

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
Dorchester Trust Foundation)
)
Plaintiff,)
)
 vs.)
)
Dorchester County & Dorchester County)
Council)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Civil Action No.: 2021-CP-40-____

SUMMONS

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address show below, within thirty days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/ Michael G. Martinez
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November 5, 2021

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	Civil Action No.: 2021-CP-40-____
)	
Dorchester Trust Foundation)	
)	
Plaintiff,)	
)	COMPLAINT
vs.)	(non-jury)
)	
Dorchester County & Dorchester County)	
Council)	
)	
Defendants.)	
_____)	

Introduction

Plaintiff, Dorchester Trust Foundation (the Foundation), seeks declaratory and injunctive relief against Defendants, Dorchester County and Dorchester County Council for their arbitrary and capricious adoption of a zoning regulation expanding the conditional uses for the Conservation Zoning District to permit gasoline stations and convenience or quick stop stores. In support of its claim for relief, the Foundation submits the following:

Parties

1. This is an action for declaratory judgment and injunctive relief arising out of Dorchester County Council’s adoption of an amendment to Dorchester County’s zoning ordinance expanding the conditional uses for District 5 of the Ashley River Historic District Overlay Zone, located within the boundaries of Dorchester County, as designated by Dorchester County Zoning Ordinance sections 11.5.2 and 11.5.7, and Exhibit C.
2. Plaintiff Dorchester Trust Foundation is a nonprofit 501(c)(3) organization founded in 2008, and headquartered in Summerville, Dorchester County, South Carolina.

3. The mission of the Foundation is to conserve and preserve Rosebrock Park from future development and provide additional passive nature-based recreational space for Dorchester County citizens and the general public, and to provide stewardship to the natural, cultural, and historic resources of the Historic and Scenic Ashley River Corridor.
4. Rosebrock Park is a parcel of property located at the intersection of SC 165 (Bacons Bridge Road) and SC 61 (Ashley River Road), also known as Cooks Crossroads.
5. Cooks Crossroads is located within District 5 of the Ashley River Historic District Overlay Zone, which is located within Dorchester County.
6. The Foundation is the current owner of the tract where Rosebrock Park is located, which corresponds to Dorchester County tax map identification number 160-00-00-018.
7. Defendant Dorchester County is a political subdivision of the State of South Carolina and the governing authority for the geographic region of Dorchester County, South Carolina.
8. Defendant Dorchester County Council is a body politic, incorporate, and governing body of Dorchester County, South Carolina.

Jurisdiction and Venue

9. This Court has jurisdiction over the parties because Plaintiff is a corporation organized and headquartered in Dorchester County, South Carolina, and Defendants are legislative bodies or political subdivisions of South Carolina. Additionally, Plaintiff is a property owner of land subject to the zoning ordinance pursuant to section 6-29-760 of the South Carolina Code, and Plaintiff is a person whose rights are affected by a municipal ordinance pursuant to section 15-53-30 of the South Carolina Code.
10. Venue is proper because a substantial part of the events giving rise to these claims occurred within Dorchester County.

Background

11. Rosebrock Park is located within Cooks Crossroads, its land constituting one of the four corners.
12. The Foundation is the current owner of the tract where Rosebrock Park is located, which corresponds to Dorchester County tax map identification number 160-00-00-018.
13. Lowcountry Land Trust, a 501(c)(3) qualified conservation entity, originally acquired the Rosebrock Park tract, utilizing funds issued by the South Carolina Conservation Bank.
14. The South Carolina Conservation Bank was established and funded by the South Carolina General Assembly to establish an ongoing funding source for the acquisition of property that preserves wildlife habitats, natural areas, historical sites, sites of unique ecological significance, forestlands, farmlands, watersheds, open space, and urban parks.
15. The Foundation was established to hold fee simple title to the tract, and Lowcountry Land Trust transferred the tract to the Foundation, subject to deed restrictions imposed by Lowcountry Land Trust and the South Carolina Conservation Bank.
16. Cooks Crossroads is the intersection of SC 165 (Bacons Bridge Road) and SC 61 (Ashley River Road) and serves as the gateway into the Ashley River Historic District. *Standing at the Crossroads—Designing a Gateway for the Future*, pp. 1.
17. The Ashley River Historic District is listed on the National Register of Historic Places, designated a “National Treasure” by the National Trust for Historic Preservation, and represents more than 300 years of cultural and ecological significance. *Id.* at 2.
18. Recognizing the importance of the Ashley River Historic District and the critical role Cooks Crossroads serves as its gateway, Dorchester County Council sought to establish

detailed and specific limitations and enhanced guidelines on development in Cooks Crossroads, and adopted the guidelines on March 18, 2019. *Id.*

19. Yet, less than two years later, County Council began attempting to amend those guidelines to accommodate a single business entity.
20. Upon information and belief, Parker's Kitchen had indicated its interest in opening a gas station and convenience store at Cooks Crossroads.
21. On July 12, 2021, Dorchester County Council, acting on behalf of Dorchester County, conducted first reading of a proposed ordinance to amend the conditional uses for Cooks Crossroads to include gas stations and convenience stores or quick stop businesses. The Council referred the ordinance to the Planning, Development, and Building Committee and the Planning Commission for public hearings and recommendations.
22. This was the second attempt by County Council to adopt this same amendment; it was previously rejected at third reading by unanimous vote on March 1, 2021.
23. Dorchester County Staff issued a report in advance of the July 12, 2021 meeting discussing the proposed amendment. The report reflects that gas stations were deliberately excluded as a conditional use from the original Cooks Crossroads design guidelines.
24. However, when "interest in developing a gas station . . . persisted," County Council requested staff prepare a zoning text amendment that would permit gas stations as a conditional use in Cooks Crossroads.
25. The purpose of the amendment was to "update the references and requirements for District 5 to preserve the natural beauty of the district while providing flexibility to allow certain conditional uses."

26. On August 12, 2021, the Dorchester County Planning Commission considered the proposed amendment to the zoning ordinance and received public comment. The motion to recommend denial of the proposed amendment split on a 2-2 vote, and the ordinance was returned to County Council with no recommendation.
27. On August 16, 2021, the County Council conducted second reading and a public hearing on the proposed amendment.
28. On September 7, 2021, the County Council received public comment on the proposed ordinance.
29. During the public comment periods offered during County Council meetings and in submitted letters, the Foundation opposed the expansion of the conditional uses, citing potential negative environmental impacts.
30. Finally, on September 7, County Council adopted the proposed amendment at third reading, permitting gas stations and convenience or quick stop stores as a conditional use within Cooks Crossroads.

Regulatory Framework

31. The General Assembly adopted the Local Government Comprehensive Planning Enabling Act (Planning Act), outlining certain requirements and authority for local governments in guiding development. S.C. Code Ann. § 6-29-310 *et seq.*
32. The Planning Act requires local planning commissions to develop a local comprehensive plan with several required enumerated elements, which must be updated at least every ten years. S.C. Code Ann. § 6-29-340; S.C. Code Ann. § 6-29-510.
33. Specifically, the comprehensive plan must include, among others, a “land use element which considers existing and future land use by categories” and a “natural resources

element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands, and soil types.” S.C. Code Ann. § 6-29-510(D)(3) & (D)(7).

34. Once the governing body has adopted at least the land use element of the comprehensive plan, the Planning Act authorizes local governments to adopt zoning ordinances “to help implement the comprehensive plan.” S.C. Code Ann. § 6-29-720(A).
35. The regulations adopted by the local government “must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter.” S.C. Code Ann. § 6-29-720(B).
36. The Planning Act mandates that zoning regulations “must be made for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.” S.C. Code Ann. § 6-29-710(A).
37. Consistent with this directive, zoning regulations must address several specific purposes, where applicable, including “to protect and preserve scenic, historic, or ecologically sensitive areas” and “to further the public welfare in any other regard specified by a local governing body.” S.C. Code Ann. §§ 6-29-710(A)(4) & (A)(8).
38. On May 1, 2007, utilizing its authority under the Planning Act, Dorchester County Council created the Ashley River Historic District Overlay Zone. *Dorchester County Zoning and Land Development Regulation*, § 11.5.1.
39. The Ashley River Historic District Overlay Zone sought to “promote responsible development and to mitigate the effect of new construction . . . so as to safeguard our local heritage, natural beauty, and economic and recreational resources; to conserve

wildlife habitat; to stabilize riverbank; and to protect water quality and marine nursery resources.” *Dorchester County Zoning and Land Development Regulation*, § 11.5.1.

40. The Historic District Overlay Zone was divided into distinct districts, with specific requirements for each district, including District 5. *Id.* at § 11.5.2.
41. Dorchester County’s Comprehensive Plan, most recently adopted January 7, 2019, established “Village Crossroads” as a future land use settlement type. *Dorchester County Comprehensive Plan*, pp. 18, 27.
42. The settlement character for “Village Crossroads” includes small traditional neighborhoods, regional scaled retail and employment centers, and small office and other employment uses. *Id.* pp. 27.
43. In addition, the Comprehensive Plan established the “Natural Riparian Corridor” as a future land use settlement type. *Id.* at 18-19.
44. The settlement vision for the “Natural Riparian Corridor” provides that it is a “highly restricted area given it encompasses swamps, streams, flood plains, and natural buffers needed to preserve these highly fragile and invaluable ecosystems” and development should be “conservation-based, considered on a case-by-case basis only, and must utilize low impact techniques to preserve and protect sensitive riparian and natural environments.” *Id.*
45. District 5 falls within a Village Crossroads, within a Natural Riparian Corridor, and is designated within the Conservation Zoning District by the County’s Zoning Ordinance. *Id.* at 18; *id.* at §11.5.13(a).

46. “Cooks Crossroads” is located within District 5 of the Historic District Overlay Zone. *See* §§ 11.5.7; 11.5.13(c); Section 11.5, Exhibits B & C; *Standing at the Crossroads—Designing a Gateway for the Future*.
47. As a result, development within District 5 “shall adhere to the design guidelines” contained in *Standing at the Crossroads*. *See* § 11.5.13(c).
48. In addition, all lots located within District 5 must “adhere” to the requirements of Article IX, Section 9.2. *Id.* at § 11.5.13(a)
49. Article IX of the Dorchester Zoning and Land Development Ordinance regulates rural zoning districts, which are intended to implement the “Comprehensive Plan policies related to agricultural, residential, commercial, and public uses, in rural areas that are intended for limited density and development.” *See* Article IX.
50. Section 9.2 established the Conservation District (CV), zoning provisions which are applied to natural areas designated for “Restricted-Conservation and/or Greenbelts on the County’s adopted Future Land Use Plan.” Article IX, Section 9.2.1(a).
51. These designated “natural areas” include significant landscapes of rural Dorchester County such as swamps and streams, major floodplains, significant wildlife habitat, and other culturally significant lands.” *Id.*
52. The Conservation District is designed to implement the goals of the Comprehensive Plan for “Conservation” areas to protect sensitive lands and encourage proactive conservation measures. Section 9.2.1(b).
53. Prior to County Council’s adoption of the amendment, section 9.2.3 excluded gasoline stations and quick stop or convenience stores as conditional uses within Conservation Districts.

54. Section 9.2.3 now authorizes such uses provided they conform with the conditions listed in Section 10.4.
55. The amended ordinance revised section 10.4.21(a) so that gas stations and quick stop or convenience stores are allowed only in Conservation Districts that are also designated as a “Village Crossroads” area on the County’s Future Land Use Map adopted in the Comprehensive Plan.
56. Section 10.4.21(b) emphasizes that development in District 5 must comply with the *Standing at the Crossroads* design guidelines adopted for Cooks Crossroads.
57. Finally, Section 10.4.21(c) imposes four additional conditions relating to gasoline station design and operations in Conservation Districts.
58. The originally adopted *Standing at the Crossroads* design guidelines for Cooks Crossroads specifically excluded gasoline stations and quick stop or convenience stores.
59. This deliberate prohibition is highlighted by the County’s own website for Cooks Crossroads, which emphasizes that the design guidelines would “allow for restaurants, retail services, and hotels while *prohibiting* multi-family development, *convenience stores and gas stations.*” See *Cooks Crossroads, Dorchester County Website*, found at <https://www.dorchestercountysc.gov/government/planning-development/planning-zoning/cooks-crossroads>, last visited on November 4, 2021 (emphases added).

FIRST CAUSE OF ACTION

Declaratory Judgment: Arbitrary and Capricious Adoption of Zoning Ordinance
(S.C. Code Ann. § 15-53-20 *et seq.*)

60. The foregoing allegations are incorporated by reference as if fully set forth in this cause of action.

61. County Council's decision to amend the Dorchester County Zoning Ordinance to expand the conditional uses for Conservation Zoning Districts to include gas stations and convenience stores or quick stops was arbitrary, capricious, and an abuse of discretion.
62. Because Cooks Crossroads is the sole area in Dorchester County designated as a Village Crossroads *and* located within a Conservation Zoning District, County Council's amendment to section 10.4.21(a) authorizes a gas station and convenience store *only* at Cooks Crossroads, contradicting the remainder of its entire Conservation District zoning.
63. Furthermore, the conditions outlined in section 10.4.21(c) make clear the intent is to specifically authorize a gasoline station at Cooks Crossroads because each condition relates only to gasoline station design and operations even as the subsection purports to additionally apply to quick stop and convenience stores.
64. County Council's decision to amend the zoning ordinance in this manner in order to benefit a single *potential* property owner in contravention of its own Comprehensive Plan, Zoning Regulatory framework, and the specific Cooks Crossroads enhanced design guidelines constitutes an action that is arbitrary, capricious, and an abuse of discretion.
65. Because County Council's adoption of the zoning amendment was arbitrary, capricious, and an abuse of discretion, Dorchester Trust Foundation seeks a judgment, pursuant to section 15-53-20, *et seq*, that County Council's September 7, 2021 zoning amendment expanding the conditional uses for Cooks Crossroads is illegal, void, and of no effect.

SECOND CAUSE OF ACTION

Declaratory Judgment: Violation of Dorchester County Comprehensive Plan
(S.C. Code Ann. §§ 6-29-720(B); 15-53-20; 15-53-30)

66. The foregoing allegations are incorporated by reference as if fully set forth in this cause of action.

67. The Planning Act mandates that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter.” *See* S.C. Code Ann. § 6-29-720(B).
68. As a result, the zoning ordinances adopted by Dorchester County Council that establish regulations for areas within the Natural Riparian Corridor and Village Crossroads areas must comply with the Comprehensive Plan’s goals and recommendations for each land use settlement type.
69. Thus, zoning regulations affecting the Cooks Crossroads area must implement the vision of the Natural Riparian Corridor and Village Crossroads areas adopted by the County’s Comprehensive Plan.
70. The Natural Riparian Corridor envisions the “lowest impact development” with the lowest density and smallest footprint possible and that utilize the highest quality stormwater best management practices.
71. Consistent with the need for the highest quality stormwater best management practices recommended by the Comprehensive Plan, the *Standing at the Crossroads* guidelines recognized that development there would have a “crucial impact on the adjacent Ashley River and the canal through Rosebrock Park that feeds directly into the river, so stormwater management is of *highest importance for the protection of the scenic river.*”
72. Similarly, the Village Crossroads area emphasizes walkability, low density small traditional neighborhoods, open space, and regional scaled retail and small office employment uses.

73. Gasoline stations are inconsistent with the type of low density and low impact development envisioned by either the Natural Riparian Corridor or Village Crossroads land use settlement type.
74. Furthermore, gasoline stations create significant risk of discharges of potentially hazardous materials such as gasoline, engine oil, or other engine related fluids.
75. The adoption of the ordinance permitting gasoline stations within a Natural Riparian Corridor with its “swamps, streams, flood plains, and natural buffers needed to preserve these highly fragile and invaluable ecosystems” exacerbates the significant risk of water quality harm, degradation, and contamination.
76. The ordinance expanding the conditional uses to include gasoline stations for the Cooks Crossroads area therefore contravenes the intent and goals of the County’s Comprehensive Plan and violates section 6-29-720(B)’s mandate that zoning regulations “must be made in accordance with the comprehensive plan.”
77. County Council’s decision to amend the zoning ordinance to expand the conditional uses in an ecologically sensitive area—previously recognized as such by County Council in its adoption of the Comprehensive Plan—represents an arbitrary and capricious action.
78. Because County Council’s adoption of the zoning amendment was arbitrary, capricious, and an abuse of discretion, the Foundation seeks a judgment, pursuant to section 15-53-30, declaring the zoning ordinance inconsistent with the Comprehensive Plan, thereby in violation of the Planning Act, and therefore null and void.

THIRD CAUSE OF ACTION

Declaratory Judgment: Violation of the Planning Act
(S.C. Code Ann. §§ 6-29-710(A)(4); 15-53-20; 15-53-30)

79. The foregoing allegations are incorporated by reference as if fully set forth in this cause of action.
80. The Planning Act mandates that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. *See* S.C. Code Ann. § 6-29-720(B).
81. As a result, the zoning ordinances adopted by Dorchester County Council that establish regulations for areas within the Natural Riparian Corridor and Village Crossroads areas must promote applicable purposes outlined in the Planning Act.
82. The Planning Act authorizes zoning regulations “to protect and preserve scenic, historic, or ecologically sensitive areas.” S.C. Code Ann. § 6-29-710(A)(4).
83. Additionally, the Planning Act authorizes zoning regulations “to further the public welfare in any other regard specified by a local governing body.” S.C. Code Ann. § 6-29-710(A)(8).
84. The Natural Riparian Corridor envisions the “lowest impact development” with the lowest density and smallest footprint possible and that utilize the highest quality stormwater best management practices.
85. Consistent with the need for the highest quality stormwater best management practices recommended by the Comprehensive Plan, the *Standing at the Crossroads* guidelines for Cooks Crossroads recognized that development there would have a “crucial impact on the adjacent Ashley River and the canal through Rosebrock Park that feeds directly into the river, so stormwater management is of *highest importance for the protection of the scenic river.*”

86. The Cooks Crossroads area serves as the gateway into the Ashley River Historic District and is designated within the Historic District Overlay Zone to “safeguard our local heritage, natural beauty, and economic and recreational resources; to conserve wildlife habitat; to stabilize riverbank; and to protect water quality and marine nursery resources.”
87. County Council recognized the importance of the Cooks Crossroads area as the gateway to the Ashley River Historic District in its adoption of the *Standing at the Crossroads* guidelines and in its designation within the Conservation District and Overlay Zone.
88. Gasoline stations are an inconsistent use for an area with such significant scenic, historic, and ecologically sensitive features.
89. Furthermore, gasoline stations create significant risk of discharges of potentially hazardous materials such as gasoline, engine oil, or other engine related fluids.
90. The adoption of the ordinance permitting gasoline stations within Cooks Crossroads with its “swamps, streams, flood plains, and natural buffers needed to preserve these highly fragile and invaluable ecosystems” and its role as the gateway to the Ashley River Historic District prevents achieving the purpose outlined in the Planning Act for the protection and preservation of scenic, historic, or ecologically sensitive areas.
91. Furthermore, the adoption of the ordinance permitting gasoline stations within Cooks Crossroads, designated as a particular zoning district by County Council as being necessary to “safeguard our local heritage, natural beauty, and economic and recreational resources,” impedes the purpose outlined in the Planning Act for “further[ing] the public welfare in any other regard specified by a local governing body.” S.C. Code Ann. § 6-29-710(A)(8).

92. As a result, the ordinance expanding the conditional uses to include gasoline stations for the Cooks Crossroads area contravenes the purpose outlined in the Planning Act and violates sections 6-29-710(A)(4) and (A)(8).
93. County Council's decision to amend the zoning ordinance to expand the conditional uses in an ecologically sensitive area that is intended to safeguard the public's heritage, natural beauty, and economic and recreational resources represents an arbitrary and capricious action.
94. Because County Council's adoption of the zoning amendment was arbitrary, capricious, and an abuse of discretion, the Foundation seeks a judgment, pursuant to section 15-53-30, declaring the zoning ordinance in violation of the Planning Act and therefore null and void.

FOURTH CAUSE OF ACTION

Petition for Injunctive Relief against Illegal Spot Zoning

95. The foregoing allegations are incorporated by reference as if fully set forth in this cause of action.
96. County Council adopted the amended ordinance and revised section 10.4.21(a) so that gas stations and quick stops or convenience stores are allowed only in Conservation Districts that are also designated as a "Village Crossroads" area on the County's Future Land Use Map adopted in the Comprehensive Plan.
97. Because Cooks Crossroads is the sole area in Dorchester County designated as a Village Crossroads *and* located within a Conservation Zoning District, County Council's amendment to section 10.4.21(a) singled out a particular area for a use classification entirely different than the surrounding area, solely for the benefit of Parker's Kitchen as *potential* owners of a property within Cooks Crossroads.

98. This decision to single out a conditional use for a potential property owner's private gain diminishes the common welfare.
99. This decision to single out a conditional use for a potential property owner's private gain does not advance any comprehensive zoning plan and is inconsistent with the existing comprehensive plan and zoning regulatory framework.
100. As a result, County Council has engaged in unlawful spot zoning, in contravention of a comprehensive plan, and the adoption of this unlawful spot zoning is an arbitrary, capricious, unreasonable, and discriminatory exercise of its zoning power.
101. Because County Council's adoption of the ordinance authorizes illegal spot zoning, Dorchester Trust Foundation is entitled to preliminary and permanent injunctive relief prohibiting Dorchester County from implementing the zoning regulation amendment.

Prayer of Relief

WHEREFORE, having fully set forth the allegations against the Defendants, the Foundation seeks an order of this Court declaring the zoning amendment adopted on September 7, 2021 by the Dorchester County Council null and void because it was an arbitrary and capricious decision, violates the Planning Act and the County's Comprehensive Plan, and amounts to unlawful spot zoning. The Foundation further seeks an order of this Court granting preliminary and permanent injunctive relief prohibiting Dorchester County Council from implementing the zoning amendment, as well as such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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