

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
	:	
Edward A. Powers and Elizabeth M. Powers; Martha C. Green; Steven E. Basso; James R. Sherman; Alexander V. Picard and Jessica L. Picard; Parkersville Planning & Development Alliance, Inc.; Keep It Green, Inc.; and Preserve Murrells Inlet, Inc.	:	CASE NO.
	:	
Plaintiffs	:	SUMMONS
	:	
v.	:	Declaratory Judgment
	:	
Georgetown County; Alliance for the Economic Development for Georgetown County, Inc.	:	Jury Trial Demanded
	:	
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

January 6, 2023
Pawleys Island, South Carolina

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COUNTY OF GEORGETOWN	:	FIFTEEN JUDICIAL CIRCUIT
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	:	COMPLAINT
	:	(Civil Action)
	:	
	:	Declaratory Judgment
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Plaintiffs	:	Jury Trial Demanded
v.	:	
	:	
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Georgetown County; Alliance for the Economic Development for Georgetown County, Inc.	:	
	:	
Defendants	:	
	:	
	:	

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint seeking Declaratory Judgment against Defendants named herein as follows:

INTRODUCTION & SUMMARY

1. This Complaint involves a zoning change application to amend the Mercom Technology Park Planned Development (sometimes hereinafter “Mercom PD”), located in Pawleys Island, Georgetown County, South Carolina.

2. The Mercom Technology Park PD consists of 28.4 acres of primarily vacant land that was approved in 2015 as a Planned Development District for construction of a technology park which did not include any residential use.

3. The Mercom Technology Park was never built after it was approved in 2015, and construction of the approved plans was neither started nor completed.

4. At all times pertinent hereto, the zoning and the Georgetown County Comprehensive Land Use Plan (hereinafter “Comprehensive Plan”) and Future Land Use Maps (hereinafter “FLU Maps” or “Maps”) permitted no residential use and no residential density on the Mercom PD.

5. At all times pertinent hereto, the Comprehensive Plan specifically restricted increased and/or additional residential density in the geographic area where the Mercom PD was located.

6. The zoning change application at issue was submitted on August 16, 2022, by the Alliance for Economic Development for Georgetown County (hereinafter “Alliance”), one of the three owners of the Mercom PD, and requested to amend the Planned Development District from an unconstructed non-residential technology park to high density multi-family residential rental housing for construction of 90 rental housing units.

7. The Mercom PD is located along a narrow back road in the heart of the historical African American community of Parkersville in Pawleys Island.

8. Parkersville is one of the oldest and most historically significant neighborhoods in Pawleys Island, and represents one of the last vestiges of traditional African American life, history, and culture on the Waccamaw Neck. It is a charming minority community with a geographic area of about 2 square miles, traditionally characterized by forest-agriculture land uses and low to medium density single family homes on narrow tree-lined, often unpaved, roads representative of the low country.

9. Parkersville has been a longstanding target of undesirable county land use decisions, commercial encroachment, predatory development of heirs’ property, and

gentrification, all of which has caused substantial displacement of residents of the minority community and threatens the survival of this important historical neighborhood.

10. More than 1,000 residents of Parkersville and the South Waccamaw Neck submitted a Petition to Georgetown County requesting reversion of the Mercom PD in accordance with local ordinances and opposing the requested zoning change to high density residential on the basis that it conflicted with the Georgetown County Comprehensive Plan and would be a detriment to the community.

11. After public hearing on September 15, 2022, the Georgetown County Planning Commission (hereinafter "Planning Commission") unanimously recommended denial of the Alliance's zoning change request on the basis that it conflicted with the Comprehensive Plan and FLU Maps.

12. Despite the Planning Commission's unanimous decision to recommend denial, Georgetown County Council (hereinafter "Council") voted to approve the Alliance's zoning change application, and on November 8, 2022, approved proposed Ordinances 22-36 (FLU map amendment from non-residential to high density residential) and 22-37 (PD zoning amendment from non-residential to residential) to allow 90 high density residential multi-family rental housing units notwithstanding the conflict with the Comprehensive Plan and FLUM, and violation of other applicable laws as set forth hereinafter.

13. Two members of Council, Louis Morant (Chairman) and Raymond Newton, both of whom voted to approve the Alliance's zoning change application, also serve on the Board of Directors of the Alliance, and notwithstanding this conflict of interest, both participated in the discussion and voted on the Alliance's application.

14. Another member of Council, Steve Goggans, who voted to approve the Alliance's zoning change application, is the architect who was paid to prepare the plans upon which the Mercom Technology Park PD was approved in 2015, and notwithstanding this conflict of interest, participated in the discussion and voted on the Alliance's application to amend the Planned Development District he designed.

15. Plaintiffs submit that Ordinances 22-36 and 22-37 were not approved in accordance with the law, and are null, void and of no force or effect for the following reasons as set forth in detail hereinafter:

- a. The Mercom PD was an invalid Planned Development District and was not capable of amendment because (i) it was a single use PD and void from its inception under South Carolina Planning Enabling Act, S.C. Code, (hereinafter "Planning Act"), Section 6-29-720(c)(4) and other law; and (ii) it should have reverted to its former zoning classification pursuant to Georgetown County Ordinance 1703.
- b. The application was submitted by only one of the three owners in violation of the requirement that all owners join in an application to amend a PD according to Georgetown County Zoning Ordinance 619.501 and other law.
- c. The Planning Commission did not recommend approval of the zoning change due to its conflict with the Comprehensive Plan, and recommendation by Planning Commission was a prerequisite to Council's authority to amend the Planned Development District according to Planning Act, Section 6-29-740.

- d. The zoning change was not “in accordance with” the Comprehensive Plan as required by Planning Act, Section 6-29-720(A) and (B); Section 6-29-540, Section 6-29-740; Section 6-29-1120(5), and other law as set forth hereinafter.
- e. The zoning change did not did not promote public welfare and other specific considerations as required by Planning Act, Section 6-29-720(B), and Section 6-29-710.
- f. The zoning change was not justified by public necessity, convenience, general welfare or good zoning practice as required by Georgetown County Zoning Ordinance 1701, which governs zoning amendments.
- g. This zoning change had and has a detrimental and discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this important historical African American neighborhood.
- h. The two council members who serve on the Board of Directors of the Alliance (the applicant), Louis Morant and Raymond Newton, should not have voted on this issue or participated in discussion or influenced others due to their conflict of interest.
- i. Councilman Goggans, the architect who was paid to design and submit plans for approval of the Mercom Technology Park PD in 2015, should not have voted on this issue or participated in discussion or influenced others due to his conflict of interest.

PARTIES

Plaintiffs

16. Plaintiffs, Edward A. Powers and Elizabeth M. Powers, husband and wife, are adult individuals who reside at 188 St. Christopher Circle, Pawleys Island, Georgetown County, South Carolina, and own and live on land that directly adjoins the Mercom Technology Park, identified as TMS No. 04-0204-059-00-00, recorded in Deed Book 781, Page 207, in the Office of Recorder of Deeds for Georgetown County on December 5, 2007. Edward and Elizabeth Powers have signed an Affidavit attached hereto as Exhibit “1,” and incorporated herein by reference.

17. Plaintiff, Martha C. Green is an adult individual who resides at 18 Majors Court, Pawleys Island, Georgetown County, South Carolina, identified as Tax Map No. 04-0204-055-00-00, recorded in Deed Book 3308, Page 93, in the Office of Recorder of Deeds for Georgetown County on July 11, 2018. Martha Green has signed an Affidavit attached hereto as Exhibit “2,” and incorporated herein by reference.

18. Plaintiff, Steven E. Basso, is an adult individual residing at 40 Majors Court, Pawleys Island, Georgetown County, South Carolina, identified as Tax Map No. 04-0204-053-00-00, recorded in Deed Book 4067, Page 171, in the Office of Recorder of Deeds for Georgetown County on March 22, 2021. Steven Basso has signed an Affidavit attached hereto as Exhibit “3,” and incorporated herein by reference.

19. Plaintiff, James R. Sherman is an adult individual who resides at 212 Sherman Drive, Pawleys Island, Georgetown County, South Carolina, identified as Tax Map No. 04-0203-139-00-00, recorded in Deed Book 170, Page 744, in the Office of Recorder of Deeds for Georgetown County on July 10, 1979. James Sherman will sign and submit the Affidavit

attached hereto as Exhibit “4,” and incorporated herein by reference upon his return from traveling out of the area.

20. Plaintiffs, Alexander V. Picard and Jessica L. Picard, husband and wife, are adult individuals who reside at 24 Majors Court, Pawleys Island, Georgetown County, South Carolina, identified as Tax Map No. 04-0204-054-00-00, recorded in Deed Book 3491, Page 115, in the Office of Recorder of Deeds for Georgetown County on April 22, 2019. The Picards have signed an Affidavit attached hereto as Exhibit “5,” and incorporated herein by reference.

21. 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 “6,” and incorporated herein by reference.

22. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American community known as Parkersville.

23. 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.

24. 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 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.

25. The Parkersville PDA represents the interests of the named Plaintiffs herein as well as many other residents and landowners in the vicinity of the high density multi-family residential zoning change at issue in this case that threatens to continue a pattern of permanent and detrimental impact to this historical minority community.

26. 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 “7,” and incorporated herein by reference.

27. 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 “8,” and incorporated herein by reference.

28. 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.

29. 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.

30. 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).

31. 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.

32. 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.

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

34. 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 zoning change at issue.

35. Parkersville PDA, KIG, and PMI represent the interests of the named Plaintiffs herein as well as other adjoining landowners and landowners who reside in the immediate vicinity of the Mercom PD and other unconstructed Planned Development Districts that have not

been reverted in accordance with Georgetown County ordinances as set forth hereinafter, and who would have standing to challenge these and other decisions.

Defendants

36. 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.

37. 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).

38. 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.

39. Defendant, Alliance for the Economic Development for Georgetown County, owner of the lot of land at issue and applicant for the zoning change, is a 501(c)(3) nonprofit corporation organized and existing under the laws of the State of South Carolina, and according to the South Carolina Secretary of State, has a registered agent address of P.O. Box 12, Screven Street, Georgetown, Georgetown County, South Carolina.

BACKGROUND OF MERCOM PD

Title, Land Use & Zoning History

40. The relevant title, zoning, land use, and Comprehensive Plan FLU Map history of the 28.4 acres that make up the Mercom Technology Park PD is as follows:
- a. On March 2, 2004, Waccamaw Land, LLC (hereinafter “Waccamaw Land”) purchased the 28.4 acre tract (TMS No. 04-203-189-00-00) for \$300,000, pursuant to Deed recorded in Georgetown County at Deed Book 1519, Page 287. At that time, the land was zoned as Forest-Agriculture (FA) and upon information and belief, contained a barn structure that still exists. Waccamaw Land was in the landscaping business and used the land for its business.
 - b. On or about March 3, 2008, Waccamaw Land by its agent, Steve Goggans, of SGA Architecture, (a member of Council at the time of the present zoning change), applied for a zoning change from FA zoning to a Planned Development District for non-residential resort services use called “Pawleys Island Business Park PD,” based upon plans submitted by Goggans.
 - c. On or about June 10, 2008, Georgetown County Council approved the zoning change to a Planned Development District by Ordinance 2008-35 based on a perceived need for resort services in the Pawleys Island area.
 - d. On or about September 9, 2008, Georgetown County Council amended the Pawleys Island Business Park Planned Development District by Ordinance 2008-47 to include additional resort service uses. The land was not approved for residential use.

- e. Construction of the Pawleys Island Business Park Planned Development, approved in 2008, was never started or completed, and the approved Planned Development District was never built.
- f. On February 1, 2013, Waccamaw Land subdivided the 28.4 acre tract into three separate parcels by Subdivision Plat recorded in Georgetown County at Plat Slide 750, Page 1, as follows:
 - i. Parcel 1, (TMS# 04-0203-189-01-00), which contained 6.373 acres;
 - ii. Parcel 2, (TMS# 04-0203-189-00-00), which contained 7.388 acres;
 - iii. Parcel 3, (TMS# 04-0203-189-02-00), which contained 14.449 acres.
- g. On February 7, 2013, Waccamaw Land sold Parcel 2 to Mission Pawleys, Inc. (a church) for \$750,000, pursuant to Deed recorded in Georgetown County at Deed Book 2090, Page 09. Upon information and belief, Mission Pawleys renovated and used the existing barn building as a church.
- h. Upon information and belief, sometime in 2015, Mercom, Inc., a technology company, and the Alliance approached the County about supporting a plan to build a technology park on the Pawleys Island Business Commons PD that would allegedly bring needed jobs to the Pawleys Island community and the Parkersville neighborhood.
- i. Upon information and belief, Mercom, or its designated representative, entered into a sales contract with Mission Pawleys to purchase Parcel 2, and the Alliance entered into a sales contract with Waccamaw Land to purchase Parcel 3 of the Pawleys Island Business Commons PD. Both sales contracts were contingent upon successfully obtaining a zoning change to allow for a technology park.

- j. On or about June 3, 2015, a zoning change application was submitted by agents for Waccamaw Land and Mission Pawleys to change the zoning on all three lots of the existing Pawleys Island Business Commons Planned Development District from resort services to a technology park and to change the name to “Mercom Technology Park Planned Development.” The requested zoning change was based on plans designed and submitted by Steve Goggans of SGA Architecture. A copy of said zoning change application and plans is attached hereto as Exhibit “9,” and incorporated herein by reference.
- k. On or about October 20, 2015, Georgetown County Council approved the zoning change for the Mercom Technology Park Planned Development by Ordinance 2015-41, which is attached hereto as Exhibit “10,” and incorporated herein by reference.
- l. Thereafter, on February 25, 2016, Parcel 3, (hereinafter “Alliance Parcel”), was transferred from Waccamaw Land to the Alliance for \$950,000 pursuant to Deed recorded in Georgetown County at Deed Book 2748, Page 233. The Alliance borrowed money for the purchase from South Carolina Public Service Authority (hereinafter “Santee Cooper”) and signed a Note secured by a Mortgage on the Alliance Parcel in favor of Santee Cooper in the amount of \$950,000, recorded in Georgetown County at Record Book 2748, Page 243.
- m. On February 26, 2016, Parcel 2, (hereinafter “Mercom Parcel”), was transferred from Mission Pawleys to Mercado Holdings, LLC, for \$525,000, by Deed recorded in Georgetown County at Deed Book 2748, Page 238. On April 25, 2016, Mercado Holdings, LLC, transferred the property for nominal consideration

to Mercom, Inc., by Deed recorded in Georgetown County at Deed Book 2785, Page 97.

- n. Waccamaw Land retained ownership of Parcel 1, (hereinafter “Waccamaw Land Parcel”) which at all times pertinent hereto was and is vacant and used to store materials for its landscaping business.
- o. Construction of the Mercom Technology Park Planned Development was never started or completed. The PD was never built nor were any written extensions of development rights ever requested or granted by Georgetown County.
- p. Upon information and belief, in 2020, the Alliance entered into a contract to sell the Alliance Parcel to a developer for \$1.4 million contingent upon obtaining a zoning change to allow for the construction of a 182-unit high density residential apartment complex on the Alliance Parcel of the Mercom PD.
- q. Pursuant to the sales contract, on August 17, 2020, a Developer, as agent for the Alliance, submitted an application to change the zoning and amend the Mercom Technology Park PD to allow high density residential on land that was neither zoned for residential use nor designated for residential use by the Comprehensive Plan FLU Maps. Owners of the other two parcels of the three parcels that make up the Mercom PD did not join in this application to amend.
- r. On November 19, 2020, after public hearing, the Georgetown County Planning Commission unanimously voted to recommend denial of this proposed zoning change.
- s. The application for zoning change was ultimately withdrawn.

- t. At all times pertinent hereto, the Waccamaw Land and Alliance Parcels were and remain vacant and unimproved. The barn building on the Mercom Parcel was used for a short time as an office by Mercom, Inc. Upon information and belief, the business of Mercom, Inc., has been since been sold, and the barn building is no longer used.
- u. On July 28, 2022, the Mercom Parcel was transferred to The Barn on Petigru, LLC, (hereinafter “The Barn”), for nominal consideration pursuant to Deed recorded in Georgetown County at Deed Book 4393, Page 346.
- v. The Alliance Zoning Change Application that is the subject of this action was submitted on August 16, 2022.

I.

MERCOM TECHNOLOGY PARK IS NOT A VALID
PLANNED DEVELOPMENT DISTRICT

A. Mercom PD Invalid as Single Use

41. The Planned Development District at issue was originally approved in 2008 as a single use PD for resort services (*i.e.*, commercial zoning), and amended in 2015 as a single use PD for a technology park (*i.e.*, commercial zoning).

42. Single use Planned Developments do not comply with the South Carolina Planning Act requirement of “mixed uses” pursuant to Section 6-29-720(c)(4), and the South Carolina Supreme Court has declared single use Planned Development Districts to be invalid. Sinkler v. County of Charleston, 387 S.C. 67, 690 S.E.2d 777 (2010).

43. Both the Mercom Technology Park and the Pawleys Island Business Commons were nothing more than commercial zoning classifications and did not qualify as legitimate mixed use Planned Development Districts.

44. Georgetown County has a longstanding history of approving Planned Development Districts and Planned Development District Amendments for single use developments.

45. Neither the Pawleys Island Business Commons nor the Mercom Technology Park was ever a valid Planned Development District from the inception, and accordingly, the Mercom Technology Park PD is not capable of being amended as a Planned Development District.

B. Georgetown County Reversion Ordinance

46. Even if the Mercom PD had been a valid mixed use Planned Development District at the time it was approved, Georgetown County Zoning Ordinance 1703 requires Planned Development Districts that have been approved, but upon which construction has not started within two years of approval, to revert to their original zoning classifications as follows:

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

If construction is not begun within two (2) years after rezoning to a Planned Development, the Planning Commission *shall* review the zoning of said property, and, unless presented cogent reasons to allow additional time, *shall* initiate proceedings to return the zoning of the property to its original classification, or to such classification as the Planning Commission deems consistent with the Comprehensive Plan. If additional time is allowed, the Planning Commission *shall* review the zoning of the property at the expiration of such additional time if construction has still not begun.

The Planning Staff *shall* periodically review the status of property which has been rezoned Planned Development, and bring to the attention of the Planning Commission any property which falls within the scope of this section. (emphasis added.)

47. In the present case, construction of the detailed plans submitted and approved for the Mercom Technology Park PD rezoning in 2015, was neither started nor finished and at all times pertinent hereto, the Planned Development was and remains wholly unconstructed.

48. According to Ordinance 1703, the Mercom Technology Park Planned Development District zoning should have been reviewed by the Planning Commission in 2017, and proceedings should have been initiated to “return the zoning of the property to its original classification, or to such classification as the Planning Commission deems consistent with the Comprehensive Plan.”

49. The original zoning classification of the land was Forest Agriculture (FA) and is the most consistent classification with the objectives of the Comprehensive Plan.

50. As a result of the County’s failure to comply with Ordinance 1703, the Mercom Technology Park PD improperly remained zoned as a Planned Development District after 2017.

Multiple Requests to County

51. Beginning in late 2020, Plaintiffs KIG, PMI and Parkersville PDA and other citizens, on numerous occasions, requested the Planning Commission to comply with Ordinance 1703, and review and revert the Mercom Technology Park PD to its former FA zoning classification.

52. On March 4, 2021, more than a year before the Alliance zoning change application was submitted, Plaintiff KIG directed a letter to the Planning Commission enclosing a Petition, which at that time contained the signatures of more than 900 citizens of Parkersville and the South Waccamaw Neck, formally requesting the County to comply with Ordinance 1703 and revert the Mercom PD to its original FA zoning classification. The letter was copied to the Georgetown County Administrator and the Chairman of County Council. A copy of said letter is attached hereto as Exhibit “11,” and incorporated herein by reference.

53. Georgetown County neither acknowledged nor responded to the letter, and at all times pertinent hereto, failed and/or refused to comply with the requirements of Ordinance 1703 with respect to the Mercom PD.

54. It has been a longstanding practice in Georgetown County to allow unconstructed Planned Development Districts to exist long after they should have been reviewed and reverted according to Ordinance 1703, to the detriment of the public.

55. There are Planned Development Districts located throughout the Waccamaw Neck that were approved many years ago, but never constructed, and that have not been reviewed and reverted in accordance with Ordinance 1703.

56. Georgetown County's continued failure and refusal to comply with Ordinance 1703 has caused harm and created a risk of imminent and future injury to Plaintiffs and other landowners in the Waccamaw Neck.

57. Georgetown County's continued failure and refusal to perform the requirements of Ordinance 1703 has had a substantially greater negative impact on minority neighborhoods and minority landowners.

Vested Development Rights Expired in 2017

58. Planned Development Districts are authorized and governed by the South Carolina Planning Act, Section 6-29-740, as a unique zoning category that is based on the specific development plan submitted for zoning approval.

59. The zoning of each Planned Development District is unique and inextricably tied to the approved land development plan upon which it is based.

60. Under the South Carolina “Vested Rights Act,” S.C. Code, (hereinafter “Vested Rights Act”), Section 6-29-1510, *et seq.*, and Development Regulations of Georgetown County, Article 5, Section 4-1, the vested right to build the Mercom Technology Park expired in 2017.

61. The Vested Rights Act, Section 6-29-1520(10), defines a vested right as “the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan”

62. The Vested Rights Act, Section 6-29-1530(A)(1), authorizes counties to provide processes for the establishment and extension of vested rights within the parameters of state law.

63. The Development Regulations of Georgetown County, Article V, Section 4-1(B), states in pertinent part as follows:

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

64. In the present case, there was no written request for extension made by the developer or landowner after the Mercom PD was approved in 2015. Accordingly, development rights expired in 2017.

II.

ALLIANCE APPLICATION INVALID

65. Even if this were a request to amend a legitimate, valid and viable Planned Development District, the application to amend was submitted by the Alliance alone. The other two owners of the Mercom PD, *i.e.*, Waccamaw Land and The Barn, did not join in the application.

66. Georgetown Zoning Ordinance 619.501 specifically requires that the application for a Planned Development amendment “shall be filed jointly by all of the owners of the properties in the plan.” In this case there are three owners of properties in the Mercom PD Plan.

67. South Carolina Planning Act, Section 6-29-720(4) and Section 6-29-740, specifically define and govern the “Planned Development District” as a unique zoning unit characterized by a “uniform site design.”

68. The Planned Development District zoning classification was created to operate as a unit with a uniform plan and purpose, and is not meant to be dissected, parsed, and amended as separate, independent zoning units within the Planned Development at the whim of only one of multiple owners and without regard to the PD as a zoning unit with uniform site design.

69. Georgetown County has a longstanding history of allowing the “Planned Development District” zoning tool to be misused by Developers in this way and other ways that are contrary to the letter and intent of the South Carolina Planning Act and South Carolina case law.

70. An amendment of a Planned Development District affects the entire zoning unit, and all landowners involved in the Mercom Technology Park PD zoning unit should have been part of an application to amend the Planned Development District in order for it to be valid and properly considered.

III.

PROPOSED ZONING CHANGE VIOLATES STATE LAW AND GEORGETOWN COUNTY ORDINANCES

A. SOUTH CAROLINA LAW

i. Zoning is Required to be Consistent with Comprehensive Plan

71. South Carolina 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.”

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

73. South Carolina 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.”

74. South Carolina Planning Act, Section 6-29-740, specifically states the purpose of Planned Development Districts is to “achieve the objectives of the comprehensive plan.”

75. 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. 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)).

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

ii. Zoning Must Benefit Public Welfare

77. South Carolina Planning Act, Section 6-29-720(B), requires that zoning regulations “be made with a view to promoting the purposes set forth throughout this chapter.”

78. South Carolina Planning Act, Section 6-29-710, sets forth those purposes to include:

“promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare . . . to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets . . . to protect and preserve scenic, historic, or ecologically sensitive areas . . . to regulate the density and distribution of populations . . . to further the public welfare in any other regard”

B. GEORGETOWN COUNTY COMPREHENSIVE PLAN PROVISIONS

i. General

79. The “Introduction” to the Georgetown County Comprehensive Land Use Plan enacted in August of 1997, specifically reinforces the requirements of the South Carolina Planning Act and states 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 [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. Mercom PD Parcels & Adjoining Land

80. The current Comprehensive Land Use Plan and Maps enacted on March 10, 2015, by Georgetown County Ordinance number 2015-05, specifically designate all three parcels of the Mercom Technology Park PD, including the Alliance Parcel, as “commercial,” which allows *no* residential use or density.

81. None of the land that adjoins the Alliance parcel is designated by the Comprehensive Plan Maps as “high density” residential.

82. The residential areas of the traditional Parkersville residential community, including adjoining residential parcels, are designated by the Comprehensive Plan and Maps as “low density” or “medium density.”

iii. Density Increases Restricted in South Waccamaw Neck

83. 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 “12,” and incorporated herein by reference.

84. The Comprehensive Plan further states as follows with respect to goals for 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 “13,” and incorporated herein by reference.

85. The clear intention of this density restriction is to allow density increases in new development *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.

86. In the present case, the Alliance requested to increase residential density on a parcel that allowed no residential density without providing a corresponding density decrease or elimination. Accordingly, the Alliance request does not fall within the exception to the density restriction.

87. The Comprehensive Plan states on Page One that it “will serve as a basis for zoning map amendments [and] zoning code revisions . . . so the future growth and development of Georgetown County can occur according to local goals and objectives.” A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “14,” and incorporated herein by reference.

88. The stated goals and objectives for the South Waccamaw Neck, as set forth above, explicitly restrict density increases to four very limited and exceptional circumstances where density is offset by the use of planning tools. Nowhere in the Comprehensive Plan does it suggest that planning tools can be used to circumvent the density restrictions or other provisions of the Comprehensive Plan.

89. 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.

90. These particular density restrictions were also included to prevent the kinds of arbitrary increases in density requested in the Alliance zoning change application which proposed to increase residential density from zero to high density without offering any need, reason, or public benefit, or otherwise meeting any of the explicit requirements of the Comprehensive Plan.

iv. Alliance Zoning Change Request Not In Compliance

91. The Alliance requested a zoning amendment to increase residential density from zero to high density which allows up to 16 dwelling units per acre.

92. South Carolina state law requires zoning amendments to be in accordance with the Comprehensive Plan. The Alliance amendment request was in direct conflict with the explicit and unambiguous language of the Comprehensive Plan and maps.

93. South Carolina state law requires zoning amendments to have the purpose of promoting general public welfare and not just the interest of a single landowner before it can be considered for approval. In this case, the zoning change negatively affects public welfare, including that of Plaintiffs, and serves only to promote the interests of the single landowner applicant, the Alliance, whose Board of Directors includes two council members, Louis Morant and Raymond Newton, both of whom voted to approve it.

94. A decision to change zoning to allow a high density residential zoning in contravention of the Comprehensive Plan sets a precedent for (a) ignoring the Comprehensive Plan in making future land use decisions, and (b) allowing high density residential re-zoning on many acres of other land in the Waccamaw Neck that is not zoned for either residential use or high density.

95. The cumulative incremental impact of density increases on 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 the minority community of Parkersville.

C. GEORGETOWN COUNTY REQUIREMENTS

96. Planning Act, Section 6-29-740, explicitly provides that Planned Development District amendments constitute zoning ordinance amendments and must follow prescribed procedures for the amendments.

97. In addition to required compliance with the Comprehensive Plan as set forth above, according to Georgetown County zoning amendment procedure, proposed zoning amendments must be justified by “public necessity, convenience, general welfare or good zoning practice” before County Council has the authority to approve.

98. Georgetown County Zoning Ordinance 1701 requires as follows with respect to amending zoning ordinances:

“When the public necessity, convenience, general welfare or good zoning practice justifies such action and after the required review and report of the Planning Commission, the County Council may undertake the necessary steps to amend the Zoning Ordinance.”

A copy of Ordinance 1701 is attached hereto as Exhibit “15,” and incorporated herein by reference.

99. The “required review and report of the Planning Commission” referenced in Ordinance 1701 is set forth in the Georgetown County Planning Commission Bylaws which state in Article V, Section 2 that “[a]ll zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan.” A copy of this Bylaw is attached hereto as Exhibit “16,” and incorporated herein by reference.

100. The Georgetown County zoning change application form states that “the burden of proving the need for the proposed amendment rests with the applicant.” No “need” for the proposed amendment was set forth on the completed Alliance application form or otherwise.

101. The Alliance zoning change request neither conformed to the Comprehensive Plan nor was justified by public necessity, convenience, general welfare, or good zoning practice.

D. PLANNING COMMISSION DID NOT RECOMMEND APPROVAL

102. Planned Development Districts are created by authority of the Planning Act, Section 6-29-740, which specifically states as follows with respect to authority to amend: “[A]mendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission.”

103. The Georgetown County Planning Commission held a public hearing on the Alliance zoning change application on September 15, 2021, and unanimously voted to deny the zoning change application, citing inconsistency with the comprehensive plan as the basis for the decision.

104. In the present case, the Planning Commission did not recommend approval of this requested amendment to the Planned Development District, and under Section 6-29-740 of the Planning Act, there is no authority for Council to amend it.

IV.

COUNTY COUNCIL DECISION IMPROPER, ARBITRARY & CAPRICIOUS

i. Background of Public Hearing and Record

105. Notwithstanding that Planning Commission did not recommend approval of the PD amendment, the zoning change application and proposed ordinances were placed on the

County Council agenda for First Reading on October 11, 2022, Second Reading on October 25, 2022, Third Reading and public hearing on November 8, 2022.

106. A total of approximately 375 letters of opposition were received, including letters submitted on September 15, 2022, October 25, 2022, and November 8, 2022, by legal counsel on behalf of Plaintiffs and thousands of community residents outlining the objections that form the basis of this complaint. A copy of said letters from counsel are attached hereto as Exhibit “17,” and incorporated herein by reference. There were no letters in support.

107. A Petition containing the signatures of more than 1,000 members of the community was re-submitted in opposition to the zoning change, hundreds of residents of Parkersville and the South Waccamaw Neck attended Second and Third Reading and the public hearing to express their opposition to the proposed zoning change, and dozens of community members spoke on the record in opposition, including neighboring landowners and legal counsel for adjoining landowners.

ii. Planning Department Input

108. The Georgetown County Planning Department submitted “Agenda Request Forms” to Council prior to both Second and Third Readings which contained, *inter alia*, “Points to Consider” for each of the proposed ordinances. Said Agenda Request Forms and copies of proposed Ordinances 22-36 and 22-37 are attached hereto as Exhibit “18,” and incorporated herein by reference.

109. The Planning Department offered oral presentations at the Second and Third Readings based on the Agenda Request Forms.

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

- a. Failed to consider that the Mercom Technology Park PD and its predecessor Pawleys Island Business Commons did not qualify as Planned Development Districts due to their single use classification.
- b. Did not address failure of Planning Commission to revert the Mercom PD in accordance with Zoning Ordinance 1703.
- c. Failed to address the South Carolina state law requirement that the requested zoning change be consistent with the Comprehensive Plan and that it promote general public welfare and other considerations.
- d. Failed to address the county ordinance requirement that zoning amendments be consistent with the Comprehensive Plan and justified by public necessity, convenience, general welfare or good zoning practice before County Council has the authority to approve
- e. Failed to address Planning Commission finding that the requested zoning change was inconsistent with the Comprehensive Plan.
- f. Failed to consider the Planning Commission's decision to recommend denial of the zoning change.
- g. Failed to address the Applicant's failure to meet its burden to prove a need for the zoning change.

- h. Failed to disclose that none of the adjoining parcels were designated by the Comprehensive Plan Maps as “High Density Residential” which was the classification requested by the Alliance.
- i. Incorrectly represented that all adjoining parcels were zoned as General Residential and did not address the county’s failure to bring existing non-compliant General Residential zoning into accordance with the Comprehensive Plan as required by state law.
- j. Failed to note that the entire Parkersville residential community is designated by the Comprehensive Plan and maps as “Medium Density” or “Low Density.”
- k. 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.
- l. Failed to consider reliable, accurate, up-to-date, traffic data or to require impartial independent traffic studies, and instead allowed traffic data to be presented by the Alliance that was substantially outdated in a geographic area that has experienced significant increase in population and traffic.
- m. Failed to note serious flooding and stormwater issues that currently exist on neighboring properties and in the Parkersville community in general as a result of over-development and irresponsible zoning changes and land use decisions.
- n. Failed to consider the cumulative negative impact of incremental development approvals on the Parkersville neighborhood and community.
- o. Failed to note the importance of protecting the historical Parkersville Community.

- p. Failed to address and consider the detrimental and discriminatory impact of this and other zoning and land use decisions on the Parkersville community.
- q. Failed to note that the plan submitted in support of the zoning change does *not* constitute affordable housing, as defined by the Comprehensive Plan and/or other law, and does *not* meet any affordable housing goal of the Comprehensive Plan.
- r. Failed to provide accurate, reliable, objective and impartial information for consideration by the governing authority and instead provided outdated and unreliable information slanted to favor the Alliance, the agent for the Alliance, and the undisclosed Developer.

111. Despite being requested to do so, council members Louis Morant and Raymond Newton, both of whom serve as Directors on the Alliance board, did not recuse themselves from agenda items involving the Alliance's zoning change application and instead fully participated in the discussion and vote notwithstanding the conflict of interest.

112. Councilman Steve Goggans, the architect who prepared and submitted the plans upon which both the Mercom Technology Park PD and the Pawleys Island Business Commons were based in 2015 and 2008, respectively, (Exhibit "9"), also participated in the discussion and vote to amend this Planned Development District that he had been paid to design.

113. Council voted 4-1 at both Second and Third Readings to approve the Alliance zoning change and proposed ordinances 22-36 and 22-37, despite the recommendation by Planning Commission to deny on the basis of incompatibility with the Comprehensive Plan. Council members Morant, Newton, Goggans and Johnson voted to approve and Anderson voted to deny.

114. The decision by Council to approve the Alliance amendments was arbitrary, capricious, without any basis or justification in law or fact, in violation of state and local law and procedure, and/or based on conflicts of interest.

115. The decision by Council is in direct conflict with South Carolina law and Georgetown County law as follows:

- a. The Mercom PD was an invalid Planned Development District and was not capable of amendment because (a) it was a single use PD and void from its inception under Planning Act, Section 6-29-720(c)(4) and other law; and (b) should have reverted to its former zoning classification pursuant to Georgetown County Ordinance 1703.
- b. The application to amend the Mercom Planned Development District was submitted by only one of the three owners in violation of the requirement that all owners join in the application according to Georgetown County Zoning Ordinance 619.501 and other law.
- c. The Planning Commission did not recommend approval of the Mercom PD amendment due to its conflict with the Comprehensive Plan, and recommendation by Planning Commission was a prerequisite to Council's authority to amend a Planned Development District according to Planning Act, Section 6-29-740.
- d. The zoning change was not in accordance with the Comprehensive Plan as required by Planning Act, Section 6-29-720(A) and (B); Section 6-29-540, Section 6-29-740; Section 6-29-1120(5), and other law as set forth herein.

- e. The zoning change did not did not promote public welfare and other specific considerations as required by Planning Act, Section 6-29-720(B), and Section 6-29-710.
- f. The zoning change was not justified by public necessity, convenience, general welfare or good zoning practice as required by Georgetown County Zoning Ordinance 1701, which governs zoning amendments.
- g. The plan submitted in support of the zoning change does not constitute affordable housing, as defined by the Comprehensive Plan and/or other law, and does not meet any affordable housing goal of the Comprehensive Plan.
- h. This zoning change has a detrimental discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this historical African American neighborhood.
- i. The two council members who serve on the Board of Directors of the Alliance (the applicant), Louis Morant and Raymond Newton, should not have voted on this issue or participated in discussion or influenced others due to their conflict of interest.
- j. Councilman Goggans, the architect who was paid to design the Mercom Technology Park PD at issue in this matter, should not have voted on this issue or participated in discussion or influenced others due to his conflict of interest.

V.

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 Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-760(C), states that “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment.” Plaintiffs Powers, Green, Basso, Sherman, and Picard are owners of land that adjoins the Alliance Parcel, and Plaintiffs Parkersville PDA, KIG, and PMI are the representatives of these and other neighboring landowners with respect to this matter.
- b. 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 affected by approval of Ordinances 22-36 and 22-37, and they have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions.

120. Alternatively and in addition, Plaintiffs have constitutional standing to challenge these ordinances pursuant to Article III of the United States Constitution inasmuch as (a) they have suffered an injury by virtue of this zoning change to allow a residential use and increase in residential density on property that directly adjoins land owned by them and that did not previously allow any residential use or density; (b) the injury was caused by the improper approval of the ordinances; and (c) the injury is redressable by a favorable decision of this court declaring that these ordinances are 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 rezoning and land development decisions that would impact many acres in the Waccamaw Neck, and future guidance by this court is necessary to determine the validity of Georgetown County's repeated disregard of the requirements of the South Carolina Planning Act and the Comprehensive Plan in the Waccamaw Neck.

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 Mercom PD and other land where unconstructed Planned Development Districts have not been reviewed and reverted in accordance with Ordinance 1703. The issues in this case fall squarely within the mission and purpose of these citizens organizations as set forth above.

COUNT I

DECLARATORY JUDGMENT

Mercom PD was not a valid Planned Development District

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 as a single use Planned Development District, the classification of Mercom Technology Park PD as a Planned Development District was null and void from its inception and was improperly considered as a Planned Development District amendment, thereby rendering Ordinances 22-36 and 22-37 null and void and of no force or effect.

COUNT II

DECLARATORY JUDGMENT

Georgetown County Has a Statutory Mandate to Revert
Unconstructed Planned Developments Districts

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 Georgetown County has a statutory mandate pursuant to Georgetown County Zoning Ordinance 1703 to review and

initiate proceedings to revert all Planned Development Districts upon which construction has not begun within two years of approval, to their former zoning classification or other zoning classification that conforms with the comprehensive plan.

127. There is presently no vested right to develop the Mercom PD. It should have reverted to FA or other appropriate zoning in 2017 and was improperly considered as a Planned Development District amendment thereby rendering Ordinances 22-36 and 22-37 null and void and of no force or effect.

COUNT III

DECLARATORY JUDGMENT

Approval of Ordinances Was a Violation of South Carolina Comprehensive Planning and Enabling Act

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

129. Plaintiffs seek declaratory judgment from this Court that, as set forth herein, the South Carolina Comprehensive Planning Enabling Act specifically requires zoning amendments to be made in accordance with the comprehensive plan for the jurisdiction.

130. The Alliance zoning amendment was not made in accordance with the Georgetown County Comprehensive Plan, and, on the contrary, was made in direct conflict with the explicit and unambiguous language of the Comprehensive Plan.

131. As set forth herein, the South Carolina Comprehensive Planning Enabling Act, further requires that zoning regulations must “promote public welfare, prevent overcrowding of land, avoid undue concentration of population, lessen congestion in the streets, protect and preserve scenic, historic, or ecologically sensitive areas, regulate density and distribution of population and further public welfare.”

132. The Alliance zoning amendment does not promote the purposes required under state law or county law, and, on the contrary, negatively affects public welfare and has a discriminatory impact on the Parkersville community.

133. In approving these ordinances, the County disregarded the input of thousands of citizens and adjoining landowners who expressed opposition to the zoning change for all the legitimate and relevant reasons required to be considered by the South Carolina Comprehensive Planning Enabling Act and local law.

134. For these reasons, the County violated the South Carolina Comprehensive Planning Enabling Act and other law by approving the Alliance zoning amendments, thereby rendering Ordinances 22-36 and 22-37 null and void and of no force or effect.

COUNT IV

DECLARATORY JUDGMENT

Approval of Ordinances was a Violation of County Law

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

136. Plaintiffs seek declaratory judgment from this Court that, as set forth herein, Georgetown County Zoning Ordinance 1701 requires that “public necessity, convenience, general welfare or good zoning practice” must justify a zoning change before Council has authority to amend zoning.

137. The Alliance zoning amendment was not justified by public necessity, convenience, general welfare or good zoning practice, nor did Council take this into consideration in its decision. On the contrary, the overwhelming weight of evidence

demonstrated that the proposed zoning change had a negative effect on general public welfare and a discriminatory impact on the Parkersville minority community.

138. The Georgetown County Zoning Amendment Application requires the applicant to prove a need for the zoning change. The Alliance did not meet its burden and presented no evidence of need for the amendment, and Council did not consider this in its decision.

139. Approval of the Ordinances 22-36 and 22-37 was arbitrary and capricious and in violation of Georgetown County law rendering them null and void and of no force or effect,

COUNT V

DECLARATORY JUDGMENT

Alliance Application Invalid

140. Paragraphs 1 through 139, above, are incorporated by reference as though fully set forth herein.

141. Plaintiffs seek declaratory judgment from this Court that an application to amend a Planned Development District should have been brought by all owners of the Planned Development as set forth herein.

142. The Alliance application was not brought by all owners and was invalid, incomplete and/or otherwise defective rendering Ordinances 22-36 and 22-37 null and void and of no force or effect.

COUNT VI

DECLARATORY JUDGMENT

Unlawful Spot Zoning

143. Paragraphs 1 through 142, above, are incorporated by reference as though fully set forth herein.

144. Plaintiffs seek declaratory judgment from this Court that the Alliance requested a zoning change from commercial to high density residential on a parcel of property surrounded by land that is designated by the Comprehensive Plan Map as either commercial or as medium density residential.

145. The classification of high density is substantially different from medium density in that it allows a maximum of more than three times as many homes per acre. It is substantially different from Commercial zoning which allows zero residential density.

146. There is no adjoining land that is designated as high density by the Comprehensive Plan Map.

147. Approval of Ordinances 22-36 and 22-37 amounts to unlawful spot zoning thereby rendering them null and void and of no force or effect.

COUNT VII

ATTORNEYS FEES FROM GEORGETOWN COUNTY

148. Paragraphs 1 through 147, above, are incorporated by reference as though fully set forth herein.

149. 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.

150. 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. Ordinances 22-36 and 22-37 are null, void and of no force or effect as set forth herein.
- b. Georgetown County Planning Commission has a statutory mandate to comply with Zoning Ordinance 1703 and initiate reversion proceedings for the Mercom PD and all other Planned Development Districts upon which construction has not begin within two years of approval.
- c. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County.
- d. 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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January 6, 2023
Pawleys Island, South Carolina