

KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

February 13, 2023

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29442

RE: Covington Homes, LLC
Application for Major High Density Subdivision – Petigru Place
Case No. MAJOR 2022-00012; TMS 04-0204-025-03-00

Dear County Council Members:

As we begin a new year, I want to thank you all for your service to our county. As council members you are responsible for difficult decisions on a broad range of issues that require a great deal of time, effort, and attention. Your dedication and commitment are very much appreciated.

The above referenced application for subdivision approval is on your agenda for February 14, 2023. This proposed high density development is located in the minority neighborhood of Parkersville in Pawleys Island on a parcel of land owned by Covington Homes, LLC, a Myrtle Beach developer, and designated as "medium density" by the comprehensive plan and maps.

I am writing on behalf of adjoining heirs' property landowners that include members of the Grate, Sherman, Bryant, Brown, Dennison, and Ford families, the Pawleys Island Civic Club (Vincent Davis, President), the Parkersville Planning & Development Alliance (Rev. Johnny Ford, President), and other neighboring residents who have lived and owned land in this neighborhood for generations, all of whom respectfully oppose this application and request Council to follow the decision of Planning Commission.

Planning Commission properly denied this subdivision site plan application on the basis that it conflicts with the comprehensive plan and is otherwise detrimental to the neighborhood. Rev. Robert Davis made the motion to deny that was supported by a majority of the commission.

My clients' position is summarized as follows:

- Under South Carolina state law, the Planning Commission decision on land development applications is final unless appealed to the Circuit Court. (Planning Act, Sec. 6-29-1150).

- State law requires that zoning and land development be in accordance with the comprehensive plan. (Planning Act, Sec. 6-29-720, 540, 1120). This high density proposal conflicts with the comprehensive plan medium density designation.
- Georgetown County ordinances provide that when there are conflicting zoning or land development regulations, the most restrictive applies. *i.e.*, in this case, medium density is more restrictive than high density. (Zon. Ord. 1800, Land Dev. Reg., Sec. 10)
- General Residential zoning is not required to be high density and by its own definition is appropriate for medium density. (Zon. Ord. 607)

The specific details upon which these landowners, residents, and groups oppose this high density project are as follows:

1. Georgetown County is bound by South Carolina state law.

It is axiomatic that Georgetown County may not act, legislate or make decisions in a manner that is inconsistent with South Carolina state law or the Constitution. If council enacts ordinances that are inconsistent with state law, those ordinances will be declared void if challenged.

In order to avoid decisions that conflict with state law, the first step in any county decision should be to review whether state law speaks to the issue. In this case, it does.

2. State law designates Planning Commission as decision-maker.

South Carolina Planning Act, Section 6-29-1150, specifically confers authority for land development decisions to the Planning Commission or designated staff. Planning Commission decisions are appealable to the Circuit Court. The Planning Act grants no authority to County Council, a legislative body, to approve or disapprove land development site plan applications or to review, modify, or reverse land development decisions of the Planning Commission.

The Georgetown County Planning Commission properly denied this application after public hearing on January 19, 2023, on the basis that it conflicts with the Comprehensive Plan and is otherwise detrimental to the neighborhood. Under state law, that decision stands as final unless appealed to the Circuit Court.

3. State law requires compliance with Comprehensive Plan.

The following are direct quotes from the South Carolina Planning Act on the issues of zoning and land development regulation and decisions:

- SC Planning Act, Section 6-29-720(B): “[Z]oning regulations must be made in accordance with the comprehensive plan for the jurisdiction”
- SC Planning Act, Section 6-29-720(A): The purpose of a zoning ordinance is to “implement the comprehensive plan.”
- SC Planning Act, Section 6-29-540: 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.”
- SC Planning Act, Section 6-29-1120: “[T]he regulation of land development by ... counties ... is authorized for the following purposes, among others: ... to assure ... the wise and timely development of new areas ... in harmony with the comprehensive plan”

The language of the Planning Act is clear and unambiguous. It is not subject to multiple interpretations. South Carolina law plainly requires zoning and land development to be in accordance with the comprehensive plan of the jurisdiction. The language is mandatory: "must be" and "to assure." It is not conditional and it does not provide for exceptions.

There is nothing in the Planning Act that permits zoning or land development that is not in accordance with the comprehensive plan. Thus, decisions that are not in accordance with the comprehensive plan maps conflict with state law. Indeed, as has often been pointed out by county officials, the comprehensive plan is a "guide;" however, it is a guide that is required by state law to be followed.

4. Comprehensive Plan Designates Parcel as Medium Density

Georgetown County Council enacted the Comprehensive Plan Land Use Element and related Future Land Use (FLU) Maps by Ordinance 2015-05 which specifically designates the land at issue and surrounding parcels as “Medium Density.”

Approval of high density land development that is inconsistent with the comprehensive plan medium density designation would be contrary to state law.

5. General Residential (GR) Zoning is Compatible with Medium Density.

The GR zoning ordinance states at 607 that “[i]t is the intent of this section that the General Residential District be established for medium-to-high density residential purposes.” There is no requirement that a use within GR zoning be high density.

The determination of the appropriate density within the GR District depends on a number of factors including the Comprehensive Plan FLUM designation, compliance with other

conditions of the GR ordinance itself, compliance with all other applicable land development regulations, and a variety of other factors that state and local law designate as relevant, including flooding, stormwater, traffic, compatibility with the character of the neighborhood, and impact on the community.

Georgetown County Council made the decision in 2015 to designate this parcel as medium density which means the GR permitted use of multi-family duplex units is limited to a maximum density of 5 units per acre.

6. Conflicts Resolved By Applying Most Restrictive Standard.

Georgetown County ordinances require that where there is a conflict between or among zoning or land development ordinances, the most restrictive one applies. In this case, the more restrictive medium density controls.

- Section 1800 of the Georgetown County Zoning Ordinance:

“[I]n 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.”

- Section 10 of the Georgetown County Development Regulations:

“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.

7. Other Legitimate Bases for Denial

Regardless of the comprehensive plan violation, the county is not obligated to approve a high density project just because it is zoned as General Residential. General Residential is appropriate for either medium or high density and there are a multitude of factors required to be taken into consideration in addition to the comprehensive plan designation as set forth in the state and local land development regulations.

Some examples of those factors include traffic, flooding, infrastructure, stormwater, incompatibility with the character of the neighborhood, tree protection, crowding, safety, and other factors that affect public health, welfare and safety, all of which are legitimate considerations under the law.

8. Impact on Minority Communities

Traditional minority communities in Pawleys Island and elsewhere in Georgetown County are experiencing attrition at alarming rates due to approval of development on former heirs' property that conflicts with the comprehensive plan and/or does not fit into the character of these longstanding neighborhoods.

This proposal is not affordable or workforce housing and the price is beyond the reach of current residents. These kinds of high density projects typically displace current residents resulting in gentrification and the loss of a longstanding traditional African American communities along with their valuable culture and history. Once made, these decisions cannot be undone and they set a devastating precedent that has a permanent impact on our future.

In addition to displacement of current residents, these high density projects often cause serious problems with flooding, stormwater and traffic which are also legitimate considerations and valid reasons to deny a proposal.

Georgetown County appreciates the necessity of having zoning conform to the Comprehensive Plan FLUM in the context of zoning changes by requiring a map amendment when a proposed zoning change conflicts. Yet, the county allows existing inconsistencies to persist throughout the county which have had a negative impact on the entire community and have been particularly devastating to minority neighborhoods.

By knowingly allowing this inconsistency and intentionally approving land development that is known to be inconsistent with the comprehensive plan, we believe the county is exposing itself to potential liability and the possibility of class action lawsuits by negatively impacted members of minority and other communities.

9. Parcel and Location Not Suitable for Proposed Purpose

Section 5 of the Georgetown County Development Regulations states that:

“The Planning Commission shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.”

In this case, County Council, specifically designated this parcel as “Medium Density.” By virtue of that enactment and designation, our County Council has made the determination that “in the best interest of the public, the site is not suitable for” high density development.

10. Stormwater Study Results

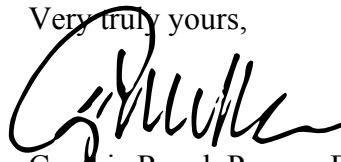
As the President of Pawleys Island Civic Club has repeatedly pointed out, the county has invested substantial funds to have a county-wide stormwater study conducted. We know that it has been completed for the Waccamaw Neck, yet the county has failed to release the results notwithstanding citizen demand.

We know that Parkersville has been designated in this study as a problem area. High density developments such as the one proposed, in a neighborhood that is already experiencing serious problems with stormwater and flooding, should not be considered until the results of that study have been received, reviewed and analyzed.

For all the reasons set forth above, we respectfully request you to (a) allow the decision of the Planning Commission to stand as final, or in the alternative, (b) deny this proposed high density subdivision on the basis that it does not conform to our comprehensive plan and is otherwise detrimental to the neighborhood.

Thank you for your kind attention and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Ranck Person', written over a horizontal line.

Cynthia Ranck Person, Esquire