

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Kendrick A. Bryant and Keisha Bryant	:	CASE NO.
Sherman on behalf of the heirs of	:	
Ernest Bryant; Benjamin Dennison and	:	SUMMONS
Willie Dereef, Jr. on behalf of the heirs	:	
of Limerick Dennison; Lucille Grate;	:	Declaratory Judgment
Parkersville Planning & Development	:	Appeal from Georgetown County Council
Alliance; Keep It Green; and Preserve	:	
Murrells Inlet, Inc.	:	Jury Trial Demanded
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
Georgetown County; Covington	:	
Homes, LLC	:	
	:	
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.
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
(570) 971-8636
kig.advocacy@gmail.com

ATTORNEY FOR PLAINTIFFS

March 10, 2023
Pawleys Island, South Carolina

minority community in Pawleys Island, Georgetown County, South Carolina, zoned as General Residential ("GR") and designated by the Georgetown County Comprehensive Plan and Maps, (hereinafter "Comprehensive Plan"), as "Medium Density."

3. The high density subdivision application was denied by Georgetown County Planning Commission after public hearing on January 19, 2023, on the basis that it conflicted with the Comprehensive Plan residential density requirements, *inter alia*. No appeal of this decision was filed by the applicant.

4. Thereafter, on February 14, 2023, Georgetown County Council reversed the decision of Planning Commission and approved the high density subdivision application without further input, review, consideration, or decision by Planning Commission.

First Ordinance that Conflicts with State Law
(County Council Site Plan Review)

5. Georgetown County GR Zoning Ordinance 607 contains provisions that require County Council to approve land development plans in certain cases of two-family, multi-family and townhouse developments.

6. Under the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Planning Act"), Section 6-29-1150, the South Carolina legislature explicitly set forth detailed procedures for the submission of development plans and conferred specific authority for making the decision to approve or disapprove development plans 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.

7. The plain language of the state Planning Act provides that the final county decision-maker on land development plans is the Planning Commission with appeal to the Circuit Court.

8. There is no provision in the Planning Act giving County Council, a legislative body, authority to make decisions on or to hear appeals of land development plans.

9. The GR Zoning Ordinance provisions requiring County Council to make the final decision on land development plans conflicts with and is pre-empted by the explicit provisions of state law which confer this decision on Planning Commission with appeal to Circuit Court.

10. Under fundamental principles of South Carolina law, county ordinances that conflict with state law are void.

11. The Georgetown County GR ordinance provisions that require site plan reviews by County Council are void as a matter of law.

12. County Council had no authority to hear or approve the subdivision application on February 14, 2023, and its decision is void as a matter of law.

Second Ordinance that Conflicts with State Law
(GR Density Provisions)

13. At all times pertinent hereto, the parcel in question was zoned General Residential (GR) and was designated by the Comprehensive Plan as "Medium Density."

14. "Medium Density" is defined by the Comprehensive Plan to allow a maximum of five (5) residential units per acre.

15. GR Zoning Ordinance 607 allows a maximum residential density of sixteen (16) units per acre.

16. The South Carolina Planning Act specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction,” and provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.” S.C. Code, Section 6-29-720(A) & (B).

17. The plain language of the state law requirement that zoning ordinances be in accordance with the Comprehensive Plan is mandatory and unconditional.

18. The GR zoning ordinance, which allows high density, i.e., a maximum residential density of sixteen (16) units per acre, is not in accordance with the Comprehensive Plan designation of this parcel as "Medium Density" which allows a maximum of five (5) units per acre.

19. To the extent that the GR zoning ordinance permits residential density of more than five (5) units per acre on land parcels designated as "Medium Density" by the Comprehensive Plan, it conflicts with the state law requirement that zoning "must be in accordance with the comprehensive plan."

20. Under fundamental principles of South Carolina law, county ordinances that conflict with state law are void.

21. The residential density provisions of the GR zoning ordinance that allow more than five (5) units per acre on land designated "Medium Density" by the Comprehensive Plan are void as a matter of law.

22. The County Council decision of February 14, 2023, was based on invalid provisions of the GR ordinance and is void as a matter of law.

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

- a. The February 14, 2023, decision by County Council to approve the subdivision site plan application is void and of no force or effect.
- b. The February 14, 2023, decision by County Council to approve the subdivision site plan application was arbitrary, capricious, and otherwise improper as set forth more particularly hereinafter.

- c. The January 19, 2023, decision of Planning Commission to deny the subdivision application is the final decision from which no appeal to the Circuit Court was filed, and therefore, is the valid and binding decision.
- d. GR zoning ordinance provisions that allow high residential density on land designated by the Comprehensive Plan as Medium Density are void as a matter of law, and land development decisions based thereon are null, void and of no force or effect.

II.

LAND PARCEL AT ISSUE

24. The parcel of land upon which the subdivision was proposed is owned by Covington Homes, LLC, (hereinafter "Covington Homes"), and was acquired by Deed dated April 7, 2022, Tax Map No. 04-0204-025-03-00, recorded in Georgetown County Deed Book 4332, Page 243, having the address of 319 Petigru Drive, and consisting of 2.01 acres of vacant forested land, including wetlands, hereinafter "Covington Homes parcel."

25. The Covington Homes parcel is located in the heart of one of the oldest and most historically significant African American neighborhoods of Pawleys Island, Georgetown County, South Carolina, known as Fraserville.

26. The Covington Homes parcel was designated as "Medium Density" by the Georgetown County Comprehensive Plan at the time Covington Homes acquired it on April 7, 2022.

27. On or about December 20, 2022, Covington Homes and its agent Bryan Lenertz, submitted a Major Subdivision Application requesting approval to construct twelve (12) multi-family high density duplex units with infrastructure including driveways, sidewalks, and parking

areas, on approximately 1.5 net buildable acres for a net residential density of 7.74 units per acre, which significantly exceeds the medium density limitation of 5 units per acre.

28. Public hearing on this Major Subdivision Application was scheduled before Planning Commission on January 19, 2023.

III.

PARTIES

Plaintiffs

29. Plaintiffs, Kendrick A. Bryant and Keisha Bryant Sherman, on behalf of the heirs of Lazarus and/or Ernest Bryant, are adult individuals having an address of 300 Petigru Drive, Pawleys Island, Georgetown County, South Carolina, and own and reside on three parcels of land consisting of approximately 5 acres that directly adjoin the Covington Homes parcel, identified as Georgetown County Tax Map Nos. 04-0416-020-00-00, 04-0416-020-01-00, 04-0416-020-02-00, by deeds recorded in the Office of Recorder of Deeds for Georgetown County. Kendrick A. Bryant and Keisha Bryant Sherman have signed an Affidavit attached hereto as Exhibit "1," and incorporated herein by reference.

30. Plaintiffs, Benjamin Dennison and Willie Dereef, Jr., on behalf of the heirs of Limerick Dennison, are adult individuals having addresses of 92 Ferguson Drive, Pawleys Island, Georgetown County, South Carolina, and 132 Ferguson Drive, Pawleys Island, Georgetown County, South Carolina, respectively, and own and reside on three parcels of land consisting of approximately 9.2 acres that directly adjoin the Covington Homes parcel, identified as Georgetown County Tax Map Nos. 04-0416-018-00-00, 04-0416-018-01-00, 04-0416-018-02-00, by Deed dated February 21, 1882, recorded in Deed Book H, Page 97, in the Office of Recorder of Deeds for Georgetown County. Benjamin Dennison and Willie Dereef, Jr., have

signed Affidavits attached hereto as Exhibits "2," and "3," respectively which are incorporated herein by reference.

31. Plaintiff, Lucille Grate, is an adult individual who resides at 328 Petigru Drive, Pawleys Island, Georgetown County, South Carolina, and owns and lives on land directly across Petigru Drive from the Covington Homes parcel, identified as Tax Map No. 04-0157-005-00-00, by Deed recorded in Deed Book 1305, Page 196, in the Office of Recorder of Deeds for Georgetown County. Lucille Grate has signed an Affidavit attached hereto as Exhibit "4," and incorporated herein by reference.

32. Plaintiff, Parkersville Planning & Development Alliance, (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, who personally resides approximately 750 feet from the Covington Homes parcel, is attached hereto as Exhibit "5," and incorporated herein by reference.

33. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American communities of Parkersville and Fraserville, which are the oldest minority settlements in the Waccamaw Neck area of Georgetown County.

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

35. The Parkersville PDA was formed to represent and speak for the 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 residential Parkersville/Fraserville 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.

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

37. Plaintiff, Keep It Green, (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.

38. 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.

39. 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.

40. 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/Fraserville, Pawleys Island, Litchfield, North Litchfield, Murrells Inlet and Garden City.

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

42. 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.

43. 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.

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

45. 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 Covington Homes parcel.

46. 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 Covington Homes parcel or other areas of the Waccamaw Neck where zoning is not in compliance with the Comprehensive Plan as required by state law and as set forth hereinafter, and who would have standing to challenge these and other decisions.

Defendants

47. The South Carolina Uniform Declaratory Judgments Act, S.C. Code, Section 15-53-80 requires that

“[w]hen declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard.”

Accordingly, the following parties are required to be named as Defendants in this action for declaratory relief.

48. 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).

49. 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.

50. Defendant, Covington Homes, LLC, owner of the Covington Homes parcel, is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 4210 River Oaks Drive, Suite 5, Myrtle Beach, Horry County, South Carolina, 29579, and a registered agent name and address of Gregory B. Harrelson, at 4210 River Oaks Drive, Suite 5, Myrtle Beach, Horry County, South Carolina 29579.

IV.

APPLICABLE LAW

A. SOUTH CAROLINA STATE LAW

51. The following are the relevant provisions of the South Carolina Planning Act that require zoning and land development to be in accordance with the Comprehensive Plan.

- a. Planning Act, Section 6-29-720(B), governs planning and zoning and specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction.”
- b. Planning Act, Section 6-29-720(A), provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.”
- c. Planning Act, Section 6-29-540, requires that the “location, character, and extent” of new development must be compatible “with the comprehensive plan of the community.”
- d. 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. 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)).

52. As set forth above, the South Carolina legislature has made it abundantly clear throughout the South Carolina Planning Act that zoning and land development are required to be consistent with the Comprehensive Plan.

B. GEORGETOWN COUNTY COMPREHENSIVE PLAN

i. General

53. The “Introduction” to the original Georgetown County Comprehensive Land Use Plan enacted in August of 1997, which is currently in effect, specifically recognizes and reinforces the requirements of the South Carolina Planning Act and states as follows:

“In order for local ordinances regulating land use to be valid, they must be adopted in accordance with a locally adopted [comprehensive] 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)

ii. Covington Homes Parcel & Adjoining Land

54. The current Comprehensive Land Use Plan, including maps, was enacted by County Council on March 10, 2015, by Ordinance number 2015-05, and specifically designates the Covington Homes parcel as “Medium Density,” which limits net residential density to a maximum of 5 units per acre.

55. All parcels of land that adjoin the Covington Homes parcel are designated by the Comprehensive Plan as “Medium Density” residential.

56. All residential areas of the traditional Parkersville/Fraserville minority community are designated by the Comprehensive Plan as “Medium Density,” or “Low Density,” (maximum of two (2) units per acre).

iii. Density Increases Restricted in South Waccamaw Neck

57. The Comprehensive Land Use Plan specifically states as follows with respect to residential density in 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.”

(Comprehensive Land Use Plan, Page 23). A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “8,” and incorporated herein by reference.

58. The Comprehensive Plan further states as follows with respect to the South Waccamaw Neck:

“Density increases in new development should *only* be allowed if open space is provided by use of planning tools: as part of a Planned Development District, Transfer Development Rights, Cluster Development, or land placed in a Conservation Easement, etc.”

(Comprehensive Land Use Plan, Page 25). A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “9,” and incorporated herein by reference.

59. The clear intention of this provision is to restrict density increases in new development and allow them *only* when there is a corresponding density decrease or elimination (*i.e.*, by creating “open space”) through use of one of the enumerated planning tools which are specifically designed to offset a density increase.

60. None of these exceptions or planning tools apply to the Covington Homes subdivision application, and, therefore, density is limited to a maximum of 5 units per acre as designated by the Comprehensive Plan.

61. Density restrictions were deliberately included in the Comprehensive Plan because the South Waccamaw Neck was then and is now facing unprecedented population growth resulting in critically overburdened infrastructure, increasing volumes of traffic that exceed road design capacity, increasing numbers of serious and life-threatening motor vehicle accidents, increasing flooding and stormwater problems as a consequence of clear cutting and filling in wetlands, as well as other environmental and safety challenges resulting from overdevelopment of the limited geographic space of the South Waccamaw Neck.

C. GEORGETOWN COUNTY ORDINANCES

i. General Residential Ordinance

62. GR Zoning Ordinance 607 permits a range of residential uses and a range of residential densities, including both medium and high density, up to a maximum of sixteen (16) units per acre.

63. Determination of the maximum permissible residential density on a particular parcel within a GR Zoning District, should consider the provisions of all applicable land use regulations, including but not limited to:

- a. The residential density permitted by the Comprehensive Plan as set forth above (in this case 5 units per acre);
- 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 all other applicable laws, ordinances, and/or development regulations, including those set forth below that dictate mandatory application of the most restrictive regulation in the case of conflict.

- ii. Ordinances Require Application of Most Restrictive Regulation

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

- a. 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.”

- b. 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.

65. In the present case, as the most restrictive regulation, the Comprehensive Plan "Medium Density" designation limits density to a maximum of 5 units per acre on the Covington Homes Parcel.

V.

COUNTY DECISION PROCESS

A. PLANNING COMMISSION PROPERLY DENIED

66. The Georgetown County Planning Commission held a public hearing on the Covington Homes major subdivision application on January 19, 2023, and after considering the evidence, including considerable testimony from interested parties, voted to deny the application

on the basis of its inconsistency with the Comprehensive Plan density restrictions, as well as flooding, stormwater and traffic, and general detriment to the neighbors and community.

67. The Planning Commission decision was proper in all respects and no appeal of the decision to deny was filed by Covington Homes.

68. The Planning Commission decision to deny should be the final and binding decision.

B. COUNTY COUNCIL IMPROPERLY REVIEWED & APPROVED

i. No Authority

69. The Covington Homes subdivision application was placed on the County Council agenda for February 14, 2023, under the heading “Reports to Council” as agenda item 14(a), “Site Plan Review,” pursuant to the ordinance provisions cited hereinabove. A copy of the February 14, 2023, County Council agenda is attached hereto as Exhibit “10,” and incorporated herein by reference.

70. Georgetown County ordinances requiring site plans to be approved by County Council are void and unenforceable for the following reasons:

- a. They are inconsistent with explicit provisions of state law as set forth hereinabove.
- b. They violate the doctrine of separation of powers.
- c. They reserve to County Council arbitrary power without the guidance of uniform rules and regulations.
- d. They do not articulate any standards by which the County Council should decide to approve or disapprove the decision by Planning Commission.
- e. They violate the South Carolina Planning Act and other law.

71. Accordingly, County Council did not have authority to hear, review or approve this land development application, or to review, modify, or reverse the decision of Planning Commission, and its decision to approve is void as a matter of law.

ii. Improper, Arbitrary & Capricious

72. Even if Council had possessed the authority to hear and make a decision on this subdivision application, which is specifically denied, the details, substance, and merits of the plan and its compliance or noncompliance with all applicable laws and regulations including South Carolina state law, the Georgetown County Comprehensive Plan, the GR ordinance and other land development regulations was not addressed or considered by Council in any way.

73. In fact, the information packet submitted to council by the Planning Department for its consideration did not include all pertinent facts and neglected to include any information about the Comprehensive Plan designation of the Covington Homes parcel. Please see Agenda Request Form and packet attached hereto as Exhibit "11," and incorporated herein by reference.

(a) Erroneous Instructions

74. County Council was specifically instructed in the Agenda Request Form as well as during the February 14, 2022, meeting, that its review was "limited to compliance with the land use regulations of the County, as the use has already been properly designated by establishment of the zoning district."

75. This instruction improperly made the predetermined conclusion that the use was "properly" designated by the establishment of the zoning district, and prevented Council from reviewing state law to determine whether the use was, in fact, "properly" designated, which is Council's very duty and responsibility.

76. Where, as in the present situation, the established zoning district is not in accordance with the Comprehensive Plan as required by state law, the use is not "properly" designated.

77. Council was instructed not to and/or otherwise did not consider the following critical matters:

- a. Whether the county ordinance requiring Council to review this land development application was void as conflicting with explicit provisions of state law.
- b. Whether the county GR zoning ordinance density provisions, which Council was instructed to follow as its sole consideration, were void as conflicting with the mandatory state law requirement that zoning ordinances must be in accordance with the Comprehensive Plan.
- c. County Zoning Ordinance 1800, and Land Use Regulation Article I, Section 10, requiring application of the most restrictive regulation.
- c. Whether the proposed land development was in accordance with the Comprehensive Plan as required by state and local law.
- d. Inconsistency of the proposed high density development with the Comprehensive Plan designation of this parcel as "Medium Density."
- e. That all adjoining parcels are designated by the Comprehensive Plan as "Medium Density."
- f. The findings of Planning Commission after consideration of evidence presented at a public hearing and the specifically articulated reasons set forth by Planning Commission as the basis for its decision to deny the subdivision application.

- d. Land development regulations that specifically allow consideration of flooding, stormwater, traffic, infrastructure, character of the neighborhood, and detriment to the community.

78. Council was advised by the Planning Director at the meeting on February 14, 2023, and in written materials submitted to Council, that the proposed subdivision complied with all county ordinances and regulations and that the Planning Department recommended approval.

79. Essentially Council was asked to rubber stamp the Planning Department recommendation and bypass the Planning Commission decision, the Public Hearing, the Comprehensive Plan inconsistencies, and the requirements of the South Carolina Planning Act.

80. County Council has been repeatedly advised that Georgetown County would be vulnerable to lawsuits by Developers if it does not approve land development applications based on the zoning ordinance alone, without regard to state law requirements, without regard to whether the zoning ordinance is in accordance with the Comprehensive Plan, without regard to whether the proposed land development conforms to the Comprehensive Plan, and without regard to many other legitimate considerations such as flooding, stormwater, traffic, infrastructure, character of the surrounding neighborhood and detriment to adjoining landowners and the community.

81. Georgetown County land use decisions have been consistently driven by a "fear of lawsuits by Developers" and not by proper and legitimate considerations such as consistency with state law and the Comprehensive Plan. As a result, citizens of the county, particularly those in minority communities, have suffered serious harm.

82. The Georgetown County land development decision-making process, as exemplified by this situation, obviates the need for a Planning Commission or a South Carolina legislature.

(b) Arbitrary & Capricious

83. Based on the above instructions, County Council voted to approve the Covington Homes high density subdivision on a parcel of land designated as Medium Density by its own Comprehensive Plan maps.

84. The following Council members voted to approve the development: Clint Elliott (District 1); Stella Mercado (District 6); Raymond Newton (District 5); Louis Morant (District 7); Lillie Jean Johnson (District 4). The following council members opposed the development: Bob Anderson (District 2); Everett Carolina (District 3).

85. The decision by Council and the underlying instructions which formed the basis of the decision are erroneous as follows:

- a. State law was deliberately not taken into consideration.
- b. The Comprehensive Plan was deliberately not taken into consideration notwithstanding the state law mandate that zoning ordinances and land development must be in accordance with the Comprehensive Plan.
- c. Conflict with the Comprehensive Plan density restrictions was disregarded.
- d. Other applicable laws were not considered including Georgetown County Zoning Ordinance, Section 1800, and Land Development Regulation, Article I, Section 10, requiring application of the most restrictive land development regulations.
- e. New 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.”

- f. New development was approved as complying with the GR zoning ordinance when details of the plans were not considered or discussed by Council and do not, in fact, comply with all applicable ordinances, including the GR ordinance.
- g. Development was approved without applying uniform standards or considering other applicable law.
- h. The decision by Council conflicts with its own ordinance 2015-05, *i.e.*, the Comprehensive Plan and maps.

86. The decision to allow a high density subdivision in contravention of the Comprehensive Plan residential density restriction sets a precedent for (a) ignoring the Comprehensive Plan in making future land use decisions, and (b) allowing high density land development on many acres of other land in Georgetown County that is designated as medium or low density by the Comprehensive Plan.

87. The cumulative incremental impact of density increases in the South Waccamaw Neck has had, would have, and is having devastating and far-reaching negative consequences to all citizens, and a disparate discriminatory impact on minority communities.

(c) No Public Hearing

88. Numerous adjoining landowners and neighboring residents attended the Council meeting on February 14, 2023, to express their opposition. No public hearing was provided and interested parties had no opportunity to present evidence. The only opportunity for input of any

kind was the very limited time afforded during the General Public Comment period at the beginning of the meeting.

89. Legal counsel for interested parties directed a letter to Council dated February 13, 2023, raising the matters that form the basis of this complaint, none of which were considered at the meeting. A copy of said letter is attached hereto as Exhibit “12,” and incorporated herein by reference. There were numerous letters of opposition and no letters in support.

VI.

DUTIES OF GEORGETOWN COUNTY WITH RESPECT TO ZONING AND LAND DEVELOPMENT

90. 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.”

91. 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.

92. The duties identified in paragraphs 90 and 91 above, shall collectively be referred to as “required duties.”

93. The “Introduction” to the first Georgetown County Comprehensive Land Use Plan, adopted in August of 1997, states:

“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)

94. 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.

A. Existing Zoning Ordinances Conflict with Comprehensive Plan

95. To the extent that the GR zoning ordinance permits high density land development on land designated by the Comprehensive Plan and Maps as medium or low density, the zoning ordinance is in direct conflict with the Comprehensive Plan.

96. There are many existing zoning districts on parcels of land in the Waccamaw Neck that are in direct conflict with the Comprehensive Plan as they relate to residential density.

97. 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.

98. 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.

99. The County has repeatedly approved development pursuant to these conflicting zoning ordinances notwithstanding their inconsistency with the Comprehensive Plan density limitations.

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

101. 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.

B. Land Use Approval Process

102. In making zoning and land development decisions, Georgetown County does not consider compatibility with the Comprehensive Plan as a necessary part of the process.

103. 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.

104. Approval of zoning changes and land development that conflict with the Comprehensive Plan are more prevalent in minority communities and have had a discriminatory impact on the minority residents of these communities.

C. Georgetown County Refuses to Comply

105. 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.

106. A letter dated September 2, 2022, attached hereto as Exhibit "13," 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.

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

108. 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.

109. 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.

110. 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.

111. Plaintiffs request that Georgetown County immediately bring the zoning of the Covington Homes parcel 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

112. Paragraphs 1 through 111, above, are incorporated by reference as though fully set forth herein.

113. 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.

114. 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.

115. 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 decision of February 14, 2023, the Planning Commission decisions of January 19, 2023, 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, SCRCP (“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.

116. 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.

117. 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.

118. 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

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

119. Paragraphs 1 through 118, above, are incorporated by reference as though fully set forth herein.

120. 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 Georgetown County ordinances requiring land development plans to be approved by County Council are inconsistent with the explicit provisions of state law and are void, and of no force or effect.

COUNT II

DECLARATORY JUDGMENT

County Council Had No Authority to Render the February 14, 2023,
Decision Approving Subdivision Application

121. Paragraphs 1 through 120, above, are incorporated by reference as though fully set forth herein.

122. Plaintiffs seek declaratory judgment from this Court that the February 14, 2023, County Council decision to reverse the Planning Commission decision and approve the Covington Homes subdivision application is null, void, and of no force or effect.

COUNT III

DECLARATORY JUDGMENT

Planning Commission Decision to Deny
Subdivision Application on January 19, 2023, was Final, Valid and Binding

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

124. Plaintiffs seek declaratory judgment from this Court that the January 19, 2023, Planning Commission decision to deny this subdivision application is the valid, proper, and final decision 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 January 19, 2023.

- 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 from this decision as provided in the Planning Act, and this decision stands as the final, valid and binding decision.

COUNT IV

DECLARATORY JUDGMENT

Georgetown County Zoning Ordinances
Allowing High Density on Land Parcels Designated by the
Comprehensive Plan as Medium Density are Void and Unenforceable

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 provisions of the Georgetown County zoning ordinances that allow high residential density on land designated by the Comprehensive Plan as Medium Residential Density are inconsistent with the explicit state law requirement that zoning ordinances must be in accordance with the Comprehensive Plan and are void, and of no force or effect.

COUNT V

DECLARATORY JUDGMENT

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

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 even if Council had authority to make decisions on the subdivision application, the February 14, 2023, decision to approve is 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 development that violates county ordinance 2015-05 (Comprehensive Plan and Maps) is improper, null, void and of no force or effect.
- c. A development decision that fails to take compatibility of the Comprehensive Plan into consideration violates the Planning Act which requires consideration of compatibility with the comprehensive plan.
- d. The decision failed to consider Zoning Ordinance 1800 and Land Development Regulations, Article I, Section 10, which requires application of the most restrictive regulation.
- e. The decision failed to consider whether the details of the subdivision plans actually complied with the GR ordinance and other local land development ordinances.
- f. The decisions failed to consider other applicable law.

COUNT VI

DECLARATORY JUDGMENT

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

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 Georgetown County has a statutory mandate to bring residential zoning ordinances and land development regulations, including the Covington Homes parcel, into conformity with the current Georgetown County Comprehensive Plan as specifically required by Planning Act, Sections 6-29-720 and 6-29-1120.

COUNT VII

DECLARATORY JUDGMENT

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

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 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 VIII

APPEAL OF COUNTY COUNCIL DECISION

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

134. In the event this court finds that County Council had authority to render the February 14, 2023, decision on the subdivision applications, Plaintiffs appeal this decision for the reasons set forth hereinabove.

COUNT IX

ATTORNEYS FEES FROM GEORGETOWN COUNTY

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

136. 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.

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

PRAYER 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 February 14, 2023, County Council decision approving the subdivision application is null, void and of no force or effect;
- b. the Planning Commission decision of January 19, 2023, denying the subdivision application is the final, valid and binding decision;

- c. Georgetown County ordinances requiring approval by County Council of land development applications conflict with state law and are void, unenforceable, and of no force or effect;
- d. Georgetown County ordinances allowing high residential density on land designated by the Comprehensive Plan as Medium Density conflict with state law and are void, unenforceable, and of no force or effect;
- e. 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;
- f. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County pursuant to S.C. Code 15-77-300 ; and
- g. Such other relief as the court deems just and appropriate.

Respectfully submitted,

/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

March 10, 2023
Pawleys Island, South Carolina