KIG Advocacy, Inc.
P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

November 8, 2022

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29440

RE: REZONING REQUEST
PAWLEYS ISLAND BUSINESS COMMONS/
MERCOM TECHNOLOGY PARK PD
TMS#04-0203-189-02-00
Case #RZE2022-00024

Dear County Council Members:

Please be advised that I am writing on behalf of adjoining landowners, interested parties with standing, the Pawleys Island Civic Club, Parkersville Planning & Development Alliance, residents in the Parkersville community of Pawleys Island, residents of St. Christopher's circle, other neighboring landowners, and thousands of citizens of the Waccamaw Neck.

This letter shall serve as our formal opposition to this proposed rezoning to allow high density, multi-family housing on land that is currently zoned for no residential use and designated for zero residential density by the comprehensive plan.

Your Planning Commission recommended 5-0 that this rezoning be denied on the basis that it conflicts with the comprehensive plan and we would respectfully ask you to follow their prudent recommendation because they were absolutely right.

We set forth the specific bases for our opposition in our letter of October 25, 2022, and we will not repeat those details here. We wish to emphasize the following for your consideration.

1. Zoning Must Conform to the Comprehensive Plan

   Zoning is required to conform to the comprehensive plan and this request to go from zoning which allows no residential use on a parcel that is identified by the comprehensive plan as allowing no residential density is a gross deviation from the requirements of our comprehensive plan.

The South Carolina Planning Act, Section 6-29-740, specifically states the purpose of Planned Development Districts is to "achieve the objectives of the comprehensive plan." They are not to be used as a tool to circumvent the comprehensive plan which is what is happening in this case.

The provisions of the South Carolina Planning Act that require you to follow the comprehensive plan in enacting zoning regulations are as follows:

a. Section 6-29-720(B) provides that "[zoning] regulations *must* be made in accordance with the comprehensive plan for the jurisdiction."

b. Section 6-29-720(A) provides that the purpose of a zoning ordinance is to "implement the comprehensive plan."

In addition to the maps, the clear language from page 23 of the comprehensive plan states:

> *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.* (emphasis added).

As your Planning Commission found after a detailed review, this requested zoning change does not conform to the comprehensive plan and should not be approved.

2. No Public Benefit.

According to Georgetown County Ordinance 1701, and other applicable law, amendments to zoning ordinances are proper only when "public necessity, convenience, general welfare or good zoning practice justifies such action." The burden of proving this justification is on the applicant. It is not the burden of the public to prove that it is not justified.

The application itself offers nothing in the way of a justification. The only reason given is "to allow for a mix of uses." After submitting its application, the developer, whose identity remains undisclosed, is willing to consider offering "up to" 30% of the rental units at "below fair market value" to promote "affordable housing." There are no further details and no further facts.

This is not a commitment to anything, much less affordable housing. This "promise" could amount to 2 rental units at $1 below fair market value for one day. This meaningless language does not meet the definition of affordable housing.

The "Affordable Housing" addressed in our Housing Element has a very specific definition. The official "affordable rental" for our area is $969/month including utilities. The fair market rental of apartments comparable to what is being proposed by this developer is $2,100 - 2,300 per month. Unless this developer intends to rent these apartments for substantially less than $969 per month, they are not "affordable housing" as contemplated by our Housing Element, and this discussion should not even be entertained.

Affordable housing should be built on land that is already zoned for it. If the county truly wishes to make affordable housing available, it could follow the suggestion of our Housing Element and donate county owned land to an organization like Habitat for Humanity because truly affordable housing is not a likely possibility through private development.

3. Development Agreement Not Appropriate.

There were multiple references at second reading to approving the zoning change and then having the developer iron out the details after the fact by working behind the scenes with the County Administrator, County Attorney and County Planning Director.

The county is not authorized under either state or local law to enter into development agreements for parcels of land that are under 25 acres. This parcel is 14 acres.

4. Alliance Status

If the Alliance is a completely separate and independent entity from the county, as represented by the county, then members of council who serve as directors on the Alliance board should recuse themselves from the vote on this issue to avoid the appearance of impropriety or a potential conflict of interest.

For these reasons as well as the reasons set forth in our letter of October 25, 2022, we oppose this zoning change application and respectfully request you to deny it.

Thank you for your kind attention and consideration.

Very truly yours,

Cynthia Ranck Person, Esquire

cc: Angela Christian
Holly Richardson
John Watson

KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

October 25, 2022

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29440

RE: REZONING REQUEST
PAWLEYS ISLAND BUSINESS COMMONS/
MERCOM TECHNOLOGY PARK PD
TMS#04-0203-189-02-00
Case #RZE2022-00024

Dear County Council Members:

Please be advised that I am writing on behalf of adjoining landowners, the Pawleys Island Civic Club (Vincent Davis, President), Parkersville Planning & Development Alliance (Rev. Johnny Ford, President), and many other residents in the Parkersville community of Pawleys Island, other neighboring landowners, thousands of citizens of the Waccamaw Neck, and more than 950 residents who signed a Petition requesting that the above referenced land be reverted to its original zoning.

This is a request to allow high density, multi-family housing on land currently zoned for no residential use and zero residential density permitted by the comprehensive plan. Your Planning Commission recommended 5-0 that this rezoning be denied on the basis that it conflicts with the comprehensive plan and we would respectfully ask you to follow their prudent recommendation.

The long established minority neighborhood of Parkersville is one of the last vestiges of traditional African American life, history, and culture in Pawleys Island. This community has been a longstanding target of undesirable county land use decisions, commercial encroachment, and predatory development. It is critically important to protect what little is left of this traditional community consisting of low to medium density single family homes on narrow tree-lined roads characteristic of the low country. There could not be a less appropriate place for the requested development for many reasons including incompatibility with the community and grossly inadequate existing infrastructure.

This letter shall serve as our formal opposition to this proposed rezoning on a parcel that is presently zoned for no residential use and requests 90 high density, multi-family townhouses in the heart of Parkersville.

In addition to all the practical reasons why this should be denied, we believe this application is defective on its face and raises a multitude of serious legal issues. There is no legitimate basis upon which this zoning change should be considered, much less approved. In the event it is approved based on the existing application, adjoining landowners and citizens groups will consider formal legal action.

1. Background

   In 2008, the county approved a business park Planned Development (PD), "Pawleys Island Business Commons" at this location. The business park was never built.

   In 2015, the county amended the business park PD and approved "Mercom Technology Park." Soon thereafter, the Alliance for Economic Development for Georgetown County (hereinafter "Alliance"), purchased "Tract 3" of the PD upon which the technology park was approved to be built. The Alliance borrowed $950,000 from Santee Cooper to purchase the tract. The loan was interest free for five years with repayment to begin thereafter.

   The Mercom Technology Park PD consisted of three separate parcels that are presently owned by three different entities – the Alliance, The Barn on Petigru, LLC (formerly Mercom, Inc.), and Waccamaw Land, LLC. The technology park was never built nor were any written extensions ever requested by the landowners or granted by the governing body of the county as required by law to properly extend development rights.

2. Planning Commission Did Not Recommend This Zoning Amendment

   Planned Development Districts are permitted by specific authority of the South Carolina Planning Enabling Act, (hereinafter "Planning Act"), Section 6-29-740, which sets forth the parameters and states that:

   > "amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission."

   Under the Planning Act, there is no authority granted to County Council to amend a PD unless Planning Commission recommends it. In the present case, the Planning Commission did not recommend this PD amendment and, therefore, there is no authority for Council to amend the PD.

3. No Vested Right to Develop

Relevant legal authority pertaining to vested rights is found in the following state statutes and county ordinances:

a. South Carolina "Vested Rights Act," S.C. Code, 6-29-1510 *et seq*.
b. Development Regulations of Georgetown County, Article 5, Section 4-1.

The South Carolina Vested Rights Act, S.C. Code, 6-29-1520(10), defines a vested right as:

> "the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan ..."

S.C. Code, 6-29-1530(A)(1) authorizes counties to provide processes for the establishment and extension of vested rights within the parameters of state law. The Development Regulations of Georgetown County, Article V, Section 4-1(B) states in pertinent part as follows:

> Such vested right shall extend for an initial period of ***two (2) years.*** Within 120 days of expiration of the initial 2-year vesting period, the developer or landowner may request, ***in writing***, to the Georgetown County Planning Department a 1-year extension of the vesting period. Extensions of vested rights shall be given in 1-year increments and shall not exceed five ... . Requests for extensions ***shall be presented to the Planning Commission*** for consideration.

In the present case, there was no written request for extension made by the developer or landowner after the PD was approved in 2015. Accordingly, any vested development rights that may have accrued by virtue of the PD approval in 2008 would have expired in 2010. Any vested rights in the PD amendment approved in 2015 would have expired in 2017, and there is presently no right to develop.

4. Reversion

Over and above the lack of any vested development rights, this property should long ago have been considered for reversion to its former zoning category.

Georgetown County Zoning Ordinance 1703 states as follows:

> To prevent land speculation at the expense of the general public and to insure the timing of projects in accordance with stated development objectives, construction shall start on all properties rezoned Planned Development within two (2) years after rezoning.

> If construction is not begun within two (2) years after rezoning to a Planned Development, the Planning Commission ***shall*** review the zoning of said property, and, unless presented cogent reasons to allow additional time, ***shall*** initiate proceedings to return the zoning of the property to its original classification, or to such classification as the Planning Commission deems consistent with the Comprehensive Plan.
>
> If additional time is allowed, the Planning Commission ***shall*** review the zoning of the property at the expiration of such additional time if construction has still not begun.
>
> The Planning Staff ***shall*** periodically review the status of property which has been rezoned Planned Development, and bring to the attention of the Planning Commission any property which falls within the scope of this section. (emphasis added.)

In the present case, construction of the detailed plans submitted and approved for the Technology Park PD rezoning in 2015, was neither started nor finished, and yet, seven years later, the parcel remains zoned as a PD and we are addressing, for a second time in less than two years, a rezoning application that should not have been permitted to get to this point.

This situation is exactly what Ordinance 1703 was enacted to prevent. Properties simply may not be held hostage as unconstructed PDs in perpetuity. Notwithstanding this ordinance and vested rights law, a longstanding practice in Georgetown County has been to allow unconstructed PDs to exist long after vested rights have expired making it easy for a developer to come along and ask for an "amendment." These unbuilt PDs should have reverted years ago.

On March 4, 2021, Keep It Green, Inc., (KIG) directed a letter to the Planning Commission Chair enclosing a Petition with the signatures of more than 900 citizens requesting this PD to be reverted to its original FA zoning classification. The letter was copied to the Georgetown County Administrator and the Chairman of County Council. KIG never received an acknowledgement or response.

In the present rezoning request, the Planning Department narrative summary states that some minor cosmetic repairs (replacement of windows, the HVAC system, and painting) were approved in early 2017 for the interior of the existing Mercom building. On that basis, the Planning Department concludes that "[c]onstruction has occurred as part of the PD, making the extensions no longer necessary."

It is incomprehensible that the county would seriously suggest that these minor repairs to the building that existed long before the Mercom Technology Park PD was requested or approved, constitute "construction" of the PD. This appears to be an attempt to circumvent

the requirements of an ordinance that was enacted to protect the best interest of the public and to prevent the very situation that is presently before you.

With respect to the requested reversion, the Comprehensive Land Use Plan is clear that there are major problems in the Pawleys Island-Litchfield area with residential density, traffic, flooding, stormwater, and infrastructure. This parcel is in the heart of those issues. The zoning classification for this parcel that is most consistent with the objectives of the Comprehensive Plan is the FA zoning classification it held before the planned developments were approved. The land should revert to its former FA status.

5. Application Defective

As set forth above, under South Carolina law and Georgetown County ordinances, the property should have been reverted to the former zoning classification. There are currently no vested rights to build this technology park PD. An application to amend a PD that neither legitimately exists nor has a right to be constructed is defective on its face and should not be considered.

Even if this were a proper request to amend a legitimate PD, the Mercom Technology Park Planned Development District is a single zoning unit owned by three separate entities. Georgetown Zoning Ordinance 619.501 specifically (and properly) requires that the application for amendment "shall be filed jointly *by all of the owners of the properties in the plan*." This application was filed by only one of the three separate owners – the Alliance by its agent Dan Stacy. All three owners should be joint applicants.

This issue was raised in our letter to Planning Commission dated September 15, 2022. In apparent response, the Planning Department addresses this issue in its Agenda Request Form submitted to Council by stating that "[t]he application follows proper procedure as the Alliance is the owner of the 'directly impacted area' as required in Section 1702.1 of the Zoning Ordinance."

The words "directly impacted area" are noted in an asterisk to a chart that appears under the referenced ordinance and is neither part of the ordinance text nor defined in the ordinance. Even so, the "directly impacted area" in this case is the Mercom Technology Park PD unit which is owned by three landowners.

The South Carolina Planning Act, Sections 6-29-720(4) and 740, specifically define and govern the Planned Development District. It is a unique zoning unit that is characterized by a "uniform site design." The whole point of a Planned Development District is that it is one unique zoning district regardless of the number of owners. The unit is not meant to be dissected, parsed, and amended as separate pieces at the whim of only one of multiple owners.

A request to amend a Planned Development District affects the entire zoning unit. A decision to amend a Planned Development District affects the entire zoning unit. Accordingly, all

landowners involved in the Mercom Technology Park PD zoning unit should be part of this application in order for it to be properly considered.

6. Alliance Status

When plans for the speculative Mercom Technology Park fell through, the Alliance was stuck with the consequences of a poor business decision – a huge loan and an unproductive parcel of land that is part of a PD zoned as a technology park. It seems obvious that the Alliance wants to unload its debt by selling the land at maximum profit by changing the zoning from no residential use to high density residential use.

Georgetown County officials have made it clear that the Alliance is a separate and independent organization from the county. A zoning change would benefit one landowner – the Alliance - to the detriment of the neighboring Parkersville community and all the citizens of the Waccamaw Neck. The county is not in the business of bailing out landowners from poor business decisions, and this is not a proper consideration for a zoning change.

7. Original PD Void on its Face.

In addition to the legal issues presented by vested rights, reversion, and improper application, there is a serious question about whether the PD approved in 2008 and later amended in 2015 was ever a proper Planned Development District designation in light of the South Carolina Supreme Court decision in the Sinkler case. If it does not comply, the PD is void on its face as of 2015, at the latest, and is not capable of being amended in 2022.

8. Comparisons to Prior Approved Uses Invalid

The Planning Department and the developer make comparisons between this proposed high density residential use of the property and the originally approved technology park, and draw conclusions that the new project would generate less traffic and have less impervious surface area. These comparisons are invalid. The present use of this property is as vacant land. The technology park is a fictional project that does not exist, never existed and has no present right to exist. The proposed high density residential project should be compared to what the land actually is – vacant land with a present traffic count of zero and no stormwater issues.

9. No Public Benefit.

According to Georgetown County Ordinance 1701, and other applicable law, amendments to zoning ordinances are proper only when "public necessity, convenience, general welfare or good zoning practice justifies such action." The burden of proving this justification is on the applicant.

The applicant in this case has offered nothing in the way of a justification for this zoning change under the criteria set forth by the ordinance. The only reason given for the request is "to allow for a mix of uses." A zoning change to high density residential on a parcel that

currently permits no residential is not justified and would adversely affect public safety by increasing density and creating more traffic, flooding and burden on existing infrastructure.

10. Not in Accordance with Zoning or Comprehensive Plan.

This parcel is currently designated for no residential density under both zoning and the Comprehensive Plan Future Land Use Map. (FLUM)

In order to accommodate a developer who wishes to buy this property to construct high density housing, a use for which it is neither zoned nor designated by the comprehensive plan FLUM, the Planning Department proposes that an amendment of the comprehensive plan FLUM "to a designation of transitional or high density residential would support the proposed uses."

The South Carolina Planning Enabling Act requires counties to conform land use to the comprehensive plan, not the other way around. The comprehensive plan is not supposed to be changed at the whim of the county to accommodate a developer's proposed use. The use should conform to the plan and in this case it does not.

Furthermore, the South Carolina Planning Act, Section 6-29-740, specifically states the purpose of Planned Development Districts is to "achieve the objectives of the comprehensive plan." They are not to be used as a tool to circumvent the comprehensive plan.

This proposal contradicts the clear language from page 23 of the Georgetown County Comprehensive Land Use Plan:

> *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.* (emphasis added).

The suggestion by the Planning Department that this request to increase density from the currently permitted ZERO to 90 high density multi-family townhouse units, might somehow be justified because the proposal allows for some "usable open space" within its high density residential plan, on a parcel of land that is currently vacant and not zoned for any residential use, is without merit.

This request is a gross deviation from the requirements of our comprehensive land use plan and is without any justification that benefits the public good.

11. Stormwater Study Results

As the President of the Pawleys Island Civic Club pointed out in recent remarks, the county has invested substantial funds to have a county-wide stormwater study completed. High density, multi-family developments such as these, in a neighborhood that is already experiencing serious problems with stormwater and flooding, should not be considered until the results of that study have been received, reviewed and analyzed.

12. Not Affordable Housing

The Planning Department narrative states "the applicant has indicated a willingness to offer 20% (18) of the residential units at a discounted rate to promote affordable housing."

These are empty words that really say nothing at all. What is a "discounted" rate? What does it mean to "indicate a willingness?" Who is the "applicant?" According to the application, the applicant is the Alliance. The Alliance is not in the residential building business nor is it in any position to make such promises.

This meaningless language does not meet the definition of affordable housing and those words should not have been used. This appears to be an attempt to appeal to a community that has a real need for affordable and workforce housing that this proposal does not satisfy. This project benefits the developer and the Alliance, not the community.

13. Spot zoning.

This parcel is located in the heart of a traditional minority community consisting of low or medium density single family homes and heirs' property. There is no other high density residential property that adjoins this parcel and a high density use of this property would be spot zoning.

14. Conclusion

For these reasons, we oppose this zoning change application and request the Planning Commission to recommend denial.

Thank you for your kind attention and consideration.

Very truly yours,

Cynthia Ranck Person, Esquire

cc: Angela Christian
Holly Richardson
John Watson

BUSINESS COMMONS-MERCOM TECHNOLOGY PROPERTY TIMELINE

DATE	PARTIES	DOCUMENT	PRICE	ZONING
3/2/2004	Seller: Strickland & Gaddy Buyer: Waccamaw Land	Deed (1519-287) 28.4 acre parcel	$300,000	Zoning: Forest-Agricultural (FA)
3/3/2008	Applicant: Waccamaw Land by its agent SGA Architecture (Goggans)	Application to change zoning from FA to a PD for Resort Services called "Pawleys Island Business Park."		Zoning change request for Resort services. Based on plans and drawings by SGA Architecture (Goggans).
6/10/2008	County Council approves zoning change from FA to PD resort services.	Ordinance 2008-35		Zoning changed to PD – resort services (PD never built)
9/9/2008	County Council amends zoning change to add some additional uses,	Ordinance 2008-47		Additional uses added. (PD never built)
9/9/2010	ZONING REVERSION			No construction happened on the 2008 zoning changes. Zoning should have reverted to FA.
2/4/2013	Waccamaw Land records plat that subdivides property into 3 separate parcels	Plat (750-01) Parcel 1 = 6.373 acres Parcel 2 = 7.388 acres Parcel 3 = 14.449 acres		
2/7/2013	Seller: Waccamaw Land Buyer: Mission Pawleys (Church)	Deed (2090-09) for Parcel 2 only (existing building on 7.388 acres)	$750,000	
6/3/2015	Co-applicant: Mission Pawleys by its agent Dan Stacy Co-applicant: Waccamaw Land by its agent Hal Strange	Application to amend zoning on all three parcels to add other uses to include technology park and associated uses based on an architectural plan drawn by SGA Architecture (Goggans) dated 8/7/2015. Name: "Mercom Technology Park." Sales contracts pending with Mercom and County Alliance that were contingent on this zoning approval.		Zoning change request to Technology Park based on plans by SGA (Goggans)

10/20/2015	County Council approves zoning change.	Ordinance 2015-41		Zoning changed to PD for technology park as described in the ordinance.
2/25/2016	SELLER: Waccamaw Land BUYER: Alliance for Economic Development for Georgetown County	Deed (2748-238) Parcel 3 (vacant land, 14.449 acres)	$950,000	Mortgage and Note in amount of $950,000
2/26/2016	SELLER: Mission Pawleys (Church) BUYER: Mercado Holdings (Mercom)	Deed (2748-233) Parcel 2 (existing building plus 7.388 acres)	$525,000	
10/20/2017	ZONING REVERSION			Zoning should have been reviewed by Planning Commission and changed back to Forest-Agricultural or comparable after two years passed with no construction.
7/28/2022	SELLER: Mercom Inc. BUYER: Barn on Petigru, LLC	Deed (4393-346) Parcel 2 (existing building plus 7.388 acres)	$5	
8/16/2022	Applicant: Georgetown County Economic Alliance by its agent Dan Stacy	Application to change zoning to allow high density residential multi-family housing		