

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

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

Civil Action No. 2023-CP-22-00007

Appellate Case No. 2023-001306

RECEIVED

Jul 10 2026

SC Court of Appeals

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

..... Appellants,

v.

Georgetown County; and Alliance for Economic Development for Georgetown County,

..... Respondents.

RESPONDENT’S PETITION FOR REHEARING

Respondent Georgetown County (“Respondent”) respectfully petitions this Court for rehearing under Rule 221, SCACR. This Court’s June 10, 2026, Opinion (“the Opinion”) fundamentally misconstrues well-established caselaw and the standard of deference to be applied to declaratory judgment actions challenging a county-enacted rezoning ordinance as well as overlooked material facts lacking in Appellants’ Complaint. The Opinion also misapprehends the long-standing caselaw regarding the interplay between a county’s Comprehensive Plan and its properly enacted zoning ordinances. Moreover, the Opinion overlooks the significant timeliness

issues regarding Appellants underlying challenges to ordinances and actions that are outside the statute of limitations. The serious and far-reaching consequences of these holdings warrant reconsideration.

DISCUSSION

Plaintiffs' Complaint seeks declaratory judgment. As the Circuit Court's Order ("the Order") at issue pointed out, "Before a court may render a declaratory judgment, an actual, justiciable controversy must exist." *Pee Dee Elec. Co-op v. Carolina Power and Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). For there to be a justiciable controversy, there must be a "real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." *Id.* Under this standard, a plaintiff is required to present facts indicating that there is an imminent violation of rights for their case to be considered ripe for review. *Waters v. South Carolina Land Res. Conservation Comm'n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 917 n.7 (1996).

However, the Opinion misapprehended several key legal points and misconstrued material facts of the Order in its reversal. Respondents will explain why each of these misapprehensions warrants immediate review in turn.

I. The Opinion Misapprehends well-established caselaw and the standard of deference to be applied to declaratory judgment actions challenging county-enacted ordinances as well as overlooked material facts lacking in Appellants' Complaint.

Court Order Correctly Cited Standard of Deference

The Order correctly noted the deference courts are to apply in cases challenging an ordinance. Relying on *Knowles v. City of Aiken*, the Order stated, "Courts have no prerogative to pass upon the wisdom of the municipality's decision unless such decision is 'so unreasonable as to impair or destroy a citizen's constitutional rights.'" *Knowles*, 305 S.C. 219, 224, 407 S.E.2d

639, 642 (1991) (quoting *Hampton v. Richland Cnty.*, 292 S.C. 500, 503, 357 S.E.2d 463, 465 (Ct. App. 1987)). The Order further stated, “A decision of a county’s governing body should not be disturbed by a court if the propriety of that decision is at least “fairly debatable.” *Id.* at 223, 143 S.E.2d at 642. The Order noted that a decision of a county’s governing body is “fairly debatable,” when it is “not so unreasonable as to impair or destroy citizen’s [*sic*] constitutional rights.” *Id.* at 224, 143 S.E.2d at 643 (internal quotations omitted). The Order noted that an individual’s constitutional rights are violated when a zoning ordinance deprives an individual of their property without due process of law. *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243-44 (2002).

Citing *Knowles* again, the Order acknowledged that zoning ordinances must be upheld so long as the propriety of the local governing body’s decision is “fairly debatable.” *Knowles*, 305 S.C. at 223, 407 S.E.2d at 642. The Court noted “The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon [the challenger] to show the arbitrary and capricious character of the ordinance through clear and convincing evidence.” *Dunes*, 401 S.C. at 298, 37 S.E.2d at 610 (quoting *Willoughby*, 306 S.C. at 422, 412 S.E.2d at 425).

The Opinion overlooks the well-established Standard of Deference

The Opinion held the Circuit Court erred in its reliance on *Knowles* because the question was whether Appellants alleged a deprivation of constitutional rights. Thus, the Opinion misapprehends the effect Appellants’ challenge to Respondent’s rezoning decision that has the ultimate effect of invalidating a properly-enacted ordinance.

The Order found that Ordinances 22-36 and 22-37 were properly enacted. The Order noted the enumerated purpose of Article Seven of South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Planning Act”) is to provide counties with the ability to create

regulations with broad authority in order to carry out the stated purposes of the Planning Act, such as the promotion of public health and safety, good order, and “progressive development of land.” S.C. Code § 6-29-1120. The Order noted the provisions of Article Five of the Planning Act state that zoning ordinances are to serve similar purposes which are to “further the public welfare in any other regard specified by the governing body.” S.C. Code § 6-29-710. The Order went on to state that such purposes are directly within the purview and responsibility of the governing body of a county and that the governing body of Georgetown County is the County Council, not the Planning Commission.

The Order went on to find, “It is within the County Council’s authority to determine the terms of the development regulations and zoning ordinances used to carry out the purposes enumerated in the Planning Act. *See* S.C. Code § 6-29-760, 1130.” It also noted that it is within the authority of County Council “to enact zoning ordinances which include additional procedural safeguards, such as a requirement for additional oversight and approval for larger developments, where such safeguards function to protect and promote the intended purposes of the Planning Act and good land use principles within the County.” Thus, the Order found no conflict between the zoning ordinances complained of and the Planning Act.

The Opinion, in finding that there was a conflict, overlooked the bulk of cases cited in the Order for the deference courts give to legislative decisions by county councils. Moreover, the Opinion failed to consider the broad powers given to counties under the Planning Act via S.C. Code Ann. §§ 6-29-760 & -1130 and Respondent’s Zoning Ordinances. As such, the Opinion overlooks important principles of law and improperly misunderstood the deference to be given to Respondent’s legislative actions. Accordingly, a rehearing is appropriate.

The Opinion Overlooked the Factual Allegations of Appellants’ Amended Complaint

The Opinion also held Appellants sufficiently stated a constitutional deprivation sufficient to withstand a Rule 12(b)(6) motion. However, in so doing, the Opinion overlooked several critical facts. First, an allegation of arbitrariness alone is not sufficient to challenge a zoning ordinance pursuant to *Knowles*. Moreover, the Opinion ventures outside of the Order and interjects allegations not contained in the Complaint regarding an alleged disparate impact. Nowhere in the Order or Appellants' Amended Complaint are there any facts supporting – nor even alleging – a disparate impact claim relating specifically to this rezoning approval. Appellants' Amended Complaint utterly fails to allege this action was made with discriminatory intent as required. *See Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d (1999). As summarized by a South Carolina District Court:

With regard to a disparate treatment or disparate impact analysis, under the McDonnell Douglas framework, “the initial burden rests on the plaintiff to make out a prima facie case of discrimination.” *Laing v. Fed. Exp. Corp.*, 703 F.3d 713, 719 (4th Cir. 2013) (*citing McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). Only if the court finds that a plaintiff established a prima facie case for discrimination does “the burden shift[] to [the defendant] to articulate a nondiscriminatory reason for its action.” *Id.* At that point, the burden returns to the plaintiff to prove the defendant's explanation “was in fact pretext” for discrimination. *Id.* (*quoting McDonnell Douglas Corp.*, 411 U.S. at 804).

Bowman v. Bank of Am. N.A., No. 3:13-CV-3436-TLW, 2016 WL 8943266, at *5 (D.S.C. June 16, 2016), *aff'd sub nom. Bowman v. Bank of Am. NA*, 676 F. App'x 216 (4th Cir. 2017), and *aff'd sub nom. Bowman v. Bank of Am. NA*, 676 F. App'x 216 (4th Cir. 2017). Thus, this matter needs to be reheard by the Court to address the insufficiencies of Appellants' Amended Complaint and failure to state viable causes of action.

Finally, the Opinion notes allegations in Appellants' Amended Complaint of general negative impacts on property such as increased traffic, stormwater drainage issues, and lack of supporting infrastructure. These are simply not sufficient allegations of harm that rise to the

required level – whether a constitutional deprivation or in light of the issue of validity of failure to comply with the ordinance – to challenge a zoning ordinance when viewed against the exhaustive caselaw cited in the Order. As such, the Opinion both misunderstands material facts and overlooks principles of law and a rehearing is necessary.

II. The Opinion misapprehends the long-standing caselaw regarding the interplay between a county's Comprehensive Plan and its properly enacted zoning ordinances.

The Opinion misapprehends the Order's findings as to the legal authority of a comprehensive plan and the application of those findings to this case. As noted in the Order, Appellants' Amended Complaint challenges the validity of the decision to rezone the subject property as it conflicts with the Comprehensive Plan. The Order found the Planning Act grants the authority to local governments in South Carolina to create planning commissions within their jurisdiction. S.C. Code Ann. § 6-29-320. It further stated that "The governing body in Georgetown County is the County Council, which has the authority to then enact land development regulations and zoning ordinances based upon the planning commission's recommendations. These zoning ordinances and land use regulations, along with South Carolina statutes, set the required standards and procedures for making land use decisions in the County."

The Opinion overlooks that without the Comprehensive Plan serving as a legal basis to challenge the County's decision, there can be no justiciable controversy. *See Pee Dee Elec. Co-op, supra*. As such, the Opinion incorrectly held this matter could go forward with a declaratory judgment action. Moreover, the Opinion overlooks that fact that the Planning Commission would not have legal authority to approve or deny a rezoning request, regardless of whether it conflicted with the Comprehensive Plan, as that is the purview of Respondent.

As the Order stated, the goals and objectives of a county's comprehensive plan are effectively implemented through the county's zoning ordinances and land use regulations. *See*

Sinkler v. County of Charleston, 387 S.C. 67,75-76, 690 S.E.2d 777, 781 (2010); *see also* S.C. Code § 6-29-720(A). The Order went on to note, “But the comprehensive plan itself does not set the standard by which a planning commission or a county council must make its land use decisions. Approval or denial of an application for a zoning amendment must be made on the basis of the existing zoning ordinances and applicable land use regulations.”

The Opinion specifically found

[T]he Court makes note a decision of the Planning Commission to deny a zoning application based solely on the reason that it conflicts with the Comprehensive Plan, would, on its own, likely be considered arbitrary, and would constitute an abuse of discretion on the part of the Planning Commission. The County Council is well within its authority to reach a determination contrary to the Planning Commission’s recommendation, particularly where that recommendation is arbitrary. *See* Op. S.C. Att’y Gen., 2021 WL 1832308 (April 5, 2021) (indicating that the General Assembly intended a county’s governing body to consider their local planning commission’s recommendations but that they were not necessarily bound by that recommendation in its entirety).

Thus, the Opinion overlooks the legal principle that it is the zoning ordinances that control and not the Comprehensive Plan. In fact, the Opinion misunderstood the Order as it characterized the issue as one in which Respondent “is under no obligation to follow [the Comprehensive Plan] and indicated Respondent “disregard[ed]” the Comprehensive Plan. This overlooks the fact that the Order cites *McClanahan v. Richland Cnty. Council* for the principle that the Comprehensive Plan is a guideline, not binding law. *McClanahan*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002). Inasmuch as the Opinion misunderstood this principle of law, rehearing is appropriate.

III. The Opinion erred in not finding Appellants challenges time barred.

The Order noted that the nature of Appellants’ action challenged Respondents’ actions in amending the planned development district at issue. The Order held the General Assembly conveyed broad authority to local governing bodies in their establishment of these types of districts, such as the ability to provide for variations from other ordinances and regulations. *See*

S.C. Code Ann. § 6-29-740. The Order noted the statute provides, “Amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission.” S.C. Code Ann. § 6-29-740. The Order went on to note Respondent’s zoning ordinances appropriately include this procedure when a zoning amendment is being reviewed for adoption or denial. *See* Georgetown County Zoning Ordinance 619.302, 1701.

The Order noted Respondents’ Amended Complaint argued that the 2022 amendments of the planned development district at issue were not properly considered by Respondent because it was invalid from its inception in 2008, as well as under its prior amendment in 2015. The Order specifically held that any challenges to the earlier zoning ordinances were statutorily barred because a challenge as to “the validity of a regulation or map, or amendment to it...may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of [the Planning Act] or with established procedures of the governing authority.” S.C. Code Ann. § 6-29-760(D). The Order found Appellants made challenges to the substantive validity of those ordinances which are statutorily barred and could not be reviewed by the court. Thus, the Opinion misconstrues this critical principle of law and rehearing is appropriate.

Likewise, the Opinion erred in finding it was improper to allow Appellants’ challenges to Respondents actions under the provisions of Ordinance 1703 be dismissed. The Opinion states the Order incorrectly characterized Appellants requested relief as being one for “automatic reversion” of the subject property. However, Appellants’ Amended Complaint, Paragraph 15(a), specifically claims the property “should have reverted to its former zoning classification pursuant to Georgetown County Ordinance 1703.” Thus, the Opinion misunderstood this material fact and

rehearing is appropriate. Additionally, the Opinion notes Appellants knew that the supposed required construction did not begin within the required two-year period under the ordinance after the 2015 amendment to the planned development at the subject property, much less the contention the 2008 original planned development zoning was incorrect. All of these actions show the Opinion misunderstood this principle of law because no further facts were needed to be determined. As such, rehearing is appropriate pursuant to Rule 221, SCRCP.

CONCLUSION

Respondents respectfully ask this Honorable Court to grant rehearing and reconsider its Opinion reversing the lower court's Order granting Respondents' Motion to Dismiss. Reconsideration is warranted because the Opinion overlooks well-established caselaw and the standard of deference to be applied to declaratory judgment actions challenging a county-enacted ordinance as well as overlooked material facts lacking in Appellants' Complaint. The Opinion also misapprehends the long-standing caselaw regarding the interplay between a county's Comprehensive Plan and its properly enacted zoning ordinances. Finally, the Opinion erred in not finding Appellant's challenges to Respondent's rezoning decision as being time-barred. For all of these reasons rehearing is appropriate pursuant to Rule 221, SCACR.

RESPECTFULLY SUBMITTED,

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

s/ H. Thomas Morgan, Jr.

H. Thomas Morgan, Jr., SC Bar No. 73585
935 Broad Street
Camden, South Carolina 29020
tommy.morgan@smithrobinsonlaw.com
T: (803) 432-1992

-And-

Shanon N. Peake, SC Bar No. 102723
Sydney J. Douglas, SC Bar No. 105744
3200 Devine Street,
Columbia, South Carolina 29205
shanon.peake@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com
T: (803) 254-5445 F: (803) 254-5007

**ATTORNEYS FOR RESPONDENT
GEORGETOWN COUNTY**

Camden, South Carolina
July 10, 2026

From: [Melissa Roberts](#)
To: [kig.advocacy@gmail.com](#); [phubbard@law.sc.edu](#); [cjohnston@burr.com](#)
Cc: [Tommy Morgan](#)
Subject: Elizabeth M. Powers et al vs. Georgetown County et al / Appellate Case No. 2023-001306
Date: Friday, July 10, 2026 4:23:39 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Certificate of Service Petition for Rehearing Powers.pdf](#)
[Respondents Petition for Rehearing Powers-HTML edits.pdf](#)

RECEIVED
Jul 10 2026
SC Court of Appeals

Counselors:

Attached herewith and served upon you please find the Petition for Rehearing of Respondents in regard to the above-referenced matter.

Thank you.

H. Thomas Morgan, Jr.



Camden

935 Broad Street
Camden, SC 29020

Columbia: 803.254.5445

Sumter: 803.778.2471

Melissa Roberts

Paralegal

Office: 803.432.1992

Email: melissa.roberts@smithrobinsonlaw.com

Follow us:  

CONFIDENTIALITY NOTICE: The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer, intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

COLUMBIA

3200 Devine Street
Columbia, SC 29205
P: 803.254.5445
F: 803.254.5007

SUMTER

126 N. Main Street
Sumter, SC 29150
P: 803.778.2471
F: 803.778.1643

CAMDEN

935 Broad Street
Camden, SC 29020
P: 803.432.1992
F: 803.432.0784

Reply To: Camden
Tommy.morgan@smithrobinsonlaw.com

July 10, 2026

VIA EMAIL ONLY:

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29211
ctappfilings@sccourts.org

RECEIVED
Jul 10 2026
SC Court of Appeals

RE: Elizabeth M. Powers and Edward A. Powers; Powers; Martha C. Green; Steven E. Basso; James R. Sherman; Alexander V. Picard and Jessica Picard; Parkersville Planning & Development Alliance; Keep it Green; and Preserve Murrells Inlet, Inc., vs. Georgetown County; and Alliance for Economic Development for Georgetown County

Dear Ms. Kitchings:

Enclosed for filing please find the Respondents' Petition for Rehearing in the above-referenced matters. Please note that the \$50.00 filing fee required pursuant to SCACR 240(d) will be forthcoming.

Thank you for your attention to this matter.

Respectfully submitted,

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

s/ H. Thomas Morgan, Jr.
H. Thomas Morgan, Jr., SC Bar No. 73585
935 Broad Street
Camden, SC 29020
tommy.morgan@smithrobinsonlaw.com
T: (803) 432-1992 F: (803) 432-0784

Shanon N. Peake, SC Bar No. 102723
Sydney J. Douglas, SC Bar No. 105744
3200 Devine Street,
Columbia, SC 29205
shanon.peake@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com
T: (803) 254-5445 F: (803) 254-5007

cc: Cynthia Ranck Pearson, Esquire (via email only w/o enclosure)
F. Patrick Hubbard, Esquire (via email only w/o enclosure)
Chad N. Johnston, Esquire (via email only w/o enclosure)