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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.

APPELLANTS' RETURN IN OPPOSITION TO THE MOTION OF RESPONDENTS' MAGIC OAKS & RCB LAND HOLDINGS TO DISMISS AND SUPPLEMENT THE RECORD AND APPELLANTS' MOTION TO RESCHEDULE ORAL ARGUMENT

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February 23, 2026

INTRODUCTION

Appellants are Plaintiffs (adjoining landowners) in a Declaratory Judgment action challenging decisions by Georgetown County Council that changed the "Conservation Preservation" Comprehensive Plan designation on 8.3 acres of land along the Pawleys Island Salt Marsh (Ordinance 24-05), to allow rezoning for construction of a 27-unit "Flexible Design District" housing development (Ordinance 24-06). In addition to challenging the validity of these two ordinances, the suit challenges underlying improper and unauthorized actions that did not comply with state law or local ordinances, as well as the consequences of those actions.

The narrow issue on appeal is the pre-trial dismissal on a Rule 12(f), SCRPC, Motion to Strike one of several causes of action raised in Plaintiffs' Complaint. The remaining causes of action are pending in the trial court at the pleadings stage. Oral argument on the appeal issue has been scheduled for March 3, 2026.

On February 6, 2026, Respondents, Magic Oaks, LLC, and RCB Land Holdings, LLC, ("Developers" or "Respondents") filed a Motion to Dismiss asking the Court of Appeals to dismiss the appeal and the entire lawsuit based on their assertion that two ordinances passed by Georgetown County subsequent to the filing of Plaintiffs' Declaratory Judgment action (Ordinances 24-30 and 25-49), render this action moot in its entirety. Appellants disagree and oppose Respondents' Motion to Dismiss as follows.

A. OPPOSITION TO MOTION TO DISMISS

1. Motion to Dismiss is beyond Scope of Appeal

Respondents' motion asks this court to go far beyond the narrow issue on appeal and to make final decisions on matters that are not before it. Respondents request the court to dismiss the entire case based on documents attached to their motion that have not been subject to

evidentiary rulings or cross examination, and are not proper matters of record.

Curiously, one of the ordinances that Respondents argue renders this case moot, (Ordinance 24-30), was passed more than a year-and-a half ago, on July 23, 2024, shortly after the Complaint was filed in the trial court and nearly a month before Respondents filed their Answer and Motion to Strike. There was ample opportunity for Respondents to have argued the issue of mootness in the trial court, but the issue was never raised or addressed in the trial court, and no record has ever been developed on the issue. Instead, mootness was raised for the first time just seventeen (17) days ago in the context of this narrow appeal fewer than thirty (30) days before oral argument is scheduled.

The majority of issues are still pending in the trial court at the pleadings stage and regardless of the outcome on the merits of this appeal, the case will be back in the trial court on those other pending issues. At that time, Respondents will have the opportunity to raise their mootness argument in the proper manner after full development of the record. Accordingly, Appellants respectfully request this Court to deny Respondents' motion, or in the alternative, to deny the motion without prejudice for Respondents to raise the issue before the trial court in a proper manner and at the appropriate time with the opportunity for all parties to fully develop the record before any decision is made on the issue of mootness.

2. Motion is Premature

a. Statutory "Appeal" Period has not Expired

Ordinance 25-49, the second of the two ordinances that Respondents claim renders this case moot, was finally approved by Georgetown County Council on January 13, 2026. Even assuming, *arguendo*, that Respondents have a legitimate mootness claim (which is denied by Appellants for the reasons set forth hereinafter), the 60-day statutory time period within which

Ordinance 25-49 may be challenged, does not expire until March 13, 2026. (South Carolina Local Government Comprehensive Planning Enabling Act of 1994, (S.C. Code Ann. §§ 6-29-310 et seq.), Section 6-29-760(D)). If Ordinance 25-49 were to be challenged and found to be invalid, the previous ordinance would not be moot.

The issue of mootness on the basis of Ordinance 25-49 is not ripe for consideration until: (i) the statutory period expires and no challenge is filed, or (ii) in the event a challenge is filed, until the validity of Ordinance 25-49 has been finally determined. Accordingly, Appellants respectfully request this Court to deny Respondents' motion.

b. Approval of Ordinance 25-49 was subject to Condition Precedent

At third reading of Ordinance 25-49, Council members asked questions about the effect of a provision in the applicable zoning ordinance requiring that the project under consideration "shall meet the requirements of the Georgetown County Stormwater Ordinance." (Georgetown County Zoning Ordinance, Section 631.9) (emphasis added). In response to those questions, the Georgetown County Attorney and the Georgetown County Planning Director repeatedly and explicitly advised Council that approval of proposed Ordinance 25-49, as well as the original zoning, were "contingent on that stormwater plan being approved." (Planning Director, Holly Richardson, Agenda Item 9(b), Georgetown County Council Meeting, January 13, 2026). Thus, Council's approval of Ordinance 25-49 was conditional.

This contingent approval creates a condition precedent that has not occurred, but which must occur before the ordinance can be considered "approved." Ordinance 25-49 does not become effective unless and/or until the Developer's proposed underground stormwater system is approved by the Georgetown County Stormwater Department and the SC Department of Environmental Services ("DES"), which ultimately requires compliance with state and federal

regulations as well as County ordinances. Thus, Respondents' motion is premature and Appellants respectfully request this Court to deny Respondents' motion on that basis.

3. Determination of "Mootness" Requires Development of Record

A decision on the issue of "mootness" necessarily involves developing the record to determine: (a) whether and to what extent Ordinances 24-30 (July 23, 2024) and 25-49 (January 13, 2026) affect, amend, partially amend, or replace Ordinances 24-05 and 24-06, if at all; (b) if Ordinances 24-05 and 24-06 are found to be impacted, whether there remains a justiciable controversy that can be addressed by the court; and (c) if moot, whether any of the three exceptions to the mootness doctrine apply, *i.e.*, (i) whether the issue is capable of repetition, but will evade review; (ii) whether the issue is a matter of public importance; or (iii) whether a decision on the issue will affect future events or collateral matters. Sloan v. Greenville County, 380 S.C. 528, 670 S.E.2d 663 (2009).

These questions are most appropriately determined by the trial court in the context of a Motion for Summary Judgment or similar procedural vehicle that allows relevant evidence to be presented by all parties and subjected to evidentiary rulings and cross-examination. Only after the record is fully developed, can the court objectively examine and evaluate the text, context, conditions, implications, and consequences of all the relevant ordinances and make a determination about mootness, justiciability, and exceptions. In point of fact, in all the cases cited by Respondents, the issue of mootness had been developed in the trial court record and addressed by the trial court. In those cases, mootness was not raised for the first time in the appellate court without any record or background on the issue whatsoever as is the case here.

Respondents motion essentially asks the Court of Appeals to blindly assume that Ordinances 24-30 and 25-49, by their mere enactment and existence, without more,

automatically render Ordinances 24-05 and 24-06 moot and Plaintiffs' claims unjusticiable. The determination of mootness is not a mechanical process to be applied just for the asking based on unverified assertions without further inquiry. Termination of Appellants' statutory and constitutional rights to petition the court and be heard on the matters raised in their Complaint is a serious matter with serious potential consequences that warrant the development of a solid record and an opportunity for Appellants to be fully heard on all aspects of the issue of mootness.

Appellants respectfully request this Court to deny Respondents' motion, or in the alternative, to deny the motion without prejudice for Respondents to raise the issue before the trial court in a proper manner and at the appropriate time with the opportunity for all parties to fully develop the record before any decision is made on the issue of mootness.

4. Official Position of Georgetown County is Contrary to Respondents' Motion

The Georgetown County Attorney and the Georgetown County Planning Director specifically advised Council at third reading on January 13, 2026, that approval of proposed Ordinance 25-49 would not render the prior zoning ordinance moot. Council approved Ordinance 25-49 on that basis and with that understanding.

There was considerable discussion among council members about the nature and extent of proposed Ordinance 25-49, which consisted of two minor changes to the previously approved zoning (Ordinance 24-06), *i.e.*, slight repositioning of a building and removal of a kayak launch. Council members specifically questioned: (a) whether their decision on proposed Ordinance 25-49 was limited to approving only the two minor changes while leaving the previously approved zoning ordinance intact, or (b) whether their decision on proposed Ordinance 25-49 would negate and/or nullify the previous zoning ordinance and result in starting over with rezoning from scratch.

In response to those questions, the Georgetown County Attorney, after reviewing the relevant ordinance, explicitly advised Council that:

None of that language would seem to indicate that suddenly you're starting over, that ... suddenly, you know, the zoning is no longer valid zoning. It is within the ordinance itself, language that contemplates there may be changes at a later date. ... It's a layering of requirements. ... The fact that you are working through this process doesn't negate it [referring to the previous zoning] or nullify the prior approval of Council.

(Georgetown County Attorney, John Watson, Agenda Item 9(b), Georgetown County Council Meeting, January 13, 2026). Likewise, in response to additional questions asked thereafter by multiple council members, the Planning Director and the County Attorney repeatedly assured Council that their decision on Ordinance 25-49 was limited to simply changing the two items before them, *i.e.*, the position of the building and the kayak launch - not the entire zoning ordinance. (Agenda Item 9(b), Georgetown County Council Meeting, January 13, 2026). The Planning Director made similar statements to the Planning Commission at the Public Hearing on November 20, 2025. (Agenda Item 4(a), Georgetown County Planning Commission Meeting, November 20, 2025).

Thus, Council's approval of Ordinance 25-49 was based on these representations and the understanding that Ordinance 25-49 did not negate or replace or render moot the previous zoning (Ordinance 24-06), but rather simply amended two minor aspects of that original ordinance. Accordingly, Appellants respectfully request this Court to deny Respondents' motion.

5. Amendments made to Circumvent Judicial Proceedings

The South Carolina Supreme Court in Peterson Outdoor Advertising Corp. v. Beaufort County, 291 S.C. 533, 354 S.E.2d 563 (1987), which involved mootness in the context of the repeal and reenactment of a billboard ordinance, made it clear that evidence "showing that the

repeal and reenactment were effectuated solely to preclude appellate review" would be relevant to the issue of mootness, although such a showing was not made in that case. Id. at 535, 565. In other words, parties should not be able to create "technical" mootness by manufacturing amendments in order to evade judicial review or eliminate Plaintiffs' statutory and constitutional rights to be heard on the substantive issues.

Appellants submit that it would be relevant to further explore the Developers' amendment strategy in this case. Specifically, the insignificant nature of the minor amendment requests coupled with the Developers' Amended Project Summary that gratuitously characterized both previous ordinances as being rendered "moot," could raise legitimate inferences in the minds of reasonable persons about potential ulterior motives to avoid judicial review. More questions are provoked by the fact that the Developers' Amended Project Summary has inexplicably appeared as an attachment to the approved ordinance without being referenced and without Council ever having approved it or its language that directly contradicts the opinion expressed by the Georgetown County Attorney and the discussion among Council members at final reading. According to the language in Peterson, it would be appropriate to develop the record in this regard to determine whether the amendments may have been contrived to circumvent legal proceedings.

The mootness doctrine does not contemplate deliberately amending a challenged ordinance to change an insignificant detail or two without changing the substance upon which the challenge was based. If mootness were permitted to be achieved in this way, theoretically, every time a land use decision via ordinance is challenged by adjoining landowners, the defendant could simply request a minor amendment or the county could enact an identical replacement ordinance to render the previous ordinance "technically" moot without any real

substantive change in the end result. The adjoining landowners would be out of court without ever having the opportunity for adjudication of legitimate substantive issues and the governing authority would never be held accountable for improper actions. This scheme flies in the face of constitutional and statutory principles as well as public policy.

Appellants respectfully request this Court to deny Respondents' motion, or in the alternative, to deny the motion without prejudice for Respondents to raise the issue before the trial court in a proper manner and at the appropriate time with the opportunity for all parties to fully develop the record before any decision is made on the issue of mootness.

6. Justiciability

In addition to challenging the validity of the two ordinances (24-05 and 24-06), Plaintiffs' Complaint challenges underlying improper and unauthorized actions that did not comply with state law or local ordinances, as well as the consequences of those actions. The enactment of the subsequent ordinances upon which Respondents rely neither changes the substance of the previous ordinances nor takes away the essence of Plaintiffs' claims. The United States Supreme Court in Powell v. McCormack, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969), found that subsequent events did not render moot the unresolved consequences of an improper act or wrongs created by that improper act, and that those unresolved consequences are justiciable. In this case, Plaintiffs (Appellants) are still living with the consequences of the improper actions and decisions alleged in their Complaint which have not been changed by the enactment of subsequent ordinances.

Accordingly, Appellants respectfully request this Court to deny Respondents' motion, or in the alternative, to deny the motion without prejudice for Respondents to raise the issue before

the trial court in a proper manner and at the appropriate time with the opportunity for all parties to fully develop the record before any decision is made on the issue of mootness.

B. OPPOSITION TO RESPONDENTS' MOTION TO SUPPLEMENT RECORD AND APPELLANTS' COUNTER MOTION

For the reasons set forth above, Appellants object to Respondents' request to supplement the record on appeal with documents that were not part of the trial court record and have not been subject to evidentiary rulings or cross-examination. Rule 210(c), SCACR, specifically states that "the Record shall not ... include matter which was not presented to the lower court."

In the event this Court grants Respondents' request to supplement the record on appeal and/or is inclined to make a determination on the merits of the issue of mootness, either as it relates to this appeal or the entire case, Appellants request the opportunity to further supplement the record with additional information relevant to the issue of mootness, including transcripts of the above referenced public meetings, and to fully brief the issues.

C. APPELLANTS' MOTION TO RESCHEDULE ORAL ARGUMENT

Oral argument on this appeal is scheduled for March 3, 2026. Respondents' Motion to Dismiss and Supplement the Record was filed on February 6, 2026. Appellants' Return in Opposition is due on February 23, 2026. Respondents' Reply is not due until the day before oral argument on the appeal issue. The decision on Respondents' motion could greatly impact the content and preparation of oral argument.

Appellants' counsel is a charitable legal services organization that provides *pro bono* representation to its clients. The organization has limited staff and resources, and relies heavily on the services of volunteers. Since the time this motion was filed on February 6, 2026, Appellants' counsel has, by necessity, focused primarily on legal research and drafting this Return in Opposition to Respondents' Motion to Dismiss rather than on preparing for oral

argument on the merits of the appeal as originally planned. Inasmuch as the decision on this motion could greatly impact the content of oral argument and that outcome will not be known until the eleventh hour, Appellants hereby respectfully request that oral argument on the appeal be rescheduled for a time that provides all parties and their counsel with sufficient time to prepare after the court renders a decision on this motion.

CONCLUSION

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

1. Deny the Respondents' Motion to Dismiss and Supplement the Record; or
2. In the alternative, deny the motion without prejudice for Respondents to raise the issue before the trial court in a proper manner and at the appropriate time with the opportunity for all parties to fully develop the record before any decision is made on the issue of mootness; and
3. Grant Appellants' Motion to Reschedule Oral Argument.

Respectfully submitted,

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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.

PROOF OF SERVICE

The undersigned hereby certify that APPELLANTS' RETURN IN OPPOSITION TO THE MOTION OF RESPONDENTS' MAGIC OAKS & RCB LAND HOLDINGS TO DISMISS AND SUPPLEMENT THE RECORD AND APPELLANTS' MOTION TO RESCHEDULE ORAL was served this 23rd day of February, 2026, 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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Emanuel Stikas, et al. v. Georgetown County, et al., Appellate Case No. 2025-000066

1 message

KIG Advocacy <kig.advocacy@gmail.com>

Mon, Feb 23, 2026 at 8:00 AM

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

Dear Counsel:

Attached please find Appellants' Return in Opposition to Motion of Respondents Magic Oaks and RCB Land Holdings to Dismiss and Supplement Record and Appellants' Motion to Reschedule Oral Argument in the above matter which is hereby served upon you. This will be filed with the Court of Appeals today.

Thank you for your kind attention.

Sincerely,
Cindy Person
Pat Hubbard
Counsel for Appellants

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Stikas Appellants' Return in Opposition 02.22.2026f.pdf
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SC Court of Appeals

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Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

February 23, 2026

VIA E-MAIL ONLY

South Carolina Court of Appeals Clerk
1220 Senate Street
Columbia, SC 29201

RE: Emanuel Stikas, *et al.* v. Georgetown County, *et al.*
Appellate Case No. 2025-000066
Motion to Reschedule Oral Argument

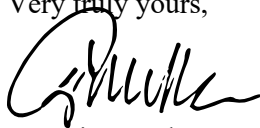
Dear Court of Appeals Clerk:

Contemporaneously with the filing of this letter, Appellants are filing Appellants' Return in Opposition to Motion of Respondents Magic Oaks and RCB Land Holdings to Dismiss and Supplement Record and Appellants' Motion to Reschedule Oral Argument. Per my telephone conversation with the case manager, this letter is to specifically advise that the Return includes Appellants' Motion to Reschedule Oral Argument currently scheduled for Tuesday, March 3, 2026, for the reasons set forth in the motion which is incorporated herein by reference.

A check for the motion fee will be sent by regular mail.

Thank you for your kind attention and consideration.

Very truly yours,



Cynthia Ranck Person, Esquire
F. Patrick Hubbard, Esquire
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