STATE OF SOUTH CAROLINA **COUNTY OF GEORGETOWN**	:	**IN THE COURT OF COMMON PLEAS** **FIFTEEN JUDICIAL CIRCUIT**
Michael T. Green *et al.* **Plaintiffs**	:	**CASE NO. 2022 CP 22-00912**
v.	:	**PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO SCRCP, RULE 59(e)**
Georgetown County, Laine CRE, LLC; TriStar Land, LLC; and Samuel J. Nesbit on behalf of the heirs of Will Nesbit **Defendants**	:	**Declaratory Judgment** **Appeal from Georgetown County Council** **Jury Trial Demanded**

PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO SCRCP, RULE 59 (e)

Pursuant to SCRCP, Rule 59(e), Plaintiffs respectfully request this court to alter and/or amend its Order of July 18, 2023, granting the Motions to Dismiss of Defendants Laine, Tristar and Nesbit in their entirety and the Motion to Dismiss of Georgetown County with respect to all Declaratory Judgment claims.

The Order filed in this case granting the Defendants' Motions to Dismiss does not address the following issues:

(1) The role of the South Carolina Comprehensive Planning Enabling Act

(2) The denial of due process resulting from the adoption of the 2011 amendments to Section 607 of Georgetown County's "General Residential District" (GRD) provisions,

(3) The interpretation and application of the Enabling Act provision that "regulations must be made in accordance with the comprehensive plan for the jurisdiction,"

(4) The elements that constitute a cause of action for Declaratory Judgment, and

(5) Statutory standing and public importance standing for all parties and all causes of action, and associational standing for the nonprofit entity parties.

I. Georgetown County Council denied Plaintiffs' rights to procedures set forth in Sections 6-29-1150 and 6-29-1155 of the South Carolina Comprehensive Planning Enabling Act (hereinafter "Enabling Act").

A. Rights Granted by Sections 6-29-1150 and 6-29-1155

Sections 6-29-1150 and 6-29-1155 provide a framework for plan approvals and disapprovals by the Planning Commission and its staff and for the judicial appeals from the grant or denial of an application.

The first sentence of 6-29-1150(A) states: "The land development regulations adopted by the governing authority *must* include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff." (emphasis added). The remainder of this subsection and subsection (B) grant important rights to applicants for plan approval. Subsection (C) grants a right of appeal to the Planning Commission "by any party in interest." Subsection 6-29-1150(D) and Section 6-29-1155 address appeals to the circuit court. *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission*, 426 S.C. 97, 825 S.E.2d 721 (S.C. Ct. App. 2019) held that subsections 6-29-1150(C) and 6-29-1150(D) (1) granted "any party in interest" a right to appeal a decision by the Planning Commission.

B. Role of Enabling Act

The Rhode Island Supreme Court stated the general principle for applying an enabling act as follows: Where a local government "purports to restate that for which provision is made in the enabling act, any attempt to expand or abridge in the zoning ordinance rights granted by the enabling act is ultra vires of the jurisdiction conferred upon such a local legislature by the

General Assembly and, therefore, is void." *Hardy v. Zoning Board of Review of the Town of Coventry,* 321 A.2d 289, 290-29 (R.I. 1974).

The South Carolina Supreme Court applied this principle in *Sinkler v. County of Charleston*, 387 S.C. 67, 690 S.E.2 777 (2010). At issue was the rezoning of a large parcel of land from the classification AG-15 (agricultural with minimum lot area of three acres) to PD ("planned development district"). This PD district would have 107 dwellings, which was the same number as would be allowed under AG-15. However, the minimum lot size for the PD was reduced to one acre.

Sinkler noted that Section 6-29-720(C)(4) of the Enabling Act explicitly authorizes the use of planned development schemes and quoted the following language:

> "[P]lanned development district" or a development project comprised of *housing of different types and densities and of compatible commercial uses,* or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development *and is characterized by a unified site design for a mixed-use development.*

690 S.E.2d at 781 (emphasis in original). *Sinkler* also quoted Section 6-29-740, which contains additional details concerning a PD district. This section provides:

> In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that *will result in improved design, character, and quality of new mixed use developments* and preserve natural and scenic features of open spaces, the local governing authority may provide for the establishment of planned development districts as

> amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning district map for the property. *The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts.*

690 S.E.2d at 779 (emphasis in original).

The Supreme Court, relying on the statutory language quoted above, held:

> T]he [zoning] ordinance [with only residential uses] did not meet the parameters or a PD . . . . [H]aving invoked that technique, it could not arbitrarily fail to meet the requirements for a PD. Consequently, we hold *the circuit court correctly ruled the ordinance is invalid because it did not properly establish a PD as contemplated by the terms of the Enabling Act.*

Sinkler, 690 S.E.2d at 781,782 (emphasis added).

C. Amendments to the Zoning Ordinance

In 2011, Georgetown County amended Section 607 of its "General Residential District" (GRD) provisions at several points (see attached copy of the Ordinance). These revisions had the following effects:

(1) County Council was granted an unrestricted power to approve or deny certain site plans.

(2) The Planning Commission had its role reduced from having the power to approve or disapprove site plans to a role of merely reviewing site plans.

(3) Rights granted to developers in Subsection 6-29-1150(B) were eliminated.

(4) Rights of appeal to the Planning Commission granted to applicants and other parties in interest by Subsection 6-29-1150(C) were eliminated.

(4) Rights of appeal to Circuit Court granted by Subsection 6-29-1150(D) and by Section 6-29-1155 (property owner's right to prelitigation mediation) were eliminated.

D. The 2011 Amendments are ultra vires

The Order of the Court relies on the principle that courts should be deferential to legislative decisions by local governments. However, this deference is not applicable herein because, as in *Sinkler v. County of Charleston*, the 2011 amendments are ultra vires. The South Carolina Legislature adopted a procedural context for addressing site plan review in Sections 6-29-1150 and 6-29-1155. Georgetown County lacks the power to adopt the 2011 amendments because, as indicated in Part C above, the amendments eliminate rights provided by the Enabling Act.

II. The 2011 Amendments Deny Plaintiffs' Right to Due Process

The 2011 amendments deny Plaintiffs' right to due process because the amendments contain no controls or guides for the discretion granted to the Georgetown County Council. An example of this concern was addressed in *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442, 445 (1999). The court noted, "When deciding whether to grant a variance, *a local board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary*. Hodge v. Pollock, 223 S.C. 342, 75 S.E.2d 762 (1953); Schloss Poster Adv. Co. v. City of Rock Hill, 190 S.C. 92, 2 S.E.2d 392 (1939)." (emphasis added).

Because the ordinance at issue was sufficiently specific, the decision at issue in *Restaurant Row Associates* was upheld.

The cited case of *Schloss Poster Advertising Co*. involved an ordinance providing as follows: "Hereafter it shall be unlawful to erect or maintain any billboard facing on any public street or other public place within the incorporate limits of the city of Rock Hill without having first obtained from the city council a permit to do so." In effect, the City Council had delegated to itself an unrestrained power to grant or deny permits to construct billboards. In holding that this "delegation" was unconstitutional, the court noted:

> The ordinance before us is in no sense a zoning ordinance as provided in Sections 7390-7398, Code 1932, nor does it prescribe rules or conditions for the issuance of permits for the erection of billboards to which all persons similarly situated may conform. *It does not profess to prescribe regulations for their location, construction, or maintenance, but it commits to the unrestrained will of the city authorities, for any reason deemed satisfactory to them,* the right and power to absolutely prohibit the use of property for the erection of billboards.
>
> The ordinance in question in no way controls or guides the discretion vested thereby in the respondents. It prescribes no uniform rule upon which the special permission is to be granted.

2 S.E.2d at 394 (emphasis added).

The scheme adopted in the 2011 amendments contains the same lack of due process as the ordinance involved in *Schloss Poster Advertising Co.* Consequently, it is invalid.

III. Role of requirement in the Enabling Act that zoning "regulations *must be made in accordance with the comprehensive plan* for the jurisdiction." (emphasis added)

The Order of Dismissal interprets the requirement that zoning "regulations must be made in accordance with the comprehensive plan" as follows: "[B]ecause the Comprehensive Plan is not a legally binding standard, a perceived violation of its terms cannot substantiate a legal claim for relief." (Order, p. 10)

The concern for requiring that zoning "regulations be made in accordance with a comprehensive plan" has been in the South Carolina Enabling Act since the original Act was adopted in 1926.[1] The requirement was in the two predecessor acts in effect before the current Enabling Act was adopted.[2] A similar requirement is contained in the land development regulations.[3]

For nearly a century, the requirement of "in accordance with a comprehensive plan" has been a basic part of the South Carolina approach to planning and zoning. Despite the long-standing nature of the requirement, the Order of Dismissal treats the requirement as mere surplusage rather than a "legally binding standard" to be interpreted and applied. This approach conflicts with the requirement that "[F]ull effect must be given to each section of a statute and words should not be added or taken away." *South Carolina National Bank v. Cook*, 354 S.E.2d 562, 563 (S.C. 1987); *Hartford Accident and Indemnity, Co. v. Lindsay*, 254 S.E.2d 301, 304

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[1] S.C. CODE §1924 (33) 1066.

[2] *See* Johnston v. City of Myrtle Beach, 321 S.E.2d 627, 629 (S.C. Ct. App. 1984) (discussing the two statutes).

[3] Section 6-29-1120(5) (Land development regulations should be "in harmony with the comprehensive plan . . . .")

(S.C. 1979) ("Full effect must be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away.")

The Order does not cite any authority to support its refusal to grant any legal effect to the "made in accordance with a comprehensive plan." The Order cites *McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002) as support for the following interpretation: "The Comprehensive Plan is a guideline, not binding law." (Order, p. 10) However, *McClanahan* does not address the issue of the role of the comprehensive plan.

McClanahan actually supports the Plaintiff's position. The case states: "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." 350 S.E.2d at 242. One basic purpose of the Enabling Act is to guide regulation by planning. The purpose of the "in accordance with" language is to align zoning regulations with that planning creating the language.

The Order states that "a county's comprehensive plan exists to guide the land use decisions of a county." However, because of the refusal to view the "in accordance with" language as legally binding in any way, a county can simply ignore the guidance in the comprehensive plan. This result is contrary to "the intended purpose of the statute."

IV. The Complaint states facts sufficient to constitute a cause of action for Declaratory Judgment.

The South Carolina Uniform Declaratory Judgments Act (hereinafter "Declaratory Judgments Act"), S.C. Code Ann., Section 15-53-30, states:

> "[a]ny 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." (emphasis added).

"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, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Farmer v. CAGC Insurance Company*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. of App. 2018) (citations omitted). See also *Jowers v. South Carolina Department of Health and Environmental Control,* 423 S.C. 343, 354 815 S.E.2d 446, 452(S.C. Supreme Ct. 2018). "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 (S.C. Supreme Ct. 2013) (citations omitted).

Plaintiffs' Complaint specifically sets forth an actual controversy involving statutes and municipal ordinances and is neither hypothetical nor abstract in character. The Complaint plainly sets forth that: (1) the ordinance requiring county council to decide site plan reviews is invalid for conflicting with the South Carolina Enabling Act; (2) Georgetown County Council exceeded its authority under the Enabling Act; (3) the actions of Georgetown County Council violated the Enabling Act; (4) the Planning Commission is the final authority under the Enabling Act and the decision of Planning Commission was not appealed; and (5) density provisions of the Georgetown County zoning ordinance applicable to the parcel in question are invalid to the extent they are not in accordance with the comprehensive plan as required by the Enabling Act.

According to the South Carolina Supreme Court, in considering 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. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Doe v. Marion,* 373 S.C. 390, 398, 645 S.E.2d 245, 247-248 (S.C. Supreme Ct. 2007) (citations omitted). "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 (S.C. Supreme Court 2019). (emphasis added).

The court order addresses the merits of the disputes raised in Plaintiffs' Complaint by weighing evidence and considering facts beyond those alleged in the Complaint itself. "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling ***solely on allegations set forth in the complaint*** … " *Skydive Myrtle Beach, Inc.*, supra, 180. 587. The purpose of a Motion to Dismiss under Rule 12(b)(6) is for "the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Id.* See also *Plyler v. Burns,* 373 S.C. 637, 645, 647 S.E.2d 188, 192 (S.C. Supreme Ct. 2007).

"The purpose of pleadings is to place the adversary on notice as to what the issues are." *Langston v. Niles,* 265 S.C. 445, 455, 219 S.E.2d 829, 833 (1975). "The principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial.' *S.C. Nat'l Bank v. Joyner,* 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct.App.1986). "Pleadings are to be liberally construed ... ." *Shirley's Iron Works, Inc. v. City of*

Union, 403 S.C. 560, 574-575, 743 S.E.2d 778, 785 (2013), see also *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (quoting Rule 8(f), SCRCP).

Plaintiffs' Complaint identifies an actual controversy regarding municipal ordinances and state statutes. The questions whether or not the actions of the governing body exceeded its authority under the Planning Act, whether or not the actions of Georgetown County Council violate the Planning Act or other applicable law, and whether or not the underlying zoning ordinance complies with the Planning Act requirement that zoning be "in accordance with" the comprehensive plan are all ***factual determinations*** to be made after evidence has been presented, and not in the context of a 12(b)(6) Motion to Dismiss.

The court order improperly applies an evidentiary presumption without giving Plaintiffs an opportunity to present evidence to rebut that presumption. In finding that Georgetown County Zoning Ordinance 607 does not violate the Enabling Act, the court order states that

> A municipal ordinance is a legislative enactment and is presumed to be constitutional ... [z]oning ordinances must be upheld so long as the propriety of the local governing body's decision is "fairly debatable." It is incumbent upon [the challenger] to show the arbitrary and capricious character of the ordinance through clear and convincing evidence.

A claim cannot be properly dismissed for failure to overcome an evidentiary presumption before Plaintiffs have been given the opportunity to present evidence to rebut the presumption. The question whether the ordinance is "fairly debatable," or "arbitrary and capricious" is an issue of fact to be determined after evidence is presented and weighed. These evidentiary standards are relevant to the ***merits*** of Plaintiffs' claims, not the ***sufficiency*** of the Complaint.

V. The Complaint fails to address statutory standing and public importance standing for all parties, and associational standing for the nonprofit parties.

A. Statutory Standing under the Declaratory Judgments Act

South Carolina law is well settled that if statutory standing has been established for all parties and all causes of action, it is not necessary to inquire into constitutional standing. "[I]t is unnecessary to address constitutional standing ... when the basis for the independent concept of statutory standing exists." *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control*, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (S.C. Supreme Ct. 2020) (citations omitted). "The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute." *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (S.C. Supreme Ct. 2012). The Supreme Court specifically noted that once the criteria of statutory standing have been met, "[n]othing more is required" for standing. *Id.* at 195, 45. In other words, "the appellant did not have to show that he had a personal stake in the outcome of the matter." *Preservation Society of Charleston* at 210, 486.

The Declaratory Judgments Act, Section 15-53-30, states *"[a]ny person* ... whose rights, status or other legal relations are *affected by a statute, municipal ordinance*, ..." (emphasis added). Statutory standing under the Declaratory Judgments Act is very broad and extends to any person whose rights are "affected."

South Carolina courts have interpreted this provision and the word "affected" very liberally to include residents in the vicinity of a land use issue who are impacted by traffic, enjoyment, recreational uses, and aesthetics, as well as organizations whose members are affected in these ways. *Citizens for Quality Rural Living, Inc.*, supra at 113, 731 and *Preservation Society of Charleston*, supra.

The Complaint alleges that Plaintiffs and those they represent have been and will be "affected" by this site plan approval in the following ways: decrease in property values; increase in stormwater and flooding problems; negative impact on character, aesthetics and enjoyment of land; increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic; precedent for future land development in the immediate neighborhood that does not comply with state law or the Comprehensive Plan; increased burden on severely over-burdened infrastructure that is operating beyond capacity creating a serious safety hazard – streets and highways, fire, police, and emergency services personnel and equipment, evacuation routes; and detrimental and discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this important historical African American neighborhood.

The United States Supreme Court in *Friends of the Earth, Inc. v. Laidlaw Environmental Services Inc.*, 528 U.S. 167, 170, 120 S.Ct. 693, 697, 145 L.Ed.2d 610 (2000), when faced with a similar issue, found that "recreational, aesthetic, and economic interests" were sufficient to establish standing on nearby residents who had had been "affected." That same case also found that an organization has standing when its members have been "affected" in those same ways.

Accordingly, all parties have statutory standing under the Declaratory Judgments Act.

B. Associational Standing

The court order fails to consider associational standing as adopted by the South Carolina Supreme Court in *Preservation Society of Charleston*, supra. at 211, 487, set forth by the United States Supreme Court in *Friends of the Earth, Inc.*, supra. at 170, 697 as follows:

> [A]n organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing

> (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

The following allegations of the Complaint support associational standing on the part of the nonprofit Plaintiffs Parkersville PDA, KIG, and PMI: at least one of its members is an affected person who has standing in his or her own right; the interests at stake fall squarely within Plaintiff Associations' purposes of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck by monitoring county land use decisions, zoning change requests and proposed development for compliance with proper law and procedure; and neither the claim asserted nor the relief requested requires the participation of individual landowners as monetary damages are not being requested.

In *Preservation Society of Charleston,* the Petitioners were found to have standing as community and neighborhood organizations comprised of members who owned property near, but not necessarily adjoining, the land use at issue. Similarly, it is alleged in the Complaint those represented by Plaintiffs Parkersville PDA, KIG, and PMI own property that either adjoins or is located in the immediate vicinity of the parcels at issue.

C. Public Importance Standing

The court order fails to address public importance standing as set forth in the *Freemantle* case which states that when a matter is of public importance, standing may be conferred by that fact alone.

> [S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for

> future guidance. In cases falling within the ambit of important public interest, standing is conferred without requiring the plaintiff to show he has an interest greater than other potential plaintiffs . . . . For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.

Freemantle, supra. at 44, 193.

The Complaint alleges in Paragraph 121 (set forth below) that future guidance by the court is necessary to determine the validity of these two ordinances and that the issues have potentially far-reaching impact:

> 121. 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.

D. Constitutional Standing

The court order states that "Plaintiffs ... fail to allege that any of those ordinances work to deprive the Plaintiffs of their constitutional rights," and that "[b]ecause these allegations are

absent from the Complaint, it fails as a matter of law in its quest to invalidate the ordinances at issue." (Court Order, p. 6)

As set forth above, it is not necessary to allege constitutional standing when statutory or other standing has been established. Notwithstanding that, however, in addition to the due process violations referenced herein, Plaintiffs' Complaint alleges that Plaintiffs have been deprived of their constitutional rights as follows:

a. Each of the seven individual Plaintiffs submitted Affidavits attached as Exhibits to the Complaint alleging that they "own and reside on land that directly adjoins" the parcel "which is the subject matter of the Complaint," and that "[t]he County's decision to approve the subdivision has caused and will cause us injury as follows:"

   i. Negative impact on character, aesthetics and enjoyment of our land.

   ii. Decrease in the value of our property.

   iii. Increase in existing stormwater and flooding problems.

   iv. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.

   v. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.

   vi. Sets a precedent for other medium density land in immediate neighborhood to be approved for high density development.

vii. Sets a precedent for future land development that does not comply with the comprehensive plan.

(Complaint Pars. 11, 12, 14, 15; Affidavits, Exhibits 1-4.)

b. The nonprofit Plaintiffs, Parkersville Planning & Development Alliance and Keep It Green each submitted signed Affidavits as Exhibits to the Complaint alleging that they represent the individual Plaintiffs as well as other adjoining landowners and landowners in the vicinity, and that the County's decision to approve this development has caused and will cause injury in the same manner set forth in the preceding paragraph. (Complaint Par. 16, Rev. Johnny A. Ford, President, signed Affidavit, Exhibit "5"; Complaint Par. 21, Duane Draper, Chairman, signed Affidavit, Exhibit "6"; Complaint Par. 22, Leon Rice, President of Preserve Murrells Inlet, signed Affidavit, Exhibit "7.")

c. Paragraph 120 of the Complaint states:

> 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 land use decisions with respect to property that directly adjoins land owned by them or someone they represent; (b) the injury was caused by the improper approval of subdivision applications; and (c) the injury is redressable by a favorable decision of this court declaring that the approval of the subdivision applications by County Council is improper, null and void, and requiring Georgetown County to perform its required duties.

d. Paragraph 20 of the Complaint alleges:

> The Parkersville PDA represents the interests of the named Plaintiffs herein as well as many other residents and landowners in the vicinity of the two proposed high density subdivisions at issue in this case that threaten to continue a pattern of permanent and detrimental impact to this historical minority community.

e. Paragraph 105 of the Complaint alleges:

> Conflicting zoning ordinances and land use decisions are more prevalent in minority communities and have had a discriminatory impact on the minority population living in these communities.

f. Paragraph 108 of the Amended Complaint alleges:

> Approval of zoning changes and land development that conflicts with the comprehensive plan are more prevalent in minority communities and have had a discriminatory impact on the minority residents of these communities.

The court in *Preservation Society of Charleston,* supra, at 210, 486 (citations omitted), quoting the United States Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), stated that the elements of constitutional standing are (1) an "injury in fact," i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury may be redressed by a favorable decision.

These elements have been properly pleaded in Plaintiffs' Complaint and the constitutional deprivation becomes a question of fact to be determined by the fact-finder after evidence has been presented.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to alter or amend the Court Order dated July 18, 2023, as set forth above, and allow this case to proceed on the merits.

Respectfully submitted,

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

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

July 28, 2023
Columbia, South Carolina

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

KEEP IT GREEN ADVOCACY, INC.
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795, (570) 971-8636
kig.advocacy@gmail.com
ATTORNEY FOR PLAINTIFFS

July 28, 2023
Pawleys Island, South Carolina

607. General Residential District (GR)

Intent. It is the intent of this section that the General Residential District be established for medium-to-high density residential purposes. These areas need to be served with public water and sewer and have direct access to collector or arterial streets. Medium to high density projects should be designed to insure preservation of the critical areas, to be compatible with the existing development and to discourage any encroachment of commercial, industrial or other uses capable of adversely affecting the charm and residential character of this district.

607.1 Permitted Uses. The following uses shall be permitted in any General Residential District:

607.101 Single-family dwellings;

607.102 Two-family dwellings;

607.103 Multi-family dwellings (including assisted living facilities),

607.104 Public buildings, facility or land; and,

607.105 Accessory uses, including telephone booths associated with non-residential uses.

607.2 Single Family and Two Family (including garage apartments) Dwelling Requirements. Unless otherwise specified in this Ordinance, single family and two family dwellings shall meet the following requirements:

607.201 Front yard setback - twenty-five (25) feet;

607.202 Side yard setback - see Article VII, footnote 6;

607.203 Rear yard setback - twenty (20) feet;

607.204 Minimum lot area:

Single family - six thousand (6,000) sq.ft.

Two family - eight thousand (8,000) sq.ft.

607.205 Minimum lot width at building line - sixty (60) feet; and,

607.206 Building coverage shall not exceed thirty- five (35%) percent of the lot.

607.207 A development of more than five (5) two-family buildings with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council and comply with the following. ***(Amended Ord. 2011-41)***

607.2071 The applicant shall submit to the Planning Commission, as part of the application, letters addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to develop, and when and where a public hearing will be held by the Planning Commission. Such letters shall be placed in unsealed, stamped and addressed envelopes, ready for mailing by the Planning Commission. The Planning Commission's address shall appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed shall accompany the application.

607.2072 The required letters of notification shall be mailed to the affected property owners by the Planning Commission at least 21 days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in this section shall not render the rezoning of the property invalid.

607.2073 Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.

607.2074 Before taking any action, the Planning Commission shall hold a public hearing thereon, notice of the time and place of which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the scheduled public hearing date. The Commission will then forward its recommendation to County Council for final approval.

607.2075 Such project shall also comply with all other applicable ordinances including, but not limited to signage, access management, parking and buffering requirements.

607.208 Planning staff shall review any request for a development which contains more than one two-family dwelling unit ***(Amended Ord. 2008-48).***

607.3 Multi-Family Requirements. The minimum lot area for a multi-family project shall be at least one acre. The minimum lot frontage shall be at least 150 feet of frontage on an approved street. The lot depth shall be no greater than three (3)

times the lot width. Unless otherwise specified in this Ordinance, multi-family dwellings shall meet the following requirements:

607.301 Front yard setback - thirty (30) feet;

607.302 Side yard setback - see Article VII, footnote 6;

607.303 Rear yard setback shall be twenty (20) feet except where the property adjoins the marsh or ocean, in which case the rear yard setback shall be thirty (30) feet;

607.304 There shall be a minimum of twenty (20) feet separation between structures;

607.305 At least fifty (50) percent of the lot shall be pervious surface; and,

607.306 A multi-family development of more than ten (10) dwelling units with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council and comply with the following: ***(Amended Ord. 2011-41)***

607.3061 The applicant shall submit to the Planning Commission, as part of the application, letters addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to develop, and when and where a public hearing will be held by the Planning Commission. Such letters shall be placed in unsealed stamped and addressed envelopes, ready for mailing by the Planning Commission. The Planning Commission's address shall appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed shall accompany the application.

607.3062 The required letters of notification shall be mailed to the affected property owners by the Planning Commission at least twenty-one (21) days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in this section shall not render the rezoning of the property invalid.

607.3063 Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.

607.3064 Before taking any action the Planning Commission shall hold a public hearing thereon, notice of the time and place of

which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the public hearing date. The Commission will then forward its recommendation to County Council for final approval.

607.3065 Such projects shall also comply with all other applicable ordinances including, but not limited to signage, access management, parking and buffering requirements.

607.307 A development of ten (10) multi-family dwelling units or less will be reviewed by Planning staff ***(Amended Ord. 2008-48).***

607.4 Townhouses-Special Requirements.

607.401 The regulations, as contained in this subsection, shall be applied to townhouses where permitted in any district in addition to the multi-family requirements.

607.402 Site Plans and Design Criteria:

607.4021 The front of the buildings shall not form long, unbroken lines of row housing, but shall be staggered at the front building lines;

607.4022 No more than six (6) contiguous townhouses nor fewer than three (3) shall be built on a row;

607.4023 No portion of a townhouse or accessory structure in or related to one group of contiguous townhouses shall be closer than twenty (20) feet to any portion of a townhouse or accessory structure related to another group, or to any building outside the townhouse area; and,

607.4024 Insofar as practicable, off street parking facilities shall be grouped in bays either adjacent to streets or in the interior of blocks.

607.4025 A development of more than ten townhouses with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council and comply with the following: ***(Amended Ord. 2011-41)***

607.40251 The applicant shall submit to the Planning Commission, as part of the

application, letter addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to develop, and when and where a public hearing will be held by the Planning Commission. Such letters shall be placed unsealed, stamped and addressed envelopes, ready for mailing by the Planning Commission. The Planning Commission's address shall appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed shall accompany the application.

607.40252 The required letters of notification shall be mailed to the affected property owners by the Planning Commission at least twenty-one (21) days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in this section shall not render the rezoning of the property invalid.

607.40253 Conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.

607.40254 Before taking any action, the Planning Commission shall hold a public hearing thereon, notice of the time and place of which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the

scheduled public hearing date. The Commission will then forward its recommendation to County Council for final approval.

607.40255 Such projects shall also comply with all other applicable ordinances including, but not limited to signage, access management, parking and buffering requirements.

607.4026 A development of ten (10) townhouses or less will be reviewed by Planning Staff *(Amended Ord. 2008-48).*

607.5 Net Density Limits For Multi-Family Developments (Excludes Streets)

MINIMUM LOT AREA PER UNIT

Dwelling Unit Type	1 Story Sq.ft	# Units Per AC	2 Story Sq.ft	# Units Per AC	3 Story Sq.ft	# Units Per AC
Efficiency	3,000	14	2,700	16	2,700	16
1 Bedroom	3,600	12	3,000	14	2,700	16
2 Bedroom	4,300	10	3,600	12	3,000	14
3 Bedroom	5,400	8	4,300	10	3,600	12
4 Bedroom	7,200	6	5,400	8	4,300	10

607.6 Conditional Uses. The following uses may be allowed in any General Residential District subject to the provisions set forth:

607.601 Boarding homes, provided that:

607.6011 There shall be a minimum of 1,000 square feet of land area for each rental room;

607.6012 Food service facilities shall accommodate only boarders of the establishment and their guests. Where food service is provided there shall be a minimum of fifty (50) square feet of dining area for each rental room; and,

607.6013 There shall be at least one (1) off street parking space per rental room, plus one for each employee.

607.602 Utility substations or subinstallations including water towers, provided that:

607.6021 Such use is enclosed by a fence or wall at least six (6) feet in height above finished grade;

607.6022 There is neither office nor commercial operation nor storage of vehicles or equipment on the premises and,

607.6023 A landscaped strip not less than five (5) feet in width is planted and suitably maintained around the facility.

607.603 Amenity, subdivision provided that: ***(Amended Ord. 2007-03)***

607.6031 Parking shall be provided at a rate of one half that required in Article XI of the Zoning Ordinance.

607.6032 Adjacent residential properties must be buffered from any recreational amenity other than a passive park which contains no structures. Such buffer shall, at a minimum, be a Type 2 as identified in Article XII of the Zoning Ordinance.

607.6033 The amenity must be owned and maintained by a homeowners association, similar entity or developer and be primarily used by the residents of the subdivision.

607.7 Other Requirements.

607.701 All allowed uses shall be required to conform to the standards set forth in Article VII.

607.702 Uses allowed in this district shall meet all standards set forth in Article XI, pertaining to off-street parking, loading and other requirements.

607.703 Signs allowed in General Residential Districts, including the conditions under which they may be located, are set forth in Article X.

607.704 In all multi-family developments, the developer is responsible for providing adequate solid waste storage areas and collection service. The location for these facilities shall be shown on the site plan and approval is required as stated in Subsection 607.306.