

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Michael T. Green and Carrie J. Green,	:	CASE NO.
Julian P. Rutledge and Melvin L.	:	
Rutledge; Carlethia B. Jenkins;	:	SUMMONS
Frances Jo Baker; Parkersville	:	
Planning & Development Alliance, Inc.;	:	Declaratory Judgment
Keep It Green, Inc.; and Preserve	:	Appeal from Georgetown County Council
Murrells Inlet, Inc.	:	
	Plaintiffs	Jury Trial Demanded
v.	:	
	:	
Georgetown County, Laine CRE, LLC;	:	
TriStar Land, LLC; and Samuel J.	:	
Nesbit on behalf of the heirs of Will	:	
Nesbit	:	
	Defendants	
	:	
	:	

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

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

Respectfully submitted,

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

KEEP IT GREEN ADVOCACY, INC.
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ATTORNEY FOR PLAINTIFFS

October 24, 2022
 Pawleys Island, South Carolina

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COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
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Julian P. Rutledge and Melvin L.	:	
Rutledge; Carlethia B. Jenkins;	:	COMPLAINT
Frances Jo Baker; Parkersville	:	(Civil Action)
Planning & Development Alliance, Inc.;	:	
Keep It Green, Inc.; and Preserve	:	Declaratory Judgment
Murrells Inlet, Inc.	:	Appeal from Georgetown County Council
	Plaintiffs	:
v.		Jury Trial Demanded
	:	
Georgetown County, Laine CRE, LLC;	:	
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Nesbit on behalf of the heirs of Will	:	
Nesbit	:	
	Defendants	:
		:

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint seeking Declaratory Judgment against Defendants named herein, and an Appeal from decisions by Georgetown County Council on September 27, 2022, approving two land development subdivision applications as follows:

INTRODUCTION

1. This Complaint involves two land development subdivision applications proposing “high density” multi-family housing on two vacant parcels of heirs’ property land designated as “medium density” by the Georgetown County Comprehensive Land Use Plan and Maps, (hereinafter collectively “comprehensive plan”), and located in the heart of a traditional African American community known as “Parkersville,” one of the oldest and most historically significant neighborhoods of Pawleys Island, Georgetown County, South Carolina.

2. Both subdivision applications were denied by Georgetown County Planning Commission, (hereinafter “Planning Commission”), after public hearing on August 18, 2022, for a variety of reasons including that they conflicted with the comprehensive plan.

3. No appeal was filed from the Planning Commission’s decisions to deny.

4. After denial by Planning Commission, the land development applications were placed on the September 27, 2022, agenda of Georgetown County Council, (hereinafter “Council”), pursuant to Georgetown County ordinance provisions requiring site plan decisions of the Planning Commission to be approved by County Council for proposed developments involving more than 10 multi-family dwelling units with a proposed density of 5 units per acre or greater (high density).

5. At the council meeting on September 27, 2022, County Council reversed the Planning Commission decisions and approved both subdivision applications without further input, review, consideration, or decision by Planning Commission, notwithstanding that the high density development plans violate the medium density comprehensive plan map designation, and no amendment was made to the comprehensive plan or map.

6. Georgetown County has failed and continues to fail to perform statutory duties required by the South Carolina Comprehensive Planning Enabling Act, (hereinafter “Planning Act”), S.C. Code, Section 6-29-310, *et seq.* causing injury and detriment to Plaintiffs and other Georgetown County landowners.

7. For the reasons set forth herein, Plaintiffs submit as follows:

a. County Council was without authority to render decisions on the subdivision site plan applications or to review, hear, or change the August 18, 2022, denial of the applications by Planning Commission.

- b. The September 27, 2022, decisions by County Council to approve the subdivision site plan applications were improper for lack of authority and for other reasons as particularly set forth hereinafter, and are null, void and of no force or effect.
- c. The August 18, 2022, decisions of Planning Commission to deny the subdivision applications are the final decisions from which no appeals to the circuit court were filed, and therefore, are valid and binding decisions.
- d. Georgetown County is required to comply with the South Carolina Planning Act as set forth more particularly hereinafter.

LAND PARCELS AT ISSUE

- 8. Upon information and belief, both parcels of land upon which the subdivisions were proposed are heirs' property owned by the heirs of Will Nesbit, (hereinafter "Nesbit heirs").
- 9. The first parcel, identified as Tax Map No. 04-0203-155-00-00, hereinafter "Petigru Parcel," is a long narrow lot that lies along a secondary road known as Petigru Drive, consisting of 6.87 acres of vacant forested land, including wetlands, with 207.6 feet of frontage on the existing Petigru Drive and extending a depth of 1,663 feet, having a width to depth ratio of 8.01.
- 10. The second parcel, identified as Tax Map No. 04-0416-004-00-00, hereinafter "Parkersville Parcel," lies along a secondary road known as Parkersville Road, consisting of 13.69 acres of vacant forested land which includes 5.79 acres of wetlands to the rear of the parcel. 7.9 acres are proposed for development, which includes 1.56 acres of wetlands. The lot has 427.2 feet of frontage on the existing Parkersville Road and extends a depth of 1,664.3 feet with a width to depth ratio of 3.90.

PARTIES

Plaintiffs

11. Plaintiffs, Michael T. Green and Carrie J. Green, husband and wife, (hereinafter “Greens”), are adult individuals who reside at 533 Parkersville Road, Pawleys Island, Georgetown County, South Carolina, and own and live on land that directly adjoins the Petigru Parcel, identified as Tax Map No. 04-0203-155-01-0, recorded in Deed Book 614, Page 92, in the Office of Recorder of Deeds for Georgetown County on February 13, 1995. The Greens have signed an Affidavit attached hereto as Exhibit “1,” and incorporated herein by reference.

12. Plaintiffs, Julian P. Rutledge and Melvin L. Rutledge, heirs of Annette Rutledge, are adult individuals who reside at 1018 Martin Luther King Road and 1654 Petigru Drive, respectively, and own 8 acres of land that directly adjoins the Petigru Parcel, identified as Tax Map No. 04-0203-156-00-00, recorded in Deed Book E, Page 384, in the Office of Recorder of Deeds for Georgetown County on May 3, 1875. Julian P. Rutledge and Melvin L. Rutledge have signed an Affidavit attached hereto as Exhibit “2,” and incorporated herein by reference.

13. Plaintiff, Patricia S. Grate, is an adult individual who resides at 1724 Petigru Drive, Pawleys Island, Georgetown County, South Carolina, and owns and lives on two parcels of land that directly adjoin the Petigru Parcel, identified as Tax Map No. 04-0203-154-03-00, and 04-0203-154-06-02, recorded in Deed Book 3404, Page 192, in the Office of Recorder of Deeds for Georgetown County on December 18, 2018.

14. Plaintiff, Carlethia B. Jenkins, heir of Frank Jenkins and Vernon Jenkins, is an adult individual who resides at 51 Jenks Court, Pawleys Island, Georgetown County, South Carolina, and owns approximately 13 acres of land that directly adjoins the Parkersville Parcel, identified as Tax Map No. 04-0413-051-01-00, recorded in Deed Book 1181, Page 257, in the

Office of Recorder of Deeds for Georgetown County on May 11, 2001. Carlethia Jenkins has signed an Affidavit attached hereto as Exhibit "3," and incorporated herein by reference.

15. Plaintiff, Frances Jo Baker, is an adult individual who resides at 729 Parkersville Road, Pawleys Island, Georgetown County, South Carolina, and owns and lives on land that directly adjoins the Parkersville Parcel, identified as Tax Map No. 04-0147-060-01-00, recorded in Deed Book 1339, Page 237, in the Office of Recorder of Deeds for Georgetown County on December 23, 2002. Frances Jo Baker has signed an Affidavit attached hereto as Exhibit "4," and incorporated herein by reference.

16. Plaintiff, Parkersville Planning & Development Alliance, Inc., (hereinafter "Parkersville PDA"), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address c/o Rev. Johnny A. Ford, President, 511 Petigru Drive, Pawleys Island, Georgetown County, South Carolina. Affidavit signed by Johnny A. Ford, President of Parkersville PDA, and resident of Parkersville, is attached hereto as Exhibit "5," and incorporated herein by reference.

17. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American community known as Parkersville which is one of the oldest settlements in the Waccamaw Neck area of Georgetown County.

18. The Parkersville PDA represents residents of Parkersville in the promotion of housing, land use, and economic development that fits within the character, infrastructure, and needs of the community.

19. The Parkersville PDA was formed to represent and speak for the Parkersville minority community which has been substantially and negatively impacted by county land use decisions and zoning ordinances that conflict with the comprehensive plan or otherwise have

allowed undesirable and harmful commercial or other encroachment into the Parkersville Community such as garbage dumps, recycling centers, storage facilities, electric substations, transformers and the like. This pattern of decision-making has had permanent detrimental and discriminatory impact on this traditional historical minority neighborhood.

20. 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.

21. Plaintiff, Keep It Green, Inc., (hereinafter “KIG”), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of P.O. Box 3312, Pawleys Island, Georgetown County, South Carolina. Affidavit signed by Duane Draper, Chairman of KIG and resident of Pawleys Island, is attached hereto as Exhibit “6,” and incorporated herein by reference.

22. Plaintiff, Preserve Murrells Inlet, Inc., (hereinafter “PMI”), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of 4510 Richmond Hill Drive, Murrells Inlet, Georgetown County, South Carolina. Affidavit signed by Leon L. Rice, III, President of PMI and resident of Murrells Inlet, is attached hereto as Exhibit “7,” and incorporated herein by reference.

23. KIG and PMI are citizens’ organizations comprised of thousands of residents of the Waccamaw Neck, Georgetown County, South Carolina, who are concerned about the impact of land use decisions, zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life, and other matters of safety and general welfare in the Waccamaw Neck.

24. The Waccamaw Neck is a part of northeast Georgetown County defined by its unique geographic configuration as a long narrow peninsula between the Atlantic Ocean and the Waccamaw River that includes the areas of Parkersville, Pawleys Island, Litchfield, North Litchfield, Murrells Inlet and Garden City.

25. KIG primarily focuses on the southern Waccamaw Neck (Parkersville, Pawleys Island, Litchfield, North Litchfield) and PMI primarily focuses on the northern Waccamaw Neck (Murrells Inlet & Garden City).

26. Part of the missions of KIG and PMI involves monitoring county land use decisions, zoning change requests, and proposed development in the Waccamaw Neck for compliance with proper law, procedure, and the Georgetown County Comprehensive Plan for the purpose of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck for the benefit of present and future generations.

27. KIG and PMI began as grassroots responses by citizens of the Waccamaw Neck to a number of zoning changes, approved and/or recommended for approval by Georgetown County, that increased residential density in conflict with the Georgetown County Comprehensive Plan and had a negative impact on the safety and general welfare of citizens and surrounding landowners.

28. Parkersville PDA, KIG and PMI are nonprofit corporations that are independent of one another and managed by separate volunteer Boards of Directors.

29. Parkersville PDA, KIG, and PMI represent the interests of thousands of citizens of the Waccamaw Neck, hundreds of whom reside in the vicinity of the Petigru and Parkersville Parcels.

30. Parkersville PDA, KIG, and PMI represent the interests of the named Plaintiffs herein as well as other adjoining landowners or landowners who reside in the immediate vicinity of the Petigru and Parkersville Parcels or other areas of the Waccamaw Neck where zoning is not in compliance with the comprehensive plan as set forth hereinafter, and who would have standing to challenge these and other decisions.

Defendants

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

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

33. Defendant, Laine CRE, LLC, a/k/a, Laine Commercial Real Estate, is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 835 Lowcountry Boulevard, Mount Pleasant, SC 29464, and a registered agent address of 1676 Jorrington Street, Mount Pleasant, SC 29464.

34. Defendant, TriStar Land, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, having a registered agent address of 665 Cornerstone Court, Charleston, SC 29464.

35. Defendant, Samuel J. Nesbit, on behalf of the heirs’ of Will Nesbit, owners of the Petigru and Parkersville parcels, is an adult individual residing at 6201 Rosebud Street, Columbia, South Carolina.

36. At all times pertinent hereto, Defendants Laine CRE, LLC and/or Defendant TriStar, LLC, were the authorized agents and representatives of Samuel J. Nesbit and the heirs of Will Nesbit.

BACKGROUND

Major Subdivision Applications

37. Upon information and belief, in or around early 2022, Defendant Laine CRE, LLC, and/or TriStar Land, LLC, hereinafter “Developers” entered into a contract with the Nesbit heirs to purchase both the Petigru and Parkersville Parcels, contingent upon approval of applications for land development projects.

38. Upon information and belief, Developers hired Development Resource Group, LLC, (hereinafter “DRG”), an engineering and development consulting firm, to draw plans on their behalf for projects on the Petigru and Parkersville parcels.

39. A letter of agency dated June 13, 2022, was signed by Samuel J. Nesbit on behalf of the Nesbit heirs authorizing DRG to submit land development applications for each of the two parcels on behalf of Developers.

40. On July 19, 2022, DRG submitted two subdivision applications on behalf of Developers requesting approval for a total of 109 high density multi-family townhouse units on the two parcels.

41. The Petigru application requested 53 two-story, three-bedroom, multi-family townhouse units with streets, driveways, sidewalks, and parking areas on 6.2 acres with a net residential density of 8.55 units per acre, and a proposed name of “Regatta Townhomes.” Said application is attached hereto as Exhibit “8,” and incorporated herein by reference.

42. The Parkersville application requested 56 two-story, three-bedroom, multi-family townhouse units with streets, driveways, sidewalks and parking areas on 7.9 acres with a net residential density of 9.84 units per acre, and a proposed name of “Osprey Townhomes.” Said application is attached hereto as Exhibit “9,” and incorporated herein by reference.

Comprehensive Plan and Maps
Designate Parcels as Medium Density

43. The current version of the Georgetown County Comprehensive Land Use Plan and Future Land Use Maps was enacted by County Council on March 10, 2015, by Georgetown County Ordinance number 2015-05, and the maps specifically designate both the Petigru and the Parkersville parcels as “Medium Density.”

44. The Petigru parcel has eight adjoining parcels of land on three sides, all of which are owned or represented by Plaintiffs herein, designated by the comprehensive plan and maps as “medium density” residential, and consist of single family homes or vacant land.

45. The Parkersville parcel has eleven adjoining parcels of land on two sides, all of which are owned or represented by Plaintiffs herein, designated by the comprehensive plan and maps as “medium density” residential, and consist of single family homes or vacant land. The land directly across Parkersville Road from this parcel is designated as “low density” residential. The far end of this parcel abuts four small lots that lie along the west side of the U.S. Route 17 corridor and are designated by the comprehensive plan as commercial which allows for no residential density.

46. The historical Parkersville residential community is and always has been characterized by single family homes along narrow, often unpaved, tree-lined streets in low to medium density neighborhoods. The residential areas of the traditional Parkersville community are designated by the comprehensive plan and maps as “low density” or “medium density.”

47. The comprehensive plan defines “Medium Density” as a maximum of 5 units per acre, “Low Density” as a maximum of 2 units per acre, and “High Density” as anything above 5 units per acre.

Zoning & Land Development Regulations
Most Restrictive Applies

48. At all times pertinent hereto, both the Petigru and Parkersville parcels were zoned as General Residential (hereinafter “GR”).

49. The GR District (Georgetown County Zoning Ordinance, 607) permits a range of residential uses and a range of residential densities.

50. The GR ordinance specifically states that it is appropriate for both medium or high density projects and that those 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.”

51. In determining the maximum permissible residential density on a particular parcel within a GR Zoning District, the provisions of all applicable land use regulations should be considered, including but not limited to:

- a. The residential density permitted by the comprehensive plan and land use maps which have been enacted by Georgetown County Ordinance 2015-05;
- b. The conditions and limitations set forth within the GR zoning ordinance itself, including proposed use, design, and setback requirements; and
- c. The requirements of other applicable laws, ordinances, and/or development regulations.

52. According to Georgetown County zoning and land development ordinances, when there is a conflict between or among zoning or land development ordinances, the most restrictive applies.

53. Section 1800 of the Georgetown County Zoning Ordinance provides:

“in case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future ordinance of the County of Georgetown, the most restrictive shall in all cases apply.”

54. Article I, Section 10, of the Georgetown County Development Regulations states:

“Whenever this Ordinance imposes a higher standard than that required by other resolutions, ordinances, rules or regulations, easements, covenants or agreements, the provisions of this Ordinance shall govern. When the provisions of any other statute impose higher standards, the provisions of such statute shall govern.

55. In the present case, the Comprehensive Land Use Plan and maps designate residential density on the Petigru and Parkersville parcels, all adjoining residential land, and all other residential land in this neighborhood as either “low density” or “medium density” which limits density to a maximum of two units per acre or five units per acre, respectively. As the most restrictive regulation, the medium density limitation on the Petigru and Parkersville parcels restricts density on these two parcels to a maximum of 5 units per acre.

56. The current version of the Land Use Element of the Comprehensive Plan was adopted in 2015, and states as follows at Page 23 with respect to residential density and Land Use Goals for the South Waccamaw Neck.

“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.”

South Carolina State Law Requires Zoning & Land Use Regulations to be
Consistent with the Comprehensive Plan

57. The South Carolina Planning Act, Section 6-29-720(A), provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.”

58. Planning Act, Section 6-29-720(B), specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction . . .”

59. Planning Act, Section 6-29-540, requires that no new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.”

South Carolina State Law Requirements for
Land Development Decisions

60. Article 7 of the South Carolina Planning Act, Section 6-29-1110, *et seq.*, governs land development regulations and sets forth definitions as well as procedures for local governments to follow in regulating land development within their jurisdictions.

61. One of the specifically articulated legislative intents of Article 7 is to “assure” that proposed development is “in harmony with the comprehensive plan” of the municipality or county. (Planning Act, Section 6-29-1120(5)).

62. Planning Act, Section 6-29-1150, sets forth detailed procedures and requirements for the submission of development plans for approval or disapproval and specifically confers authority for making decisions to approve or disapprove on the Planning Commission or designated staff. Staff decisions are appealable to the Planning Commission and Planning Commission decisions are appealable to the circuit court.

63. The Planning Act grants no authority to County Council to approve or disapprove a land development application, or to review, modify, or reverse a decision of the Planning Commission relative to a land development application.

64. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.

Planning Commission
Denied Subdivision Applications

65. The Georgetown County Planning Commission held a public hearing on the Petigru and Parkersville subdivision applications on August 18, 2022.

66. Prior to the public hearing, the public record included numerous letters of opposition from residents, including a detailed letter dated August 18, 2022, from legal counsel on behalf of Plaintiffs and other citizens, outlining the objections that form the basis of this complaint. A copy of this letter is attached hereto as Exhibit “10,” and incorporated herein by reference. There were no letters supporting approval of the applications.

67. Numerous residents and adjoining landowners, including Plaintiffs, attended the Planning Commission public hearing to express their opposition. Legal counsel for adjoining landowners and 19 other citizens spoke on the record. No one spoke in favor of the subdivision applications other than the Developers’ agent.

68. After public hearing, the Planning Commission voted to deny both applications, citing a variety of reasons including inconsistency with the comprehensive plan.

69. No appeal of the August 18, 2022, Planning Commission decisions to deny was filed by the applicant Developers.

County Council Improperly
Reviewed and Approved Applications

70. Following denial by Planning Commission, the subdivision applications were placed on the county council agenda for September 27, 2022, under the heading “Reports to Council” as agenda items 14(a) and 14(b), “site plan reviews,” pursuant to Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council. A copy of the September 27, 2022, County Council agenda is attached hereto as Exhibit “11,” and incorporated herein by reference.

71. As set forth hereinabove, County Council did not have authority under the Planning Act to approve or disapprove these land development applications, or to review, modify, or reverse the August 18, 2022, decision of the Planning Commission.

72. The Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council do not articulate any standards by which the County Council should decide to approve or disapprove the decision by Planning Commission.

73. These ordinances are invalid and unreasonable because they reserve to County Council arbitrary power without the guidance of uniform rules and regulations.

74. The ordinances are invalid and unenforceable as violating the Planning Act and other law.

75. The ordinances are invalid and unenforceable because they violate the doctrine of separation of powers.

76. Placing the Petigru and Parkersville subdivision applications on the council agenda pursuant to these ordinances was improper and any decision rendered by Council thereunder is void and of no effect.

77. Prior to the September 27, 2022, council meeting, numerous letters of opposition were received , including a letter dated September 26, 2022, by legal counsel for Plaintiffs and other residents outlining the objections that form the basis of this complaint. A copy of said letter is attached hereto as Exhibit “12,” and incorporated herein by reference. There were no letters in support.

78. Numerous residents attended the meeting to express their opposition, and legal counsel for adjoining landowners along with members of the community spoke in opposition.

79. The Georgetown County Planning Department submitted an “Agenda Request Form” to Council which contained, *inter alia*, “Points to Consider” for each of the two subdivision applications. Said Agenda Request Forms are attached hereto as Exhibits “13,” and “14,” respectively, and incorporated herein by reference.

80. The Planning Department offered oral presentations at the council meeting based on the Agenda Request Forms.

81. Minor modifications had been made to the site plans between the time they were denied by Planning Commission and the September 27, 2022, council meeting; however, both subdivision applications remained “high density” developments proposed on parcels designated as “medium density” by the comprehensive plan.

82. The Planning Department in both the Agenda Request Forms and the oral presentations at the County Council meeting omitted and/or failed to objectively set forth important and relevant facts including, but not limited to, the following:

- a. Failed to note inconsistencies of the proposed developments with the Comprehensive Plan including that these applications requested “High Density” on parcels designated by the comprehensive plan and maps as “Medium Density.”

- b. Failed to note that all 19 adjoining residential parcels are designated by the comprehensive plan and maps as “Medium Density,” and the land across the street from the Parkersville parcel is designated as “Low Density.”
- c. Failed to note that the entire Parkersville residential community is designated by the comprehensive plan and maps as “Medium Density” or “Low Density.”
- d. In calculating permissible density, considered only the requirements of the GR zoning ordinance and failed to consider the requirements of the comprehensive plan and land use maps and other land development regulations, or Zoning Ordinance 1800, or Land Use Regulation Article I, Section 10, which requires application of the most restrictive regulation.
- e. Failed to note that existing infrastructure in the Parkersville community is currently overburdened, beyond design capacity, and grossly inadequate to accommodate additional high density development.
- f. Failed to consider reliable, accurate, up-to-date, traffic data or require impartial independent traffic studies, and instead relied on traffic data that was substantially outdated in an area that has experienced significant increase in population and traffic.
- g. Failed to note serious flooding and stormwater issues that currently exist on neighboring properties and in the Parkersville community in general.
- h. Failed to provide any information on the amount of fill to be brought in and the impacts of that fill on adjacent properties already subject to frequent flooding.
- i. Failed to consider the cumulative negative impact of incremental development approvals on the neighborhood and community.

j. Failed to provide accurate, reliable, objective and impartial information for consideration by the governing authority and instead provided information based on outdated data and slanted to favor the Developers.

83. After the Planning Department made its presentation to council, one of the six council members noted that the two subdivision applications did not comply with the Comprehensive Plan and map designation as “Medium Density” and suggested that zoning and land development should “mirror the comprehensive plan.” Other council members disagreed and sought advice and direction of the County Attorney and the Planning Director in resolving the issue.

84. Council was advised that the sole consideration was compliance of the applications with the GR zoning ordinance and that the comprehensive plan and maps were not to be considered.

85. The Planning Director specifically represented in response to questions by council that “the site plan, in terms of density ... as it's laid out, meets the requirements of our ordinances.”

86. Neither the Planning Director nor the County Attorney addressed other applicable law, including Georgetown County Zoning Ordinance, Section 1800, or Land Use Regulation, Article I, Section 10, which requires application of the most restrictive land development regulations.

87. Council members clearly did not understand the parameters of the decision they were charged with making. In the course of Council’s discussion based on the advice and representations of the Planning Director and the County Attorney, the Chairman of County Council stated that if a plan has complied with all the regulations that have been set forth by the

County, “why does it come in front of Council?” Another council member remarked on two occasions that, “I don’t think we have a choice, but to approve this plan.” Two council members stated that they believed the developer had “vested rights” that needed to be protected.

88. County Council voted 5 to 1 to approve the Petigru and Parkersville subdivision applications based on the guidance of the County Attorney and Planning Director which Plaintiffs believe to be erroneous as follows:

- a. The comprehensive plan and comprehensive plan map designation of the parcels, which had been put into place by Georgetown County Ordinance 2015-05, were deliberately not taken into consideration.
- b. The sole consideration was compliance of the applications with the GR zoning ordinance, notwithstanding their conflict with the comprehensive plan and maps, and regardless of other applicable law including Georgetown County Zoning Ordinance, Section 1800, and Land Development Regulation, Article I, Section 10, requiring application of the most restrictive land development regulations.
- c. “Vested rights” of the Developers in the GR zoning ordinance was considered as a legitimate factor in this decision notwithstanding that the applicant Developers had not yet purchased the land in question and that neither the owners (Nesbit heirs) nor the Developers had any approved development plan or pre-existing nonconforming use that would trigger a vested right.

89. Even if council had possessed the authority to hear and make decisions on these Subdivision Applications, which is specifically denied, the details, substance, and merits of the plans and their compliance or noncompliance with the GR ordinance and other land development regulations were not addressed or considered by Council in any way.

90. In addition to the failure of the applications to comply with the comprehensive plan, there were numerous substantive areas of noncompliance with the GR ordinance and other ordinances, including but not limited to:

a. GR Zoning Ordinance, 607.3:

"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."

b. GR Zoning Ordinance, 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;"

c. GR Zoning Ordinance, 607.4022:

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

d. GR Zoning Ordinance, 607.40255:

"[Multi-family] projects shall also comply with all other applicable ordinances"

e. Land Development Regulations, Article II, Section 2-2(A):

"All required federal, and state permit applications shall be pending prior to submission of the Development Plat to the Planning Commission."

Upon information and belief, there is a federally protected bald eagle's nest on this property that requires no disturbance within a certain radius and requires federal permits that were not requested or received or pending as of the date of this application.

f. Other state and local laws require wise distribution of development to avoid congestion and overcrowding and to protect the public health, safety, and general welfare of the community. This includes stormwater, flooding, traffic, tree protection, safety and other considerations, and assuring compatibility of the proposed development with the character of the neighborhood.

91. The decisions by Council and the underlying instructions which formed the basis of the decisions, are in direct conflict with the plain language of the South Carolina Planning Act, the South Carolina Vested Rights Act, 6-29-1510, *et seq.*, and Georgetown County Land Development Regulations as follows:

- a. New high density development was approved without considering its compatibility with the comprehensive plan in violation of Planning Act, Section 6-29-540, which provides that no new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community,” and Section 6-29-720 which provides that zoning regulations are intended to “implement the comprehensive plan” and that they “must be made in accordance with the comprehensive plan for the jurisdiction.”
- b. South Carolina Vested Rights Act and local law require an approved plan or a pre-existing nonconforming use in order to trigger a vested right, neither of which existed in the present case.
- c. Development was approved as complying with the GR zoning ordinance when details of the plans were not even considered by Council and do not, in fact, comply with the GR zoning ordinance.
- d. Development was approved without applying uniform standards or considering other applicable law.

92. The decisions by Council to approve the subdivision applications were unauthorized, without any basis or justification in law or fact, and in violation of state and local law and procedure.

93. The decisions by council to allow high density development on land designated as medium density by the comprehensive plan and maps that are put in place by Georgetown County Ordinance would set a precedent for allowing high density development on many acres of undeveloped land in Parkersville and other areas of the Waccamaw Neck that is designated medium or low density.

**DUTIES OF GEORGETOWN COUNTY WITH RESPECT TO
ZONING AND LAND DEVELOPMENT**

94. Defendant Georgetown County through its agents, representatives, employees, elected officials, boards and appointed officials has the following duties and responsibilities pursuant to the South Carolina Planning Act and local law:

- a. Duty to bring residential zoning ordinances and land development regulations into conformity with the current Georgetown County Comprehensive Plan as specifically required by Planning Act Sections 6-29-720 and 6-29-1120.
- b. Duty to bring the decision-making processes in land development and zoning change requests into compliance with state law which requires review for compatibility with the comprehensive plan as a condition of approval pursuant to Planning Act Sections 6-29-540, 6-29-720, and 6-29-1120, and Georgetown County Planning Commission Bylaws, Article V, Section 2, which states that “[a]ll zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan.”

95. South Carolina Planning Act, Section 6-29-340, mandates that it is the “duty” of the local planning commission to put these processes into place for the benefit and welfare of the public which it serves.

96. The duties identified in paragraphs 94 and 95 above, shall collectively be referred to as “required duties.”

97. The “Introduction” to the first Georgetown County Comprehensive Land Use Plan, adopted in August of 1997, by Georgetown County ordinance, which is still apparently in effect, specifically recognized that the Comprehensive Plan forms

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

“One of the most important implementation measures is the immediate preparation of revisions to the Georgetown County Zoning Ordinance. The adoption of the Comprehensive Plan represents the direction or “blueprint,” but the actual governing laws and ordinances must change to reflect the goals and action items within the Plan. Once the Plan is adopted, the planning staff will immediately commence work on changes to the Zoning Ordinances.” (page 1-5 and 1-6)

98. More than twenty-five years after this language was adopted by Georgetown County ordinance, zoning ordinances have still not been revised or changed to be in accordance with the comprehensive plan as required by the South Carolina Planning Act and the Georgetown County Comprehensive Plan itself.

Existing Zoning Ordinances Conflict with Comprehensive Plan

99. To the extent that the GR zoning ordinances on the Petigru and Parkersville parcels permit high density land development on land designated by the comprehensive plan and

maps as “Medium Density,” the zoning ordinances are in direct conflict with the comprehensive plan.

100. There are many existing zoning ordinances on parcels of land in the Waccamaw Neck that are in direct conflict with the comprehensive plan as they relate to residential density.

101. Under both state and local law, these conflicting zoning ordinances should have been brought into compliance with the comprehensive plan immediately upon its enactment. Instead, conflicting zoning ordinances have been permitted to exist, in some cases for many decades, despite their inconsistency with the comprehensive plan and maps.

102. The county’s failure to perform its duty to bring residential zoning ordinances into compliance with the comprehensive plan has caused injury to the Plaintiffs herein, and put Plaintiffs and every other land owner in the Waccamaw Neck at risk of imminent harm and serious injury.

103. The county has repeatedly approved development pursuant to these conflicting zoning ordinances notwithstanding their inconsistency with the comprehensive plan density limitations.

104. These approvals have negatively affected the property rights of many land owners in the Waccamaw Neck.

105. 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.

Land Use Approval Process

106. In making zoning and land development decisions, Georgetown County does not consider compatibility with the comprehensive plan as a necessary part of the process.

107. There are many instances of approval of land development and zoning changes on the Waccamaw Neck that were inconsistent with density and other provisions of the comprehensive plan and maps. These approvals have negatively affected the property rights and caused injury to many land owners in the Waccamaw Neck.

108. 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.

Georgetown County Refuses to Comply

109. Georgetown County has repeatedly been requested by Plaintiff organizations and citizens to bring its zoning ordinances and land use approval processes into compliance with the comprehensive plan as required by the South Carolina Planning Act.

110. A letter dated September 2, 2022, attached hereto as Exhibit “15,” and incorporated herein by reference, was directed to Georgetown County by legal counsel for Plaintiff organizations and citizens specifically requesting compliance. Georgetown County has neither acknowledged nor responded to the letter.

111. At all times pertinent hereto, Georgetown County has failed and/or refused to perform the required duties as set forth herein.

112. Georgetown County’s continued failure and refusal to perform its required duties has caused harm and created a risk of imminent and future injury to Plaintiffs and other land owners in the Waccamaw Neck.

113. Georgetown County’s continued failure and refusal to perform its required duties has had a substantially greater negative impact on minority neighborhoods and minority land owners.

114. Georgetown County's continued failure and refusal to perform its required duties sets a precedent for allowing development that does not conform to the comprehensive plan and maps.

115. Plaintiffs request that Georgetown County immediately bring the zoning of the Petigru and Parkersville parcels as well as all other non-compliant zoning and decision-making processes into compliance with the comprehensive plan and the South Carolina Planning Act.

JURISDICTION, STANDING AND VENUE

116. Paragraphs 1 through 115, above, are incorporated by reference as though fully set forth herein.

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

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

119. Plaintiffs have statutory standing to challenge these ordinances as follows:

- a. South Carolina Uniform 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.”

Plaintiffs' rights and legal relations have been and are substantially affected by the County Council decisions of September 27, 2022, the Planning Commission decisions of August 18, 2022, Georgetown County's Zoning Ordinances, Land

Development Regulations and Comprehensive Plan, and the South Carolina Planning Act. Plaintiffs have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions.

- b. South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-1150 and 6-29-1155, states that any party in interest may appeal land development decisions. Rule 74, SCRCR ("Procedure on Appeal to the Circuit Court") governs appeals from "an inferior court or decision of an administrative agency or tribunal" to circuit court. Plaintiffs are parties in interest under the Planning Act.

120. Alternatively and in addition, Plaintiffs have constitutional standing 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 by someone they represent; (b) the injury was caused by the improper approval of subdivision applications and Georgetown County's failure and refusal to perform required duties; 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.

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 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.

122. Plaintiffs Parkersville PDA, KIG, and PMI have associational standing as follows: (a) at least one of the parties represented is an affected person who has standing in his or her own right; (b) the interests at stake are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual landowners and monetary damages are not being requested. Plaintiffs Parkersville PDA, KIG, and PMI represent the interests of the named Plaintiffs as well as other affected persons who own adjoining land or reside in the vicinity of the Petigru and Parkersville parcels and other land where zoning is not in compliance with the comprehensive plan or where land use decisions have been made that are not in compliance with the comprehensive plan. The issues in this case fall squarely within the mission and purpose of these citizens organizations as set forth above.

COUNT I

DECLARATORY JUDGMENT

Planning Commission Decisions to Deny
Subdivision Applications on August 18, 2022, were Valid and Final

123. Paragraphs 1 through 122, above, are incorporated by reference as though fully set forth herein.

124. Pursuant to the provisions of the Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-10, *et seq.*, Plaintiffs seek declaratory judgment from this Court that the August 18, 2022, Planning Commission decisions to deny these subdivision applications are the valid, proper, and final decisions as follows:

- a. The South Carolina Planning Act 6-29-1150 confers final decision-making authority on subdivision applications to Planning Commission whose decisions are appealable to the circuit court.
- b. Planning Commission properly voted to deny the subdivision applications after public hearing on August 18, 2022.
- c. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.
- d. No appeal was taken by the applicant Developers from this decision as provided in the Planning Act, and this decision stands as the final, valid and binding decision.

COUNT II

DECLARATORY JUDGMENT

County Council Had No Authority to Render the September 27, 2022,
Decisions Approving Subdivision Applications

125. Paragraphs 1 through 124, above, are incorporated by reference as though fully set forth herein.

126. Plaintiffs seek declaratory judgment from this Court that the September 27, 2022, County Council decisions to approve the Petigru and Parkerville subdivision applications are null, void, and of no force or effect as follows:

- a. The Planning Act grants no authority to County Council to approve or disapprove land development applications or to review, modify, or reverse decisions of the Planning Commission relative to land development applications.

- b. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.
- c. County Council's approval of a site specific development plan violates the separation of powers doctrine.

COUNT III

DECLARATORY JUDGMENT

Georgetown County Ordinances Requiring Site Plan Review by
County Council are Void and Unenforceable

127. Paragraphs 1 through 126, above, are incorporated by reference as though fully set forth herein.

128. Plaintiffs seek declaratory judgment from this Court that the Georgetown County ordinances requiring site plan decisions of the Planning Commission to be approved by County Council for proposed developments are null, void, and of no force or effect.

COUNT IV

DECLARATORY JUDGMENT

The Approval of the Subdivision Applications
was a Violation of State and County Law

129. Paragraphs 1 through 128, above, are incorporated by reference as though fully set forth herein.

130. Plaintiffs seek declaratory judgment from this Court that even if Council had authority to make decisions on the subdivision applications, the September 27, 2022, decisions to approve are null, void, and of no force or effect as follows:

- a. The approval of development that conflicts with the comprehensive plan and maps violates the South Carolina Planning Act which requires development and zoning to be consistent with the comprehensive plan.
- b. The approval of developments that violate county ordinance 2015-05 (comprehensive land use plan and maps) is improper, null, void and of no force or effect.
- c. Development decisions that fail to take compatibility of the comprehensive plan into consideration violate the Planning Act which requires consideration of compatibility with the comprehensive plan.
- d. The decisions failed to consider Zoning Ordinance 1800 and Land Development Regulations, Article I, Section 10, which requires application of the most restrictive regulation.
- e. The decisions failed to consider whether the details of the subdivision plans actually complied with the GR ordinance.
- f. The decisions failed to consider other applicable law.

COUNT V

DECLARATORY JUDGMENT

Georgetown County Has a Statutory Mandate to Bring Zoning Ordinances and Land Use Regulations Into Compliance with Comprehensive Plan

131. Paragraphs 1 through 130, above, are incorporated by reference as though fully set forth herein.

132. Plaintiffs seek declaratory judgment from this Court that Georgetown County has a statutory mandate to bring residential zoning ordinances and land development regulations, including the Petigru and Parkersville parcels, into conformity with the current Georgetown

County Comprehensive Plan as specifically required by Planning Act, Sections 6-29-720 and 6-29-1120.

COUNT VI

DECLARATORY JUDGMENT

Georgetown County Has a Statutory Mandate to Consider Compliance with Comprehensive Plan in Decision Making Processes

133. Paragraphs 1 through 132, above, are incorporated by reference as though fully set forth herein.

134. Plaintiffs seek declaratory judgment from this Court that Georgetown County has a statutory mandate to bring its zoning and land development decision-making processes into compliance with state law which requires review for compatibility with the comprehensive plan as a condition of approval pursuant to Planning Act Sections 6-29-540, 6-29-720, and 6-29-1120, and Georgetown County Planning Commission Bylaws, Article V, Section 2, and the language of the Georgetown County Comprehensive Plan Introduction, and other applicable law.

COUNT VII

APPEAL OF COUNTY COUNCIL DECISION

135. Paragraphs 1 through 134, above, are incorporated by reference as though fully set forth herein.

136. In the event this court finds that County Council had authority to render the September 27, 2022, decisions on the subdivision applications, Plaintiffs appeal these decisions for the reasons set forth hereinabove.

COUNT VII

ATTORNEYS FEES FROM GEORGETOWN COUNTY

137. Paragraphs 1 through 136, above, are incorporated by reference as though fully set forth herein.

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

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

PRAAYER FOR RELIEF

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

- a. the September 27, 2022, County Council decision approving the subdivision applications is null, void and of no force or effect;
- b. the Planning Commission decisions of August 18, 2022, denying the subdivision applications are the final, valid and binding decisions;
- c. Georgetown County ordinances requiring approval by County Council of Planning Commission's decisions on land development applications are invalid, unenforceable, and of no force or effect;
- d. Georgetown County has a statutory mandate to bring zoning ordinances into compliance with the comprehensive plan and to consider compliance with the comprehensive plan in its land use decision making processes;

e. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County;

and

f. such other relief as the court deems just and appropriate.

Respectfully submitted,

/s/ Cynthia Ranck Person

Cynthia Ranck Person, Esquire (SC Bar #105126)

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October 24, 2022

Pawleys Island, South Carolina