 04-0158-060-00-00
Pawleys Island, Georgetown County, SC
January 22, 2024



ROA=1667

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

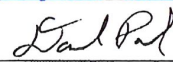
Name: Earthworks Group (Daniel Park)

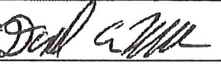
Address: 11655 highway 707 PO Box 201

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.

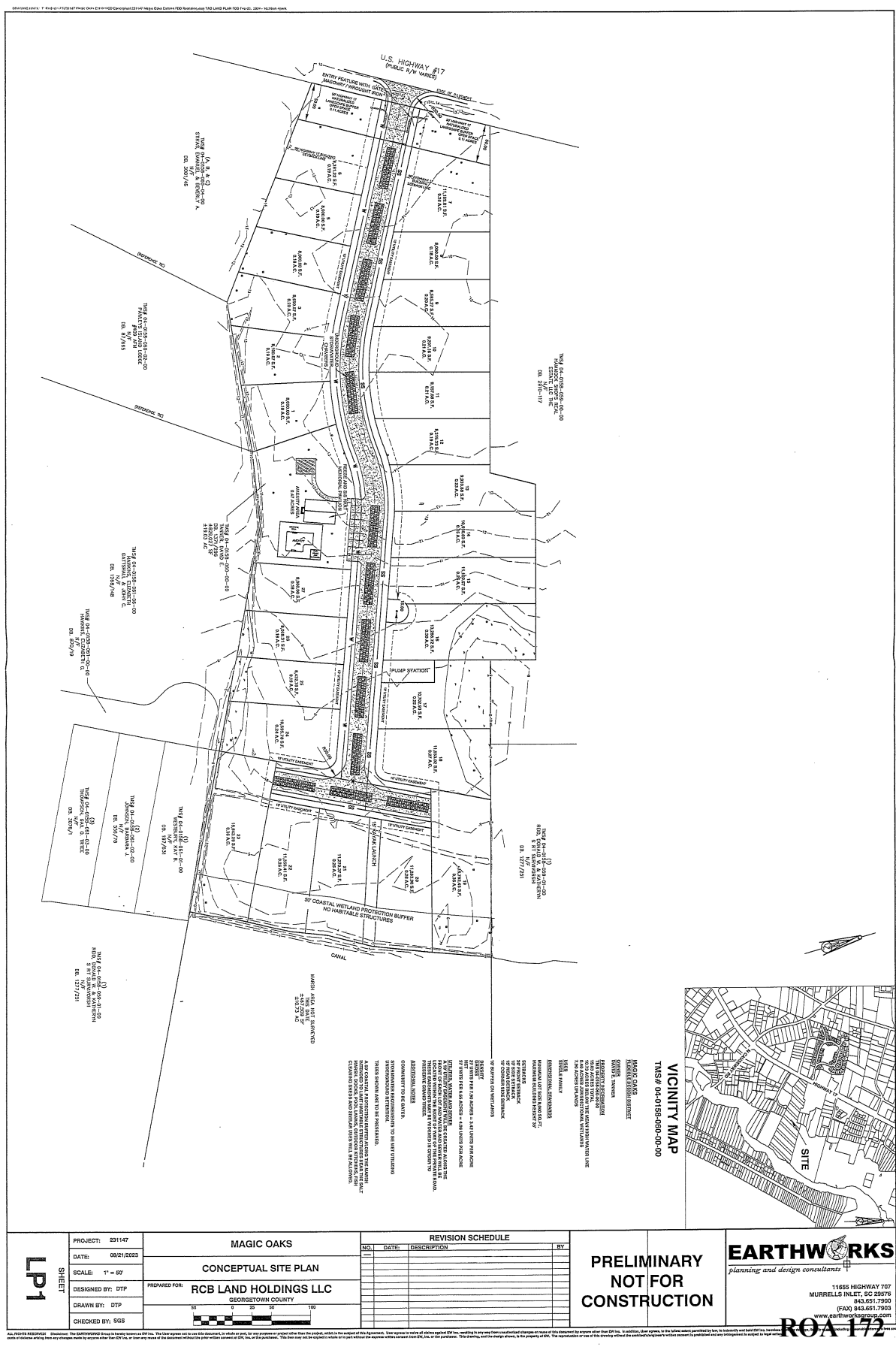
It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed rezoning rests with the applicant.

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.



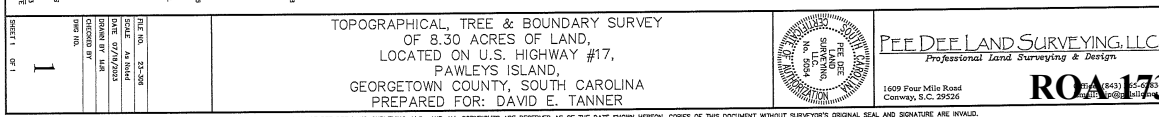




Exhibit 4

ALL RIGHTS RESERVED Disclaimer: The EARTHWORKS Group is hereby known as EWHS. The User agrees not to use this document, in whole or part, for any purpose or project other than the project, which is the subject of this Agreement. User agrees to waive all claims against EWHS, resulting in any way from unauthorized changes or reuse of this document by anyone other than EWHS. In addition, User agrees, to the fullest extent permitted by law, to indemnify and hold EWHS harmless from any damage, liability or cost, including reasonable attorney's fees.

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

ROA 175

(as amended 4/9/24)

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



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.

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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)
)
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
Chairman, Georgetown County Council

(SEAL)

ATTEST:

Theresa Floyd
Clerk to Council

Exhibit 4B

ROA 185

(as amended 4/9/24)

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: _____

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;	)	SUMMONS TO COUNTERCLAIMS
Tall House Farm, L.P.,	)	AND THIRD PARTY COMPLAINT
Plaintiffs,	)	
	)	
vs.	)	
Georgetown County; David E. Tanner;	)	
RCB Land Holdings, LLC; Magic Oaks,	)	
LLC,	)	
Defendants.	)	
	)	
_____	)	
	)	
Magic Oaks, LLC,	)	
Third Party Plaintiff,	)	
	)	
vs.	)	
	)	
Keep It Green, Inc.,	)	
Third Party Defendant	)	
_____	)	

TO: THE ABOVE-NAMED PLAINTIFFS AND THIRD PARTY DEFENDANT

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

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

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

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

Myrtle Beach, South Carolina
November 26, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
		C/A NUMBER: 2024-CP-22-00577
Emanuel Stikas, Trustee of the Stikas	)	
Revocable Living Trust, dated February 1,	)	
2023, d/b/a The Village Shops; Donald W.	)	
Reid and Katheryn W. Reid, husband and	)	
wife; Elizabeth Gattshall Hawkins Martin;	)	
Tall House Farm, L.P.,	)	
Plaintiffs,	)	ANSWER TO AMENDED
	)	COMPLAINT; COUNTERCLAIMS;
vs.	)	& THIRD PARTY COMPLAINT ON
Georgetown County; David E. Tanner;	)	BEHALF OF DEFENDANTS MAGIC
RCB Land Holdings, LLC; Magic Oaks,	)	OAKS, LLC AND RCB LAND
LLC,	)	HOLDINGS, LLC
Defendants.	)	
	)	
	)	
Magic Oaks, LLC,	)	
Third Party Plaintiff,	)	
	)	
vs.	)	
Keep It Green, Inc.,	)	
Third Party Defendant	)	

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

FOR A FIRST DEFENSE
(General Objection)

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

FOR A SECOND DEFENSE
(Reservation of Defenses and Claims)

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

FOR A THIRD DEFENSE
(Specific Responses)

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FOURTH DEFENSE
(Failure to State a Claim)

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

FOR A FIFTH DEFENSE
(Failure to Appeal)

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

FOR A SIXTH DEFENSE
(Waiver and Estoppel)

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

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

FOR A SEVENTH DEFENSE
(Unclean Hands)

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

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

FOR AN EIGHTH DEFENSE
(Good Faith Reliance)

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

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

FOR A NINTH DEFENSE
(Justification and Compliance)

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

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

FOR A TENTH DEFENSE
(Attorney Fees Not Recoverable)

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

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

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

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

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

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

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

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

FOR A FOURTEENTH DEFENSE AND FOURTH COUNTERCLAIM AGAINST ALL PLAINTIFFS

(Tortious Interference with Prospective Contractual Relations)

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

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

100. Plaintiffs are aware of Magic Oaks' residential development plans and the reasonable probability that the contractual relations with third parties for the sale and development of these lots will be realized.
101. Plaintiffs have filed this unfounded action to intentionally interfere with these prospective contractual relations and to hinder and delay the development altogether.
102. Plaintiffs' action has hindered and delayed Magic Oaks from acquiring these prospective contractual relations and has caused damage to Magic Oaks in the form of default on security obligations, interest, delay, changing market conditions, lost profits, and other damages which may be discovered in the course of this litigation.
103. Magic Oaks, LLC is entitled to judgment against the Plaintiffs, jointly and severally, for Plaintiffs' tortious interference with prospective contractual relations, and to an award of actual damages together with prejudgment interest, punitive damages, and costs of this action.

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

104. Defendants reallege and incorporate by reference all Paragraphs above as if fully set forth herein.
105. This case is one in a series of lawsuits attempting to stop residential development in Georgetown County.
106. Plaintiffs are represented in this action by Keep It Green Advocacy, Inc. ("KIGA"), in-house counsel for Keep It Green, Inc. ("KIG"), a public interest group that

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

107. KIG has opposed many residential projects in Georgetown County upon virtually identical assertions raised in this matter. In fact, in the past two years, KIG has brought three other Georgetown County lawsuits as a named Plaintiff to stop residential development. Each of those actions have been dismissed pursuant to Court Orders Granting Defendants' Motions to Dismiss.¹ Notably, after three consecutive Orders of Dismissal, KIG has refrained from naming itself as a Plaintiff in this action, but has provided its in-house counsel to represent all Plaintiffs in this matter.

108. The gist of all of these lawsuits is the false and incorrect assertion that residential development in Georgetown County is incompatible with the Georgetown County Comprehensive Plan and thus in violation of state and local law. This lawsuit is no different.

109. The planned Magic Oaks development is a residential neighborhood proposing 27 single family lots with minimum lot sizes of 8,000 sq. ft., a 50' Open Space/Vegetative Buffer along Highway 17, pool and pool house, Reese and Sis Hart Memorial Pavilion, and the incorporation of low impact design techniques such as underground stormwater chambers and the use of pervious paving materials. The road and building footprints are designed to protect existing large trees.

110. Prior to the rezoning of the property at issue, the site was split zoned General Commercial and General Residential. The single-family use of this development through the rezoning to a Flexible Design District will have a significantly smaller impact on the

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

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

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

Parties and Jurisdiction

112. Magic Oaks, LLC is a limited liability company organized and existing under and by virtue of the laws of the State of South Carolina and is authorized to do business within the State.
113. Upon information and belief, KIG is a non-profit South Carolina corporation and is or may be liable to Magic Oaks, LLC for all or part of Plaintiffs' claims against Magic Oaks, LLC.
114. The property which is the subject of this action is located in Georgetown County, South Carolina.
115. Based upon the foregoing, this Honorable Court has jurisdiction, and venue is proper.

Factual Allegations

116. Prior to this action, the land at issue was split zoned General Commercial/General Residential and owned by Defendant David Tanner.
117. Magic Oaks, LLC entered into a contract with Mr. Tanner for the purchase of the property with the intent to build a residential development.

118. Prior to closing on the property, Magic Oaks and Mr. Tanner sought to rezone the property to accomplish these objectives.

119. Initially, Magic Oaks and Mr. Tanner filed an application to rezone the property to solely General Residential.

120. However, upon discussion with and recommendation of KIG, Magic Oaks and Mr. Tanner amended the application to apply instead for rezoning to a Flexible Design District in order to reduce density. KIG celebrated this collaboration on its website on February 13, 2024 stating:

The FDD zoning includes saving trees, large natural buffers, open space, and being more aesthetically pleasing.

The current General Residential and General Commercial zoning that exists on this parcel would allow high density and up to 95 multi-family/single-family units without any zoning change. The requested change to a Flexible Design District would eliminate the possibility of high density and/or multi-family housing on an environmentally sensitive tract which would be a big win for the community.

121. Earthworks Group in Murrells Inlet was hired to assist in the rezoning effort and Earthworks undertook to compile all necessary information and materials for the rezoning application.

122. Part of Earthworks' efforts included obtaining a wetlands study which was completed by the Brigman Company on January 22, 2024. As a result, the Brigman Company produced a full report with a Delineation Concurrence Exhibit and submitted the report to the United States Army Corps of Engineers with a request for a wetlands Delineation Concurrence. In response, the United States Army Corps of Engineers issued a Delineation Concurrence and stated "Based on a review of the information you submitted, the delineated boundaries depicted on the map titled 'Delineation Concurrence Exhibit Tanner Property' and dated January 22, 2024, are a reasonable representation of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Post Office Box 357
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Attorneys for Magic Oaks, LLC and RCB Land
Holdings, LLC

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

Myrtle Beach, South Carolina
November 26, 2024

ROA 210

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 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.	)	DEFENDANT GEORGETOWN COUNTY'S
Reid and Katheryn W. Reid, husband and	)	ANSWER TO PLAINTIFFS' PROVISIONAL
wife; Elizabeth Gattshall Hawkins Martin;	)	AMENDED COMPLAINT
Tall House Farm, L.P.,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
Georgetown County; David E. Tanner; RCB	)	
Land Holdings, LLC; Magic Oaks, LLC,	)	
	)	
Defendants.	)	

TO: CYNTHIA RANCK PERSON, ESQ. AND F. PATRICK HUBBARD, ESQ., ATTORNEYS FOR PLAINTIFFS, AND PLAINTIFFS:

Defendant Georgetown County (hereinafter collectively "Defendant") hereby answers Plaintiffs' Provisional Amended Complaint and alleges as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of Plaintiffs' Provisional Amended Complaint not hereinafter specifically admitted, qualified, or explained. Further, the answering Defendant specifically denies that it violated any constitutional or statutory right belonging to Plaintiffs. Finally, Defendant expressly denies that Plaintiffs are entitled to a jury trial on these declaratory judgment causes of action.

2. Paragraphs 1, 2, 3, and 4 are denied and Defendant demands strict proof thereof.

3. As to Paragraphs 5 and 6, Defendant craves reference to Ordinances 24-05 and 24-06. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

4. As to Paragraph 7, including subparagraphs a-f, Defendant denies the allegations and demands strict proof thereof.

5. As to Paragraphs 8, 9, 10, and 11, Defendant craves reference to public records in Georgetown County Register of Deeds office and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

6. Defendant denies the allegations in Paragraph 12 and craves reference to South Carolina Code, Section 15-53-80 and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

7. Defendant Georgetown County admits that it 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). Defendant denies the remaining allegations set forth in Paragraph 13 of the Amended Complaint.

8. Defendant denies the allegation in Paragraph 14 and demands strict proof thereof.

9. Defendant denies the allegations set forth in Paragraphs 15, 16, 17, 18, and 19, as it is without knowledge or information sufficient to form beliefs as to the truths of those allegations.

10. Defendant denies the allegations in Paragraphs 20, 21, 22, and 23 of the Amended Complaint and craves reference to public records in the Georgetown County Register of Deeds office and to ordinances of the Georgetown County Council and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

11. As to Paragraph 24, Defendant denies the allegation and craves reference to Statute/Section 6-29-720(B) of the Enabling Act and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

12. As to Paragraphs 25, 26, 27, and 28, including all subparagraphs, Defendant denies the allegations and demands strict proof thereof.

13. Paragraphs 29 and 30 are admitted upon information and belief.

14. Paragraphs 31, 32, and 33, including all subparagraphs, Defendant denies the allegations and craves reference to the South Carolina Enabling Act. All allegations deemed unaddressed by the foregoing are denied and Defendant demands strict proof thereof.

15. As to Paragraph 34, Defendant craves reference to Georgetown County Ordinance 1701 and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

16. As to Paragraph 35, Defendant craves reference to the Georgetown County Planning Commission Bylaws, Article V, Section and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

17. As to Paragraphs 36 and 37, Defendant craves reference to the Georgetown County Comprehensive Land Use Plan and admits the allegations consistent therewith. All allegations deemed unaddressed by foregoing are denied and Defendant demands strict proof thereof.

18. Paragraphs 38, 39, 40, 41, 42, and 43 of the Amended Complaint are denied, and Defendant demands strict proof thereof.

19. Paragraph 44 is admitted.

20. As to Paragraphs 45, 46, 47, 48, 49, and 50, including all subparagraphs, Defendant denies the allegations and demands strict proof thereof.

21. Paragraph 51 is admitted.

22. Paragraphs 52, 53, and 54 are denied, and Defendant demands strict proof thereof.

23. Paragraph 55 is admitted.

24. As to Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66, including all subparagraphs, Defendant denies the allegations and demands strict proof thereof.

25. Paragraph 67 does not require a response but if one is required Defendants deny the same and demand strict proof thereof.

26. Paragraph 68 is denied, and Defendant demands strict proof thereof.

27. Paragraph 69 is admitted.

28. Paragraphs 70, 71, and 72, including all subparagraphs, are denied, and Defendant demands strict proof thereof.

29. As to Paragraphs 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83, including all subparagraphs, Defendant denies the allegations, and demands strict proof thereof.

30. Plaintiffs' Prayer for Relief is denied in its entirety, and Defendant demands strict proof thereof.

FOR A SECOND DEFENSE

31. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

32. Plaintiffs' Amended Complaint fails to state a claim for which relief shall be

granted pursuant to Rule 8 and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, must be dismissed as a matter of law.

FOR A THIRD DEFENSE

33. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

34. Defendant denies that any constitutional rights of Plaintiffs have been violated and denies that it is, in any way, responsible for any willful, arbitrary, capricious, or malicious acts toward Plaintiffs such that Plaintiffs' Amended Complaint must be dismissed as a matter of law.

FOR A FOURTH DEFENSE

35. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

36. That Defendant expressly denies that any acts or failures to act, as described in the Amended Complaint, were committed or omitted maliciously, in bad faith, or in a grossly negligent manner, and, therefore, Defendant is immune from suit.

FOR A FIFTH DEFENSE

37. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

38. That at all times relevant hereto, the Defendant was engaged in the performance of its official duties, and at no time violated any clearly established constitutional rights which were known or should have been known to it; and therefore, it is entitled to immunity as a matter of law.

FOR A SIXTH DEFENSE

39. All admissions, denials, and allegations set forth above are incorporated herein as

if repeated verbatim.

40. Defendant pleads qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

FOR A SEVENTH DEFENSE

41. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

42. Georgetown County is a political subdivision of the State of South Carolina, and as such is immune from liability for any and all losses allegedly resulting from action taken pursuant to comprehensive planning and zoning processes and other governmental functions in accordance and as set forth in the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.*, as amended and all of the exceptions.

43. Defendant specifically pleads, but is not limited to, provisions of South Carolina Code §15-78-60(1)(2)(3)(4)(5)(12)(13)(16)(20)(23) as a complete bar to the recovery by the Plaintiffs herein.

44. Therefore, Defendant pleads South Carolina Code of Laws, §15-78-10, *et seq.*, as a complete bar to Plaintiffs' claims.

FOR AN EIGHTH DEFENSE

45. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

46. Defendant enjoys sovereign immunity and legislative immunity for its acts in passing the ordinances at issue in this lawsuit and, therefore, are immune from suit.

FOR A NINTH DEFENSE

47. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

48. Plaintiffs have not negated every conceivable rational basis for Defendant's treatment of the subject property nor shown how Defendant lacked a rational basis for its decision regarding the passing of the Ordinances and, as such, Plaintiffs' Amended Complaint must be dismissed as a matter of law.

FOR A TENTH DEFENSE

49. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

50. Defendant at no time violated any clearly established constitutional rights of the Plaintiffs which were known or should have been known to them, and therefore, Defendant is entitled to immunity.

FOR AN ELEVENTH DEFENSE

51. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

52. Defendant pleads qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

FOR A TWELFTH DEFENSE

53. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

54. To the extent any of Plaintiffs' claims or requests for relief could be interpreted as requesting declaratory relief, Plaintiffs' Amended Complaint fails to state any justiciable claims.

FOR A THIRTEENTH DEFENSE

55. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

56. Defendant's investigation into the facts of this case has not been completed and, therefore, Defendant reserves any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendant prays that Plaintiffs' Amended Complaint be dismissed with prejudice, for the costs of this action, attorney's fees, and for such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

**SMITH ROBINSON HOLLER DuBOSE
AND MORGAN, LLC**

By: *s/H. Thomas Morgan, Jr.*

H. Thomas Morgan, Jr., SC Bar No. 73585

Sydney J. Douglas, SC Bar No. 105744

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November 27, 2024

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.

NOTICE OF APPEAL

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., appeal the final order and judgment of the Honorable David P. Caraker, Jr., dated October 15, 2024 (attached). Appellants filed a Rule 59(e) Motion to Alter and/or Amend which was denied by final order and judgment dated December 27, 2024 (attached). Appellants received written notice of final order and judgment on December 27, 2024.

/s/ F. Patrick Hubbard
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January 10, 2025

ROA 219

Other Counsel of Record:

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RECEIVED

Jan 10 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 NOTICE OF APPEAL was served this 10th day of January, 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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January 10, 2025



KIG Advocacy <kig.advocacy@gmail.com>

Emanuel Stikas, et al. v. Georgetown County, et al. C/A No.: 2024-CP-22-00577

1 message

KIG Advocacy <kig.advocacy@gmail.com>

Fri, Jan 10, 2025 at 1:15 PM

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

Counsel of Record:

The attached Notice of Appeal is hereby served upon you as counsel of record for the Respondents. The Notice will be filed with the Circuit Court and the Court of Appeals this afternoon.

Thank you,
Cindy Person
F. Patrick Hubbard

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

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ROA 223

Transcript

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 15
COUNTY OF GEORGETOWN) DOCKET NO. 2024-CP-22-00577

EMMANUEL STIKAS, ET AL,)
)
) Plaintiff,)
)
) versus)
)
)
)
) Georgetown County, Et Al,)
)
) Defendant.)

H E A R I N G

DATE: September 19, 2024
LOCATION: South Carolina Circuit Court 15
JUDGE: David Caraker
TRANSCRIBED BY: Jeanne Meldrim

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25 Attorney for the Defendant Georgetown County

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27 Sydney Douglas, Esquire
28 Smith Robinson
29 935 Broad Street
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31 Attorney for the Defendant Georgetown County

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EXHIBITS

(No exhibits marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Proceedings

1 THE COURT: The next one is Emmanuel Stikas verse
2 Georgetown County, et al. All right. Good afternoon,
3 everyone.

4 MR. MORGAN JR.: Good afternoon, Your Honor.

5 THE COURT: Do we have everybody?

6 CLERK: I think that's everybody.

7 THE COURT: All right. Mr. Morgan, Ms. Person, Mr.
8 Crowl --- is Crowl or Crawl? Sorry.

9 MR. CROWL: Crawl, Your Honor.

10 THE COURT: Crawl, apologize.

11 MR. CROWL: That's all right.

12 (Simultaneous speaking)

13 THE COURT: And Ms. Douglas. All right. This is a
14 motion to strike brought by defendant Magic Oaks LLC?

15 MR. CROWL: Yes, Your Honor.

16 THE COURT: All right. I'll be happy to hear from
17 you, sir.

18 MR. CROWL: Thank you, Your Honor. My name is Zach
19 Crowl. I'm here with David Miller we're with the Bellamy
20 Law Firm and we represent Magic Oaks. Magic Oaks is an
21 entity made of Tripp Neeley, his wife Julie Neeley who
22 have been developing property in and around Georgetown
23 County and Horry County for many years.

24 A little bit of action, this lawsuit was brought by
25 the plaintiffs regarding rezoning a property in Pawleys

Proceedings

1 Island, owned by our client. The property at issue is
2 about eight acres, it's along Highway 17. It sits in
3 between the Hammock Shops to the north, and the Village
4 Shops to the south, and backs up to the marsh.

5 Our client bought this property from codefendant,
6 David Tanner, for the purpose of building a residential
7 development. The proposed plan is 27 single family lots,
8 with a minimum lot size of about 8,000 square feet, and
9 open space vegetative bumper along Highway 17,
10 incorporation of low impact design techniques throughout
11 and preservation of as many trees as possible.

12 Prior to closing, our client rezoned this property
13 to a flexible design district for this purpose. Once the
14 property was rezoned client closed, and about a week
15 later the plaintiffs brought this lawsuit, quite frankly
16 to prevent the development despite the fact that our
17 client got all of the proper local, State, and Federal
18 administrative channels to provide the necessary
19 approvals to build this neighborhood.

20 Unfortunately this wasn't completely surprising.
21 This is one in a series of lawsuits that's been brought
22 by Keep it Green in recent years on Pawleys Island to
23 prevent development. I believe this is lawsuit number
24 four. Notably the previous three have been dismissed
25 upon motion of the defendants. And this action is much

1 like those others but in this one the plaintiffs have
2 also alleged that they will suffer injuries due to a
3 public kayak launch that was proposed on the development
4 by a county council member.

5 However, the inclusion of the public kayak launch
6 was contingent upon access through the adjoining Hammock
7 Shop land owner's property. We've been informed that
8 such access will not be provided, so there will not be
9 any public kayak launch on this property. And the issues
10 that the plaintiffs complain of don't exist.

11 As a little bit more detail on this specific issue,
12 at the time our client purchased the property it was
13 split-zoned general commercial and general residential.

14 Our client filed a rezoning application with
15 Georgetown County for a flexible design district. This
16 move was encouraged by many, including Keep it Green.
17 The reason for that a flexible design district has a
18 reduced density and a much smaller impact on the site
19 than say a multi-family use or commercial use that would
20 have been allowed under the previous zoning.

21 So during council review of the rezoning
22 application, one of the members of council suggested a
23 minor change to the development plan. And Your Honor, if
24 I may, I have the development plan and I think it would
25 be beneficial to all of us if I pull that up so you could

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1 see it.

2 THE COURT: All right. So Your Honor ---

3 (Simultaneous speaking)

4 THE COURT: You're more technically sophisticated
5 than I am because I couldn't do that.

6 MR. CROWL: A lot of practice trying to share the
7 screen this morning.

8 So this is the Magic Oaks development. Try to Zoom
9 in a little bit and we can walk through it. So this is
10 Highway 17. If you can see here we have all of the trees
11 at the front, the grand entrance. You come through on a
12 single road, the lots are on either side. You have the
13 amenity center right here, in the middle the memorial
14 pavilion for owners that were long ago deceased. You
15 keep coming along back here, you see more of the trees,
16 and then you come to the marsh.

17 So the plan originally depicted a private kayak
18 launch for use of the residents right through the middle
19 here. The minor change requested by the council member
20 was to move that public launch to the northern boundary
21 right up here and make it public. Zoom in a little bit
22 so that we can see it. So on that request the change is
23 made with a note that access to the public kayak launch
24 would have to be through the adjoining land owner's
25 property.

1 You can see that note right here and I'll see if I
2 can highlight it for you. Access to public kayak launch
3 through adjoining property. So as you can see, this
4 change, this --- this public kayak launch was ultimately
5 contingent upon receiving approval of the adjoining land
6 owners, access to their property for public parking and
7 access to the water.

8 So our client approached the Hammock Shops about the
9 launch and they took it under consideration. Ultimately,
10 the Hammock Shops informed our client by letter that they
11 would not be able to provide access.

12 So come back to all of us here. The contingency
13 upon which this public kayak launch was dependent will
14 not occur. There will not be a public kayak launch on
15 this property. And the injuries and the issues that the
16 plaintiffs raised regarding this public kayak launch will
17 not and cannot happen. Still the plaintiffs would like
18 to use the Court's valuable time and resources to
19 consider it and rule upon something that does not,
20 cannot, and will not exist.

21 As Your Honor's well aware, Rule 12(f) allows the
22 Court to strike any immaterial matter in a pleading, this
23 is within the sound discretion of the judge. And the
24 Federal Court has provided some guidance on this rule
25 that I think is particularly applicable in this

1 situation. Rule 12(f) empowers the Court to strike
2 immaterial matter and (unintelligible) the Court to
3 promote judicial efficiency and avoid needless
4 expenditure of time and money.

5 Your Honor, that's what we have here. Further
6 development of the allegations of the public kayak launch
7 are not needed because the launch does not and will not
8 ever exist. Plaintiff's allegations regarding the launch
9 are part of one of their several declaratory judgment
10 actions. As you know a declaratory judgment action must
11 show a real and substantial controversy appropriate for
12 judicial determination. That means an existing
13 controversy or at least the ripening seeds of
14 controversy. This is neither. This is no launch on the
15 property and there will be no launch on the property.

16 There is no real controversy here. And the
17 allegations regarding the public kayak launching are
18 irrelevant. The --- the issues and injuries that they
19 bring up will never come to fruition.

20 Your Honor, I want to make clear that granting this
21 motion will not dispose of all of plaintiff's causes of
22 action. I mentioned a second ago they had several other
23 declaratory judgment actions. So unfortunately, their
24 lawsuit will continue. This request --- this motion to
25 strike is very specific. It's a specific request to

1 strike the allegations that deal with the public kayak
2 launch. And if granted, we will draft a very narrowly
3 tailored order that specifically strikes the allegations
4 regarding this non-existent public kayak launch.

5 Thank you, Your Honor.

6 THE COURT: All right. Thank you, sir. Ms.
7 Douglas, do you need to be heard on that matter, ma'am?

8 MS. DOUGLAS: Mr. Morgan, my co-counsel for the
9 county was going to handle any sort of argument on that.

10 THE COURT: Okay. Yes, sir, Mr. Morgan.

11 MR. MORGAN JR.: All right. Thank you, Your Honor,
12 if it please the Court. We are ---

13 THE COURT: Yes, sir.

14 MR. MORGAN JR.: --- on behalf of Georgetown County.
15 I think Mr. Crowl first and foremost I need him to come
16 do some of my technological wizardry when it comes to
17 presenting these types of cases, because I also am --- am
18 somewhat of Luddite when it comes to that.

19 But addressing the issues before the Court, I think
20 the --- the presentation of the argument was accurate and
21 the county would join 100 percent behind that. We think
22 that any of the allegations in the complaint and as Mr.
23 Crowl has pointed out, they're only in certain very
24 limited, specific paragraphs. And so we think removing
25 that would then as --- as been stated, clarify the issues

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1 that are brought before the Court, make sure that it is a
2 judicial controversy.

3 We're not asking the Court to go afield and start
4 looking into hypotheticals so on and so forth. And it
5 will not have any disposition unfortunately as it relates
6 to the case on behalf of the --- the defendants. It's
7 still going to go forward, it just narrows the issues for
8 presentation to the Court. So we think that this motion
9 is appropriate and we join in and we would ask that the
10 Court to grant that.

11 And we're able to answer any questions should they
12 become necessary at the appropriate time, and we thank
13 you.

14 THE COURT: All right. Thank you, Mr. Morgan. Yes,
15 ma'am, Ms. Person, I'll be happy to hear from you.

16 MS. PERSON: Yes, thank you very much. May it
17 please the Court.

18 THE COURT: Yes, ma'am.

19 (Simultaneous speaking)

20 THE COURT: Good afternoon.

21 MS. PERSON: Can you hear me?

22 THE COURT: Yes, ma'am.

23 MS. PERSON: Okay. Very good. My co-counsel,
24 Professor Hubbard, apologizes that he will not be able to
25 join us this afternoon due to a prior commitment, so

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1 I'll --- I'll be handling the argument. I assume the
2 Court has received our written memorandum in opposition,
3 and if so I will just simply summarize the highlights of
4 the basis for our opposition.

5 THE COURT: Okay.

6 MS. PERSON: A motion to strike. The --- the issue
7 here is very narrow. And the question is really whether
8 the matter that's being asked to be stricken is relevant
9 to the cause of action raised in the complaint. This is
10 a pretrial motion, it's the pleading stage. We're
11 limited to at this point the face of the complaint. And
12 it's not proper to consider or make determinations based
13 on outside information that's not properly a matter of
14 evidence or the record before the Court.

15 And essentially, the defendant's entire argument is
16 based on outside information about a contingency that
17 allegedly exists and allegedly was not met, and that ---
18 that just in and of itself is way beyond the face of the
19 complaint. And we would submit not properly considered
20 at this stage of the proceedings and in this context.

21 Notwithstanding that however, this is reviewing our
22 cause of action, this is a declaratory judgment action,
23 in which all the plaintiffs are adjoining land owners who
24 have consistently opposed this zoning amendment from day
25 one. And they challenge the zoning amendments based on

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1 what they're lawfully entitled to do pursuant to the
2 Enabling Act which --- which gives them 60 days to
3 challenge an amendment from the date of a decision.

4 One of the claims raised is that there were
5 modifications made to the text and to the maps after they
6 had been considered and approved by planning commission
7 and before the plan was voted on by county council. And
8 I don't think anybody is disagreeing with that set of
9 facts.

10 According to section --- but that doesn't matter.
11 What matters is what the complaint says. According to
12 section 310 of the Enabling Act, is --- the plain
13 language is that any change to the text and maps from
14 what was considered and recommended by planning
15 commission has to go back to planning commission before
16 it can be properly considered and voted on by county
17 council. In this case one of several modifications that
18 was made to the plan includes this public kayak launch
19 which was added to the plan after it was approved by the
20 planning commission. So the proper process would have
21 been for the plan to go back to planning commission for
22 planning commission to consider the modifications.

23 Instead, county council voted on and approved the
24 modified plan without that happening. So plaintiff is
25 claiming as one of --- of a number of claims in the

1 complaint that proper process was not followed, which
2 renders the county council decision void.

3 So I just want to make sure the Court is clear that
4 this is not a claim about the ultimate existence or
5 nonexistence of the kayak launch, and whether or not it
6 will be built is not relevant. The claim is that it was
7 improper for county council to consider any change ---
8 and this was one of it --- one of the changes, which
9 ultimately renders the decision void. So whether or not
10 the contingency was there, whether or not it was met,
11 whether or not the kayak launch ultimately happens is not
12 relevant to the claim that it was improper for county
13 council to vote on it in the first place.

14 And even though that's --- that's really the
15 relevant issue, even if we assume for a moment for the
16 sake of this argument that the kayak launch won't happen,
17 let's just assume all of that's true, there was a
18 contingency. It won't happen, it does not render
19 plaintiff's issue moot for a number of reasons.

20 First we cannot presume that if the matter had been
21 handled properly from a procedural standpoint from the
22 beginning that the outcome would be the same. We don't
23 know that it would have been approved by county council.
24 We can't assume that county council would have approved
25 the zoning change without the kayak launch and the other

1 changes. The kayak launch was just one of several
2 changes by the way. In fact, it's a matter of record
3 that one county council member actually publicly stated
4 that it was the inclusion of the kayak launch that caused
5 her to vote for the zoning change.

6 So the second thing is we can't assume that planning
7 commission would have approved the plan with the changes
8 if it had been sent back to planning commission as it
9 should have been.

10 So plaintiffs would ask the Court to note that this
11 motion in addition to being a motion to --- to strike
12 specific paragraphs is really a motion to dismiss that
13 claim because if these items are stricken, the basis for
14 that claim is being eliminated which operates to dismiss
15 the claim.

16 So the bottom line is that in this context, we're
17 limited to the face of the complaint at this point. The
18 relevant facts are what is included in the complaint, and
19 plaintiffs would respectfully request the Court to deny
20 the motion.

21 And if the Court has any specific questions I would
22 be very happy to address them.

23 THE COURT: Okay. Thank you, ma'am. In the
24 complaint in the --- the paragraphs that Magic Oaks has
25 asked to be stricken, several of the --- those paragraphs

1 do specifically mention the public kayak launch. And
2 I --- and you can, you know, Mr. Crawl, you can certainly
3 correct me if I'm wrong, and I think that's the issue
4 that they're --- that they're having a --- a problem with
5 is that at least according to them, if we believe, you
6 know, what they're saying that, you know, the Hammock
7 Shop said no thanks, we don't want any part of that, that
8 okay now it can't happen, it's not going to happen and so
9 why should that still remain in the complaint? Can
10 you --- can you speak to that, Ms. Person?

11 MS. PERSON: I sure can. Thank you very much. So
12 whether or not --- so --- so the public kayak launch
13 being included needs to be raised in the complaint
14 because the claim is that there were changes made to the
15 plan which necessitated the process of sending the whole
16 plan back to planning commission for review, and that
17 didn't happen. So that --- that was one of several
18 changes.

19 The fact that ultimately that is not going to happen
20 doesn't change the fact that it --- the --- the process
21 and the procedure was improper because there were changes
22 made that were considered by county council that planning
23 commission never had an opportunity to consider. So that
24 they don't become moot or irrelevant even if the kayak
25 launch doesn't exist or --- you know, will not exist. We

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1 don't know that, by the way, because those aren't really
2 matters of record properly. We hear defendants are
3 coming and --- and saying that, but we don't --- we don't
4 know that for a fact.

5 But even if we did, the point isn't whether or not
6 the kayak launch will happen, the point is that county
7 council approved a plan that had changes, one of which
8 was the kayak launch and it had no right or authority to
9 do --- vote on or approve that without sending it back to
10 planning commission first. And we don't know what would
11 have happened at planning commission had that been done.
12 We don't know what would have happened at county council
13 had the kayak launch not --- and --- and the other
14 changes not been part of the --- of the plan.

15 (Simultaneous speaking)

16 MR. CROWL: Your Honor, if I may respond?

17 THE COURT: Sure.

18 MR. CROWL: Thank you, Your Honor. Just wanted to
19 touch on a few points that Ms. Person just made.

20 First off this is a motion to strike, it --- it's
21 not a motion to dismiss, it be recharacterized that way.

22 Second, this --- the cause of action that the
23 allegation regarding the public kayak launch go to it's
24 just --- the public kayak launch is just a part of those.
25 They also --- that declaratory judgment action also

1 brings up matters of their issues with the compatibility
2 of the rezoning with the (unintelligible) plan as well as
3 their issues that the rezoning does not promote the
4 public welfare and the public (unintelligible) that
5 matter.

6 So we're not getting rid of their entire cause of
7 action. They'll still be able to argue those matters
8 if --- if we narrowly consider this to strike just the
9 public (unintelligible) allegations.

10 Ms. Person makes the point that should have gone
11 back down to planning commission. We don't know what
12 they would have done. Well, we do know what they would
13 have done because planning commission approved the
14 original plan which as I showed Your Honor and spoke
15 about earlier. It was a private kayak launch down the
16 middle, there wasn't a public kayak launch there. So we
17 know what planning commission would do. This also does
18 not take into account the fact that this is a minor
19 change, which under Georgetown County ordinances can be
20 made.

21 I just wanted to make those points, Your Honor, just
22 to try to clarify things.

23 THE COURT: All right. Thank you, sir. And Ms.
24 Person, let's --- I'm not saying I'm going to, but let's
25 say when we strike all the references to the public kayak

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1 launch in your complaint, aren't you still then left
2 either with some --- what you view to be as issues with
3 the process? And if not, can't you amend your complaint
4 to include those various other issues that --- that you
5 allege have occurred?

6 MS. PERSON: We are certainly left with other
7 issues, there's no question about that. However, one
8 major issue is that this was improper procedure. We
9 cannot assume that we know what would have happened if
10 proper procedure would have been followed. The --- the
11 fact that the improper procedure happened to involve a
12 public kayak launch isn't the issue. The issue is that
13 the --- the procedure was not proper. There were
14 additions made to the plan that by the way, it's state
15 law that requires planning commission to --- to review
16 those not county council, and that wasn't followed.
17 If --- if the --- if those paragraphs are stricken, it
18 eliminates that part of our claim entirely.

19 THE COURT: Well, isn't --- I mean, if you believe
20 what --- what they're saying, isn't it already
21 eliminated? Are you saying that we have to let this go
22 forward, get revoted on, and they have to get turned down
23 again for the public kayak launch in their neighborhood?

24 MS. PERSON: This isn't about the public kayak
25 launch. That's --- that's kind of the point. This is

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1 not ---

2 (Simultaneous speaking)

3 THE COURT: That's what I'm trying --- yeah, that's
4 what I'm trying to figure out ---

5 MS. PERSON: Right.

6 THE COURT: --- is why is it still in there if it's
7 not about that?

8 MS. PERSON: It's about the process.

9 THE COURT: Right.

10 MS. PERSON: It's the fact that proper process was
11 not followed because this --- these changes were made,
12 and county council voted improperly without authority on
13 a plan that was changed. And we can't assume that ---
14 fast forward, looking ahead that whether or not the kayak
15 launch actually happens, the process was still wrong.
16 And if the process is wrong, that means the decision is
17 invalid. We can't make it valid regardless of what
18 happens to the kayak launch.

19 THE COURT: All right.

20 (Simultaneous speaking)

21 MR. MORGAN JR.: Your Honor, if I may ---

22 THE COURT: Yes, sir.

23 MR. MORGAN JR.: --- on behalf of the county.

24 THE COURT: Yes, sir.

25 MR. MORGAN JR.: I --- I appreciate the indulgence,

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1 Your Honor.

2 Just briefly, I --- I think Your Honor's hitting it
3 directly on the point here. Trying to include
4 information about a kayak launch which is a --- an
5 impossibility has rendered this particular point moot.
6 And therefore it --- this is an issue like you had
7 pointed out that there were other issues that can be
8 presented to the Court, that's a true justicial
9 controversy. At this point in time, there is no
10 justicial controversy about the public kayak launch that
11 we can argue about whether the process was right or
12 wrong, obviously the county thinks that the process was
13 correct.

14 These are issues that have previously been brought
15 up by Ms. Person in other lawsuits before and --- and ---
16 and the courts that consistently found that the county's
17 done everything correct and properly when it comes to
18 passing these types ordinances.

19 But even that's not before the Court. We're limited
20 right now looking solely at the allegations regarding
21 this kayak launch. That kayak launch is not going to be
22 there and so again, trying to borrow from Mr. Crawl's
23 arguments and --- and joining with him, we think it's
24 proper to strike those allegations from the complaint.

25 And I --- I thank you again.

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1 THE COURT: All right. Yes, sir. Mr. Crowl, I'll
2 give you the last word, sir.

3 MR. CROWL: Your Honor, I think Mr. Morgan wrapped
4 up very succinctly, well. I --- I appreciate your time
5 and consideration of this. It --- it again, think is a
6 narrow issue regarding a public kayak launch. We're ---
7 we're not --- we're --- we're not making this broad. The
8 plaintiffs will still have their other causes of action
9 to go forward on and --- and their claims regarding other
10 procedures and all. This is just to simply strike the
11 allegations regarding the kayak launch because it will
12 not happen.

13 Thank you, Your Honor.

14 THE COURT: All right. Thank you, sir. Okay. So
15 assuming that the kayak launch is not happening, and
16 I'm --- you know, when Mr. Crowl says so as an officer of
17 the court, I believe him when he says so. I think that
18 paragraph two, I think is probably still remaining in
19 there will be proper. I think that's more of a
20 generalized sort of, you know, allegation with regard to
21 7(c). I think it will be proper to strike the middle ---
22 the mention from --- from that particular paragraph
23 what --- what was brought out about the public kayak
24 launch.

25 And reason I'm --- I'm striking this and anything

1 else I may strike is what --- is because I do view it as
2 moot at this point. If it --- if it can't go forward,
3 then there's no use in litigating it. If it's --- if
4 it's not a possibility, then I don't think it's proper to
5 bring that forward. With regard to 7(d), I believe that
6 should be stricken as well, because that deals with the
7 kayak launch.

8 There --- there's something in paragraph 52 that it
9 does deal with second reading, third reading changes
10 and --- and it says it --- that it includes
11 (unintelligible) a public kayak launch located on the
12 northeast corner of the Magic Oaks property. I think
13 certainly if there are other issues that the plaintiffs
14 have a problem with those can certainly be left in there.
15 But the what refers to the public kayak launch in there,
16 I think needs to be stricken at this point because it's
17 moot. That still allows the plaintiffs to go forward on
18 any other issues that they see with regard to that. 53,
19 I --- looks like a general argument with regard to the
20 Enabling Act. And it --- it can properly refer back to
21 other issues that can be brought forward by the
22 plaintiff.

23 The same goes with 54. Those --- that can stay in
24 there.

25 And with regard to 56, the issues regarding the

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1 public kayak launch need to be stricken from there as
2 well for the same reasons.

3 And 59, it looks like a sort of a general allegation
4 based on erroneous instructions county council voted six
5 to one to approve ordinances 2405 and 2406, that
6 really --- that hasn't been argued. I think that
7 should --- as --- that refers --- Ms. Person to something
8 else other than the kayak launch; does it not?

9 MS. PERSON: That's correct.

10 THE COURT: That --- yeah, I believe that should
11 stay in as well.

12 All right. That will be the order of the court.
13 Mr. Crawl, can you prepare an order for me as to that,
14 please, sir?

15 MR. CROWL: Yes, Your Honor.

16 THE COURT: All right. Thank you very much. Y'all
17 have a nice day.

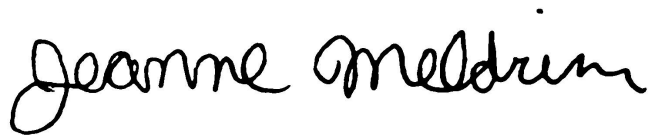
18 (PROCEEDINGS CONCLUDED)
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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 15 for GEORGETOWN COUNTY, South Carolina, on the 19th Day of September, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 27, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a period at the end.

Jeanne Meldrim
Transcriber

Other



2024CP2200577 : Emanuel Stikas , plaintiff, et al VS Georgetown County , defendant, et al
Common Pleas

Case Number 2024CP2200577

Case Subtype Special-Comp/Oth 699

Filed Date 06-18-2024

Status Appeal

[Show/Hide Participants](#)

Plaintiff

Defendant

Assigned Judge

File Type

Emanuel Stikas et al

Georgetown County et al

Clerk Of Court C P, G S, And Family Court

Mediator-Jury

Name	Description	Type	File Date
Rcb Land Holdings Llc	NEF(02-12-2025 02:27:00 PM) Affidavit/Affidavit of	Filing	02-12-2025 02:55:10 PM
Rcb Land Holdings Llc	Affidavit/Affidavit of Holly Richardson	Filing	02-12-2025 02:27:00 PM
Rcb Land Holdings Llc	Affidavit/Affidavit of Holly Richardson-EX_1	Filing	02-12-2025 02:27:00 PM
Emanuel Stikas	ADR/Alternative Dispute Resolution (Workflow)	Action	01-14-2025 03:09:47 PM
Emanuel Stikas	NEF(01-10-2025 01:55:21 PM) Appeal/Notice of Appeal to C...	Filing	01-10-2025 02:40:31 PM
Emanuel Stikas	Appeal/Notice of Appeal to Court of Appeals	Filing	01-10-2025 01:55:21 PM
Emanuel Stikas	Service/Proof Of Service	Filing	01-10-2025 01:55:21 PM
Cynthia Ranck Person	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Cynthia Ranck Person	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
F. Patrick Hubbard	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
F. Patrick Hubbard	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Sydney Jean Douglas	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Sydney Jean Douglas	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
H. Thomas Morgan, Jr.	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
H. Thomas Morgan, Jr.	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
David B. Miller	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
David B. Miller	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Zachary James Crowl	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
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Zachary James Crowl	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Zachary James Crowl	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Daniel W. Stacy, Jr.	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Daniel W. Stacy, Jr.	1/23/2025_MOTION_Roster/Notice of Case Roster Publication Se	Action	01-02-2025 09:07:22 AM
Emanuel Stikas	NEF(12-27-2024 11:50:48 AM) Order/Electronic Form 4	Filing	12-27-2024 11:51:00 AM
Emanuel Stikas	Order/Electronic Form 4/Motion for Reconsideration is Denied	Order	12-27-2024 11:50:48 AM
Keep It Green Inc	NEF(12-27-2024 10:10:33 AM) Motion/12 (B) in lieu of Ans...	Filing	12-27-2024 10:13:43 AM
Keep It Green Inc	Mot to Dismiss and/or Strike 3rd Party Complaint/Person	Motion	12-27-2024 10:10:33 AM
Emanuel Stikas	NEF(12-27-2024 10:03:10 AM) Motion/12 (B) in lieu of Ans...	Filing	12-27-2024 10:08:18 AM
Emanuel Stikas	Mot to Dismiss Strike Defense & Counterclaims/Person	Motion	12-27-2024 10:03:10 AM
Rcb Land Holdings Llc	NEF(12-02-2024 09:42:33 AM) Letter/Letter	Filing	12-02-2024 09:52:10 AM
Rcb Land Holdings Llc	Letter/Motions filed by 3rd Party Def & Plt are Moot	Filing	12-02-2024 09:42:33 AM
Rcb Land Holdings Llc	Letter/Motions filed by 3rd Party Def & Plt are Moot-EX_1	Filing	12-02-2024 09:42:33 AM
Rcb Land Holdings Llc	Letter/Motions filed by 3rd Party Def & Plt are Moot-EX_2	Filing	12-02-2024 09:42:33 AM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024 10:37:43 AM

Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024	10:37:43 AM
Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-27-2024	10:37:43 AM
Georgetown County	NEF(11-27-2024 08:43:03 AM) Answer/Answer	Filing	11-27-2024	08:52:09 AM
Georgetown County	Answer/Answer to Amended Complaint	Filing	11-27-2024	08:43:03 AM
Rcb Land Holdings Llc	NEF(11-26-2024 04:19:33 PM) Answer/Answer and Third Part...	Filing	11-26-2024	04:28:07 PM
Rcb Land Holdings Llc	Summons/Ans/Counterclaims & 3rd Party Summons and Complaint	Filing	11-26-2024	04:19:33 PM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-25-2024	08:34:07 AM
Emanuel Stikas	NEF(11-15-2024 12:56:49 PM) Amended/Amended Summons And ...	Filing	11-15-2024	01:07:36 PM
Emanuel Stikas	Amended/Amended Summons And Complaint	Filing	11-15-2024	12:56:49 PM
Emanuel Stikas	Amended/Amended Summons And Complaint-EX_1	Filing	11-15-2024	12:56:49 PM
Emanuel Stikas	Amended/Amended Summons And Complaint-EX_2	Filing	11-15-2024	12:56:49 PM
Emanuel Stikas	Amended/Amended Summons And Complaint-EX_3	Filing	11-15-2024	12:56:49 PM
Emanuel Stikas	Amended/Amended Summons And Complaint-EX_4	Filing	11-15-2024	12:56:49 PM
Emanuel Stikas	Amended/Amended Summons And Complaint-EX_5	Filing	11-15-2024	12:56:49 PM
Emanuel Stikas	Amended/Amended Summons And Complaint-EX_6	Filing	11-15-2024	12:56:49 PM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Cynthia Ranck Person	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
F. Patrick Hubbard	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Sydney Jean Douglas	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
H. Thomas Morgan, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
David B. Miller	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Zachary James Crowl	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Daniel W. Stacy, Jr.	12/5/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	11-14-2024	03:39:36 PM
Emanuel Stikas	NEF(11-07-2024 03:21:17 PM) Motion/Protection from Disco...	Filing	11-07-2024	03:54:22 PM
Keep It Green Inc	NEF(11-07-2024 03:14:50 PM) Motion/Protection from Disco...	Filing	11-07-2024	03:14:50 PM
Emanuel Stikas	Motion/Protection from Discovery/Person	Motion	11-07-2024	03:21:17 PM
Keep It Green Inc	Motion/Protection from Discovery/Person	Motion	11-07-2024	03:14:50 PM

Rcb Land Holdings Llc	NEF(11-06-2024 01:20:18 PM) Memo/Memo in Opposition	Filing	11-06-2024	01:25:18 PM
Rcb Land Holdings Llc	Memo/Memo in Opposition to Mot to Alter or Amend Judgment	Filing	11-06-2024	01:20:18 PM
Katheryn W Reid	NEF(10-25-2024 02:38:31 PM) Certification/Certification	Filing	10-25-2024	02:42:03 PM
Katheryn W Reid	Certificate of Compliance With SCRPC Rule 59 (g)	Filing	10-25-2024	02:38:31 PM
Emanuel Stikas	NEF(10-25-2024 01:45:41 PM) Motion/Alter and/or Amend	Filing	10-25-2024	01:54:52 PM
Emanuel Stikas	Motion/Alter and/or Amend Judgment/Person	Motion	10-25-2024	01:45:41 PM
Emanuel Stikas	NEF(10-23-2024 11:43:08 AM) Order/Electronic Form 4	Filing	10-23-2024	11:43:18 AM
Emanuel Stikas	Order/Electronic Form 4/Motions Moot	Order	10-23-2024	11:43:08 AM
Cynthia Ranck Person	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Cynthia Ranck Person	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
F. Patrick Hubbard	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
F. Patrick Hubbard	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Sydney Jean Douglas	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Sydney Jean Douglas	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
H. Thomas Morgan, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
H. Thomas Morgan, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Daniel W. Stacy, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Daniel W. Stacy, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-22-2024	08:39:27 AM
Rcb Land Holdings Llc	NEF(10-16-2024 03:27:08 PM) Letter/Letter	Filing	10-16-2024	03:48:03 PM
Rcb Land Holdings Llc	Letter/Letter to Judge	Filing	10-16-2024	03:27:08 PM
Rcb Land Holdings Llc	Letter/Letter to Judge-EX_1	Filing	10-16-2024	03:27:08 PM
Rcb Land Holdings Llc	NEF(10-15-2024 09:24:42 AM) Order/Other	Filing	10-15-2024	09:24:54 AM
Rcb Land Holdings Llc	Order/Granting Motion to Strike	Order	10-15-2024	09:24:42 AM
Emanuel Stikas	NEF(10-11-2024 04:05:05 PM) Motion/Dismiss	Filing	10-11-2024	04:14:08 PM
Emanuel Stikas	Mot/Dismiss/Strike Defenses and Cntrlms of D Tanner/Person	Motion	10-11-2024	04:05:05 PM
Rcb Land Holdings Llc	NEF(10-09-2024 05:25:10 PM) Proposed Order/Other	Filing	10-10-2024	08:30:39 AM
Magic Oaks Llc	Order/Order Cover Sheet \$25.00	Filing	10-09-2024	05:25:10 PM
Cynthia Ranck Person	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Cynthia Ranck Person	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
F. Patrick Hubbard	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
F. Patrick Hubbard	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Sydney Jean Douglas	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Sydney Jean Douglas	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
H. Thomas Morgan, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
H. Thomas Morgan, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
David B. Miller	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Zachary James Crowl	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Daniel W. Stacy, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Daniel W. Stacy, Jr.	10/31/2024_MOTION_Roster/Notice of Case Roster Publication S	Action	10-09-2024	08:28:47 AM
Magic Oaks Llc	NEF(09-27-2024 09:27:10 AM) Order/Electronic Form 4	Filing	09-27-2024	09:27:20 AM
Magic Oaks Llc	Order/Electronic Form 4/See Form 4	Order	09-27-2024	09:27:10 AM
Keep It Green Inc	NEF(09-26-2024 03:59:44 PM) Motion/12 (B) in lieu of Ans...	Filing	09-26-2024	04:02:51 PM
Emanuel Stikas	NEF(09-26-2024 04:01:06 PM) Order/Protection from Court ...	Filing	09-26-2024	04:01:15 PM
Emanuel Stikas	Order/Protection from Court Appearance	Order	09-26-2024	04:01:06 PM
Keep It Green Inc	Motion/12 (B) in lieu of Answer/Person	Motion	09-26-2024	03:59:44 PM
Emanuel Stikas	NEF(09-26-2024 03:59:32 PM) Order/Protection from Court ...	Filing	09-26-2024	03:59:39 PM
Emanuel Stikas	Order/Protection from Court Appearance	Order	09-26-2024	03:59:33 PM
Emanuel Stikas	NEF(09-26-2024 03:25:31 PM) Proposed Order/Protection fr...	Filing	09-26-2024	03:48:43 PM
Emanuel Stikas	Order/Order Cover Sheet \$25.00	Filing	09-26-2024	03:25:31 PM

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Emanuel Stikas	NEF(09-26-2024 03:15:03 PM) Proposed Order/Protection fr...	Filing	09-26-2024	03:21:13 PM
Emanuel Stikas	Order/Order Cover Sheet \$25.00	Filing	09-26-2024	03:15:03 PM
Emanuel Stikas	NEF(09-23-2024 12:46:55 PM) Motion/Dismiss	Filing	09-23-2024	12:56:07 PM
Emanuel Stikas	Motion/Dismiss and/or Strike/Counter Claims/Person	Motion	09-23-2024	12:46:55 PM
Georgetown County	NEF(09-18-2024 03:07:59 PM) Notice/Joinder Of Co-Defenda...	Filing	09-18-2024	03:27:12 PM
Georgetown County	Notice/Joinder Of Co-Defendants Motion to Strike	Filing	09-18-2024	03:07:59 PM
Rcb Land Holdings Llc	NEF(09-16-2024 10:59:51 AM) Affidavit/Affidavit of	Filing	09-16-2024	11:17:15 AM
Emanuel Stikas	NEF(09-16-2024 10:52:16 AM) Memo/Memo in Opposition	Filing	09-16-2024	11:14:08 AM
Rcb Land Holdings Llc	Affidavit/Affidavit of	Filing	09-16-2024	10:59:51 AM
Rcb Land Holdings Llc	Affidavit/Affidavit of-EX_1	Filing	09-16-2024	10:59:51 AM
Rcb Land Holdings Llc	Affidavit/Affidavit of-EX_2	Filing	09-16-2024	10:59:51 AM
Emanuel Stikas	Memo in Opposition to Mot to Strike of Def RCB Land & Magic	Filing	09-16-2024	10:52:16 AM
Rcb Land Holdings Llc	NEF(09-16-2024 09:05:27 AM) Service/Acceptance Of Servic...	Filing	09-16-2024	09:20:44 AM
Rcb Land Holdings Llc	Service/Acceptance Of Service	Filing	09-16-2024	09:05:27 AM
David E Tanner	NEF(09-12-2024 02:31:35 PM) Answer/Answer & Counterclaim	Filing	09-12-2024	02:40:10 PM
David E Tanner	Answer/Answer & Counterclaim	Filing	09-12-2024	02:31:35 PM
David E Tanner	Notice/Notice of Appearance	Filing	09-12-2024	02:31:35 PM
Cynthia Ranck Person	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
F. Patrick Hubbard	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
Sydney Jean Douglas	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
H. Thomas Morgan, Jr.	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
David B. Miller	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
Zachary James Crowl	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
David B. Miller	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
Zachary James Crowl	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	09-09-2024	08:52:36 AM
Cynthia Ranck Person	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
F. Patrick Hubbard	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
Sydney Jean Douglas	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
H. Thomas Morgan, Jr.	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
David B. Miller	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
Zachary James Crowl	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
David B. Miller	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
Zachary James Crowl	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:25:39 AM
Cynthia Ranck Person	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
F. Patrick Hubbard	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
Sydney Jean Douglas	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
H. Thomas Morgan, Jr.	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
David B. Miller	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
Zachary James Crowl	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
David B. Miller	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
Zachary James Crowl	9/19/2024_MOTION_Roster/Notice of Case Roster Publication Se	Action	08-29-2024	10:16:04 AM
Rcb Land Holdings Llc	NEF(08-23-2024 11:44:40 AM) Answer/Answer and Third Part...	Filing	08-23-2024	11:59:17 AM
Rcb Land Holdings Llc	NEF(08-23-2024 11:52:43 AM) Motion/Strike	Filing	08-23-2024	11:56:02 AM
Rcb Land Holdings Llc	Notice/Notice of Appearance	Filing	08-23-2024	11:52:43 AM
Magic Oaks Llc	Motion/Strike/RCB Land Holdings/Magic Oaks/Crowl	Motion	08-23-2024	11:52:43 AM
Rcb Land Holdings Llc	Answer/Answer and Third Party Summons and Complaint	Filing	08-23-2024	11:44:40 AM
Rcb Land Holdings Llc	Notice/Notice of Appearance	Filing	08-23-2024	11:44:40 AM
Georgetown County	NEF(08-21-2024 10:52:46 AM) Notice/Notice of Appearance	Filing	08-21-2024	11:14:15 AM
Georgetown County	Notice/Notice of Appearance	Filing	08-21-2024	10:52:46 AM
Georgetown County	Georgetown County Answer to Complaint	Filing	08-21-2024	10:52:46 AM
Emanuel Stikas	NEF(06-29-2024 11:07:10 AM) Service/Affidavit Of Service	Filing	07-01-2024	08:59:17 AM
Emanuel Stikas	Service/Affidavit Of Service	Filing	06-29-2024	11:07:10 AM
Emanuel Stikas	Service/Affidavit Of Service	Filing	06-29-2024	11:07:10 AM
Emanuel Stikas	Service/Affidavit Of Service	Filing	06-29-2024	11:07:10 AM
Emanuel Stikas	Service/Affidavit Of Service	Filing	06-29-2024	11:07:10 AM
Emanuel Stikas	Summons & Complaint	Filing	06-18-2024	03:09:47 PM
Emanuel Stikas	Summons & Complaint-EX_1	Filing	06-18-2024	03:09:47 PM
Emanuel Stikas	Summons & Complaint-EX_2	Filing	06-18-2024	03:09:47 PM
Emanuel Stikas	Summons & Complaint-EX_3	Filing	06-18-2024	03:09:47 PM
Emanuel Stikas	Summons & Complaint-EX_4	Filing	06-18-2024	03:09:47 PM

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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.

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Record on Appeal contains all material proposed to be included by all of the parties hereto and not any other material.

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July 11, 2025