

Penny D. Mahone, Clerk
Talbot County, Georgia

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Plaintiffs Jon Hale, Penny Hale, CGH Properties, LLC, James Terry, Shirley Terry, Kearney Glenn, Tom Calk, Laura Calk, Celeochee Creek Farm, LLC, *by and through its representative Brad Waddell*, Marie Daniell King Revocable Living Trust, *by and through its trustee Marie King*, William Hardaway, Suzanne Hardaway, Meghan and Clarke Magruder Revocable Living Trust, *by and through its trustees Meghan Magruder and Clarke Magruder*, Sandural Lanier, and Flint Riverkeeper, Inc. (together, “Plaintiffs”), by and through their undersigned counsel, file this Appeal and Verified Complaint (“Appeal”), respectfully showing this Court as follows:

INTRODUCTION

1.

This Appeal challenges Talbot County's approval of a zoning application filed by Pleasant Valley Road Quarry, LLC ("Quarry") regarding property owned by Kenneth E. Chapman that authorized the rezoning of two parcels on Pleasant Valley Road (Tax Parcel 007 17401 and 007 17415 A) ("Subject Property") from Agricultural (A-1) to Industrial (I-1). In granting the rezoning request, the County ignored (i) its own procedural requirements for considering applications for rezoning, (ii) the recommendation of denial by the Talbot County Planning and Zoning Commission ("Planning Commission"), (iii) the evidence and materials submitted by the opposition, (v) zoning criteria and factors under the zoning ordinance of Talbot County along with the Talbot County Comprehensive Plan ("Comprehensive Plan"), (iv) a patent and well-documented conflict that tainted the zoning process, (vii) the Open Meetings Act by issuing a written letter differing from that which was adopted by motion and vote at the public hearing and (vii) zoning criteria under Georgia law.

2.

Instead of evaluating the evidence presented and the legal criteria for a zoning decision, Talbot County Commissioners ("Commissioners") were improperly influenced and/or prejudged the rezoning application.

3.

Talbot County's actions, by and through its Board of Commissioners ("Board") were an abuse of its police and zoning powers; were the result of improper influences, pressure, and conflicts of interest rendering them fraudulent, corrupt, and/or manifest abuse of discretion; were a violation of the Constitutional Trust provision of the Georgia Constitution; constitute an

arbitrary and capricious abuse of discretion; and constitute a violation of Plaintiffs' substantive and procedural due process rights in violation of Article I, Section I, Paragraph I of the Georgia Constitution of 1983, as amended, the Official Code of Georgia Amended.

4.

Individual Plaintiffs own and/or reside at property located adjacent to and nearby the Subject Property. As detailed below, they have a substantial interest in the zoning decision and will suffer irreparable injury and damage beyond the damage that other similarly situated owners will face should Talbot County's improper decision stand.

5.

Plaintiffs request that this Court find and declare the I-1 zoning designation and its enforcement unconstitutional, vacate the rezoning decision, direct Talbot County to enforce constitutional, Agricultural (A-1) zoning, and grant such other relief in favor of Plaintiffs as the Court deems appropriate.

PARTIES AND JURISDICTION

6.

Plaintiff Jon Hale and his mother Plaintiff Penny Hale own, operate, and reside on properties located at 2323 Pleasant Valley Road, Woodland, Georgia, Talbot County (Parcel No. 007 17412 A), and 2200 Tax Road, Woodland, Georgia, Talbot County (Parcel No. 007 17410) in addition to parcels 007 17409 A, 007 17408 A, and 007 17419 A. A portion of the property is in the name of Plaintiff CGH Properties LLC, of which Plaintiffs Jon Hale and Penny Hale are members. In total, these parcels comprise roughly 300 acres and contain two ponds and a stream.

Plaintiffs Jon Hale and Penny Hale acquired this property in 2013 from Jon Hale's grandfather who in turn owned the property for more than 45 years.

7.

Plaintiff Celeochee Creek Farm, LLC, is located at 1598 Pleasant Valley Road, Woodland, Georgia, Talbot County, Parcel No. 007 17411, and comprises 233.82 acres and is used as a recreational property for hunting and camping by its members Brad Waddell and his family and friends. A creek runs through a portion of the property...

8.

Plaintiff Sandural Harvey-Lanier resides immediately adjacent to the Subject property at 920 Pleasant Valley Road, Woodland, Georgia, Talbot County (Parcel No. 007 17225), which consists of 1.66 acres. Plaintiff Lanier has resided at the property since 1999 when she inherited it from her father, who in turn acquired the property in 1942.

9.

Plaintiff W. Kearney Glenn owns and resides on 5225 Chalybeate Springs Road, Woodland, Georgia, Talbot County (Parcel No. 007 17602), which consists of 656.88 acres and was acquired in 2005 along with 5025 Chalybeate Springs Road, Woodland, Georgia, Talbot County (007 17603), which consists of approximately 407 acres and was acquired in 1992. The properties include two (2) lakes and one (1) pond.

10.

Plaintiffs James and Shirley Terry own and reside on 801 Pleasant Valley Road, Woodland, Georgia, Talbot County (Parcel No. 007 17233). Plaintiff Terry James also owns Parcel No. 007 17231. Together, the properties comprise approximately 33 acres immediately

adjacent to and downstream of the Subject Property. A stream that begins on the Subject Property bisects Plaintiffs James and Shirley Terry's property.

11.

Plaintiffs Tom and Laura Calk own and reside at 2310 Pleasant Valley Road, Woodland, Talbot County, Georgia 31836, which consists of 60 acres including a seven (7) acre lake. The lake is spring fed and is reliant on the existing, consistent, and historical groundwater flows currently present. They acquired the property in 2016 from another family member. The Calks began construction of a \$250,000 horse barn on their property in 2019 and operate a horse farm thereon. The noise from test blasting on the Subject Property has already disturbed the horses. The Calks had intended to build an additional home on the property prior to learning of the proposed quarry.

12.

Plaintiff Marie Daniell King Revocable Living Trust, by and through Marie King as trustee, owns three parcels immediately adjacent to the Subject Property (parcel numbers 007 17409, 007 17403, and 007 17219), which she and her husband Tommy King began acquiring in 1989 and now comprises approximately 445 acres. Since acquiring the property, Marie King and her husband Tommy King have built a cabin, a three (3) acre lake, two barns, and built roads. The property is primarily used for silviculture and recreation and is actively managed to create habitat for wildlife.

13.

Plaintiffs William and Suzanne Hardaway own and reside at 1749 Rush Creek Highway, Woodland, Georgia, Talbot County (Parcel No. 005 15506), which comprises 260.18 acres and

includes a creek and three (3) acre pond. Plaintiffs acquired the property in 2005 and have used it for their primary residence, hunting, fishing, and other recreational purposes since that time.

14.

Plaintiff Meghan and Clarke Magruder Revocable Living Trust, by and through its trustees Meghan Magruder and Clarke Magruder, owns property located at 9443 Manchester Highway, Woodland, Georgia, Talbot County (Parcel No. 007 17216), which comprises nearly 65 acres and a spring fed pond that feeds into Coleatchee Creek. It was acquired in 2020 to allow the trustees create and nurture a sustainable organic farm.

15.

Plaintiff Flint Riverkeeper, Inc. (“FRK”) is a local 501(c)(3) nonprofit corporation with a principal office in Albany, Georgia. The purpose of FRK is to “restore and preserve the habitat, water quality and flow of the Flint River watershed [including Coleoatchee Creek, its tributaries, and Lazer Creek] for the benefit of the general public, FRK’s members, and future generations and dependent wildlife in the Flint River Watershed.” FRK has approximately 900 members consisting of both families and businesses. The individual Plaintiffs are all among these approximately 900 members.

16.

Defendant Talbot County is a political subdivision of the State of Georgia. It is a lawful entity which may sue and be sued. It is subject to the jurisdiction and venue of this Court and may be served with process through its Chairman Larry Sparks at 35 West Madison Street Talbotton, Georgia 31827.

17.

This Court has jurisdiction over this Appeal and the claims asserted herein.

18.

Venue is proper in this Court.

FACTUAL BACKGROUND

19.

The Subject Property consists of approximately 457 acres of land that is currently a mix of forest and pasture and several streams. It is currently used for cattle and has been used for cattle for at least the prior eighteen years. It is surrounded by other agricultural and low-density residential land uses.

20.

The owner of the Subject Property, Mr. Kenneth E. Chapman, is a sitting Vice-Chair on the Talbot County Board of Commissioners and has been a commissioner for at least two decades. Mr. Chapman is also president of the Talbot State Bank.

21.

On May 8, 2023, the Quarry, by and through its attorney, filed an application seeking to rezone the Subject Property from A-1 (Agricultural, Residential) to I-1 (Industrial) for the development of a quarry, among other things.¹

22.

Plaintiffs filed an Open Records Act Request with Talbot County on May 19, 2023, seeking:

¹ Various documents submitted by the Quarry to Talbot County indicated it would also be operating an asphalt plant and a ready-mix plant, though its claims were inconsistent

- a) Any and all permits, plans, and applications for rezoning of the [Subject Property] including, but not limited to, initial applications, amendments or supplemental submissions, exhibits, studies, reports, diagrams, plans, plats, surveys, and land disturbance permits;
- b) Any and all correspondence, written, or, or electronic, between Talbot County and owners, operators, agents, employees, or perspective [sic] purchases of the Parcels;
- c) Any and all inspections, investigations, complaints, reports, notices of violations or enforcement efforts concerning the [Subject Property]; and
- d) Any and all correspondence between Talbot County and other entities, such as the Environmental Protection Agency, EPD, and any regional commission, which in any way involve the [Subject Property].

23.

On May 22, 2023, the County, by and through Carol Ison, responded with documentation submitted to the River Valley Regional Commission regarding the proposed quarry and said: “To my knowledge, these are all documents that our office is in possession of, that pertain to the parcels mentioned in your request.” The documentation did not include any application for rezoning.

24.

After immediately pointing out the absence of an application to the County, Plaintiffs received a single-page cover sheet with the pronouncement that “[t]his should complete production of your open records request.”

25.

The following day, on May 23, 2023, Plaintiffs once again followed up with the County to ensure receipt of all relevant documentation: “Thank you for sending. It looks like the attached application is only a single page with no attachments, so I want to make sure nothing got lost in translation. I have reattached my Open Records Request and included the language describing the requested documents below for ease of review.”

26.

The County responded that same day that it had “submitted all documents that are in [its] possession.”

27.

After additional correspondence, Plaintiffs eventually received additional requested documents (a packet totaling more than 500 pages) on June 1, 2023. After this transfer, Plaintiffs were assured (once again) they had received everything in the County’s possession regarding the Subject Property.

28.

The rezoning application and appendixes were submitted by the Quarry (Pleasant Valley Road Quarry, LLC) by and through counsel. The application consisted of a cover sheet and appendixes A-R.

29.

Upon information and belief, the Subject Property has been used for a cattle operation for decades. Surrounding properties are used for silviculture, agriculture, and residential purposes.

30.

Upon information and belief, the application and appendixes contained numerous and significant, intentional misstatements of fact and law.

31.

The documents provided to Plaintiffs did not include any authorization from the owner of the property (Mr. Chapman) allowing the Quarry to submit the application. Upon information and belief, such authorization did not exist at the time of the vote on the application.

32.

The documents provided to Plaintiffs did not include any disclosure from Mr. Chapman pursuant to O.C.G.A. § 36-67A-2. Upon information and belief, such disclosure may have been submitted prior to the submission of the rezoning application.

33.

Upon information and belief, the Quarry did not submit any campaign contribution information despite the requirements of O.C.G.A. §36-67A-3.

34.

On June 26, 2023, Talbot County Planning and Zoning Commission considered the Quarry's proposal and properly voted to recommend denial of the rezoning application with three (3) votes to recommend denial, one (1) vote to recommend approval, and one (1) abstention.

35.

The Planning and Zoning Commission's recommendation for denial is consistent with the Talbot County Comprehensive Plan ("Comprehensive Plan") and Future Land Use Map and the policies and procedures in the Talbot County Zoning Ordinance and State law.

36.

On March 1, 2021, Talbot County approved and adopted the Comprehensive Plan.

37.

The Comprehensive Plan and the Future Land Use Map included therein identify the Subject Property and the area as a whole as being and remaining agricultural and residential. The Comprehensive Plan further specifically identifies Pleasant Valley Road (on which the Subject Property is located) as a scenic viewshed that should be protected. The proposal for rezoning was not and is not consistent with the Comprehensive Plan.

38.

Upon information and belief, at some point after its initial May 8, 2023, submission, the Quarry amended its application by submitting a list of proposed conditions that were not included in the initial submission to Talbot County. Despite Plaintiffs' specific requests for clarification, it is unclear when the majority of these conditions were submitted. However, upon information and belief, *additional* proposed conditions were submitted to the Board of Commissioners on the day of the Board of Commissioners' public hearing considering the rezoning application.

39.

The proposed conditions included:

- a) a condition that the Quarry contribute \$.25 cents per ton for every ton that is shipped by rail to go into the county general fund to be spent at the discretion of the County;
- b) a condition that the Quarry contribute \$.10 cents per ton for every ton that is shipped by rail to go to the Talbot County School System and be spent at the discretion of the Talbot County Board of Education.

40.

These conditions are unrelated to offsetting any additional burdens to the County yet induced the County to approve the proposal, thus rendering the approval an illegal contract rezoning.

41.

On July 10, 2023, Talbot County held a public hearing regarding the rezoning application before three (3) of the five (5) Talbot County Board of Commissioners. Mr. Chapman did not vote and Chairman Larry Sparks was not in attendance. After closing the public hearing, the remaining three (3) Commissioners—Franklin Holmes, Anthony Couch, and Walter Wilson, Jr.—voted to approve the application after absolutely no discussion of the merits of the proposal. Beyond what is described below, Commissioners provided no reasoning for their approval.

42.

During the hearing, the Commissioners repeatedly and blatantly dismissed, ignored, and failed to consider the arguments and points raised by opponents of the rezoning proposal.

43.

While voting, the Acting Chairman Mr. Franklin Holmes, indicated that the County had to approve the rezoning request because the last time the Board of Commissioners voted to deny a rezoning request regarding a separate, unrelated quarry on the opposite side of the County, that decision was ultimately overturned on review.

44.

It is further unclear what exactly was adopted, given that neither the motion nor the vote included any mention or discussion of the Quarry's proposed conditions.

45.

On July 14, 2023, the Talbot County Building & Zoning Inspector Paul Higginbotham issued a “Zoning Confirmation” letter regarding the Subject Property indicating that the parcels are zoned I-1 and are subject to 26 conditions.

46.

Rezoning is governed by state law, the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., and local ordinance.

47.

Section 18 of the Talbot County Zoning Ordinance (“Zoning Ordinance”) sets forth the amendment, application and procedural requirements for rezoning property.

48.

Pursuant to Section 18(1), applications for proposed map amendments “shall be submitted by the owner of such property or the authorized agent of the owner. An authorized agent shall have written authorization from the property owner, and such authorization shall be notarized and attached to the application.

49.

According to Open Records Act responses, Talbot County is not in possession of such an authorization form.

50.

The application for rezoning of the Subject Property failed to include necessary supporting documentation.

51.

Pursuant to Section 18.1(4) of the Zoning Ordinance, proposed zoning conditions “shall be filed with the building inspection/zoning office at least seven days prior to the public hearing before the board of commissioners.”

52.

Upon information and belief, at least some of the conditions were proposed on the day of the July 10, 2023, hearing.

53.

The application for rezoning did not meet the procedural requirements of the Zoning Ordinance.

54.

When considering a rezoning application, the Talbot County Board of Commissioners is required to consider the following factors:

- a) Whether the zoning decision will permit a use that is suitable in view of the use and development of adjacent or nearby property;
- b) Whether the zoning decision will adversely affect the existing use of adjacent or nearby property;
- c) Whether the property affected by the zoning decision has a reasonable economic use as currently zoned;
- d) Whether the zoning decision will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
- e) Whether the zoning decision conforms with the policy and intent of an adopted land use plan; and

- f) Whether other conditions exist that affect the use and development of the property in question and support either approval or denial of the zoning decision.

55.

Evaluation of the application for rezoning of the Subject Property under each of the above-listed criteria demanded denial of the application.

56.

The Board of Commissioners' decision to approve the rezoning application is final, and there are no administrative remedies or procedures to review said decisions before any body empowered to act, reverse, modify, or alter the decisions. Therefore, all statutorily provided administrative action is final and the procedure available is limited to remedial action before this Court.

57.

The minutes do not correctly or adequately reflect what actually occurred at the July 10, 2023, hearing. Nor do they provide clarity on whether the Commissioners intended to or did adopt, modify, or reject the proposed conditions.

58.

Plaintiffs submitted a subsequent Open Records Act requests to Talbot County on July 24, 2023, seeking:

- a) Any written authorization from the property owner of the parcels attached to the rezoning application submitted regarding the [Subject Property] for the proposed Pleasant Valley Road Quarry.
- b) Any disclosures submitted by the owner of the [Subject Property].

- c) Any documents submitted by owners, representatives, or agents of the [Subject Property] (including but not limited to Pleasant Valley Road Quarry, LLC) on or after May 9, 2023.
- d) Any and all internal communication, including email correspondence and/or notes from calls or meetings between and among County officers, employees, and/or representatives, regarding the parcels including the rezoning action, from 2015 to the present.
- e) Any and all communications, including email correspondence, and/or notes from calls or meetings between County officers, employees, and/or representatives and any officers, employees, and/or representatives of Pleasant Valley Road Quarry, LLC,
- f) Any and all communications, including email correspondence, and/or notes from calls or meetings between County officers, employees, and/or representatives and the owner of the [Subject Property] regarding the rezoning application or action.
- g) Any conditions submitted to the Planning Commission or the Board of Commissioners in conjunction with or regarding the request to rezone the [Subject Property].
- h) Any documentation memorializing the Board of Commissioners' oral decision on July 10, 2023, regarding the application to rezone the [Subject Property], including but not limited to any letter, written, signed, or official decision regarding the application to rezone the [Subject Property].
- i) A copy of the official zoning map of Talbot County.

- j) A copy of the agenda, proposed agenda, and/or any applications to be on the agenda for the July 31, 2023, called meeting.

59.

Plaintiffs have not yet received a complete response to their Open Records Act Request.

60.

Upon information and belief, the application for rezoning of the Subject Property was discussed by and decided by members of the Talbot County Board of Commissioners prior to the hearing on the matter on July 10, 2023. Plaintiffs have specifically requested information regarding these discussions, communications, correspondence, and meetings. Plaintiffs have not received the requested information.

61.

The response to Plaintiffs' requests, to date, is inadequate.

62.

Upon information and belief, conflicts of interest exist among one or more members of the Board of Commissioners in association with the application for rezoning of the Subject Property.

63.

Upon information and belief, Mr. Chapman, the property owner, improperly leveraged his positions to receive a favorable vote.

64.

Upon information and belief, the Board of Commissioners was unduly and improperly influenced in its decision and/or based its decision on improper considerations.

65.

If zoned I-1, the Subject Property will cause an undue burden and be a significant detriment to Plaintiffs and their ability to use and enjoy their property.

66.

Plaintiffs each have a substantial interest in the rezoning decision and will each suffer substantial damage not common to other similarly situated property owners in Talbot County.

67.

The Subject Property is in a rural, incredibly scenic area prized for these qualities.

68.

Plaintiffs relied on the existing zoning classifications along with the Comprehensive Plan indicating that the area is to remain agricultural and residential when purchasing and improving their properties.

69.

Coleoatchee Creek flows through the northern portion of the property. There are several other streams crossing or entering the property including a tributary of Coleoatchee Creek that flows through the southern portion of the site. Coleoatchee flows to Lazer Creek, which in turn discharges into the Flint River. Upon information and belief, these streams are fed, at least in part, by groundwater flows.

70.

The geology of the property is such that there is significant, if unpredictable, groundwater connection to the wider area meaning that a quarry (construction of which would extend hundreds of feet below the water table) will impact nearby wells, streams, springs, ponds, and lakes by causing dewatering.

71.

If developed in accordance with industrial zoning, the Subject Property will significantly and adversely affect the quality and quantity of water leaving the Subject Property. It will be a significant detriment to watercourses on the Subject Property and those downstream, Specifically, the development of the property will cause an increase in the volume and turbidity of water in Coleoatchee Creek and the unnamed tributaries thereof, affecting downstream recreational and agricultural uses along with the ecology of the watershed.

72.

In addition to surface water impacts, a quarry would similarly impact the groundwater flows of the area.

73.

As stated above, several Plaintiffs own and/or reside at property downstream and/or downgradient of the Subject Property.

74.

Due to their proximity to the proposed quarry, their operation of a horse farm, and the lake on their property, the illegal rezoning has caused and will cause a significant detriment to Plaintiffs Tom and Laura Calk. In addition to impacting their ability to use and enjoy their property due to noise, fugitive dust, light pollution, and traffic concerns, it will adversely impact their ability to use their property for their horses and threatens the very existence of their seven (7) acre lake. The Calk's will face a significant decrease in their property value, unlike similarly situated properties.

75.

Similarly, Plaintiff James Terry lives immediately adjacent to and downgradient of the Subject Property. In fact, one of the streams that start on the Subject Property flows through Plaintiff Terry's property.

76.

In addition to threats to groundwater and surface water, Plaintiffs will face a significant detrimental impact from significant increases in noise, light pollution, and traffic, inalterable damage the viewshed and rural quality of the area for adjacent and nearby Plaintiffs.

77.

Plaintiff Marie Danielle King Revocable Living Trust has actively worked to create habitat and refuge for wildlife including bees, ducks, songbirds, deer, and turkey, among other things. Nearly 4,500 feet of the Trust's property borders the Subject Property. The blasting, noise from heavy machinery, light, and dust, among other things are incompatible with the rural, natural qualities that the Trust has cultivated and nurtured on its property for decades.

78.

Similarly, Plaintiff Celeochee Creek Farm, LLC, has operated its property for hunting, recreation, and camping given its rural location. The proposal to use the Subject Property for industrial purposes will forever destroy the rural quality that allows the aforementioned uses, significantly limiting if not eliminating Plaintiff Celeochee Creek Farm, LLC,'s ability to use the property for the constitutional uses for which it is currently zoned.

79.

Plaintiffs William and Suzanne Hardaway have owned and resided on their property since 2005. Converting the area to industrial will significantly impact their property value along

with their ability to use the property as currently (and constitutionally) zoned for residential and recreational purposes.

80.

Plaintiff Sandural Lanier and her family have owned their property since 1942. Converting the Subject Property to industrial uses will irrevocably alter her ability to continue to use, enjoy, and reside peacefully on her property. The increased traffic, noise, light, and pollution will inalterably impact and decrease her daily quality of life along with her property value.

81.

Plaintiffs Jon Hale and Penny Hale's rights to use and enjoy their property will be significantly and negatively impacted by industrial uses on the Subject Property due to traffic, noise, pollution, and a decrease in their property value.

82.

Plaintiff W. Kearney Glenn's large parcels are currently used for agricultural, residential, and recreational purposes. Converting the area to industrial will significantly impact the property value and ability to use the property as currently (and constitutionally) zoned.

83.

Meghan and Clarke Magruder, trustees for Plaintiff Meghan and Clarke Magruder Revocable Living Trust purchased their property because it is in an agricultural area suitable for sustainable organic farming. The property is now home to gardens, an orchard, and various livestock including horses, goats, and chickens. In purchasing this property, the trustees relied on the fact that the area was zoned agriculturally and that the Comprehensive plan indicated it was to remain agricultural safe from incompatible and damaging industrial uses. Industrial use of the

Subject Property will significantly and detrimentally impact their ability to use and enjoy their property as intended.

84.

The incompatible industrial use of the Subject Property will have a significant detrimental impact on Plaintiffs' property values.

85.

These detrimental impacts are not mitigated by or justified by any benefit to public health, safety, morals or general welfare of the public.

86.

In fact, the incompatible use will deter or preclude positive growth in the area and poses a significant risk to the public health, safety, morals, and general welfare of the public.

87.

As approved, the rezoning authorizes development of the Subject Property in a manner which will adversely affect Plaintiffs' use and enjoyment of their properties and interfere with their constitutionally protected rights.

COUNT I – DECLARATORY JUDGMENT FOR SUBSTANTIVE DUE PROCESS VIOLATIONS

88.

Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 87 of this Appeal as if fully set forth herein.

89.

Article I, Section II, Paragraph V of the Constitution of Georgia waives sovereign immunity “for actions in the superior court seeking declaratory relief from acts of . . . any county

. . . outside the scope of lawful authority or in violation of the laws or the Constitution of this State or the Constitution of the United States.” Ga. Const. of 1983, Art. I, Sec. II, Para. V.

90.

Talbot County’s actions in granting the rezoning application and any subsequent actions to allow I-1 zoning to take effect on the Subject Property are and would be arbitrary, capricious, without rational basis, and constitute an abuse of discretion. Such action by Talbot County is a violation of Plaintiffs’ rights to due process pursuant to Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, as amended.

91.

Talbot County’s actions in granting the rezoning application and any subsequent action to enforce the rezoning or allow I-1 zoning to take effect on the Subject Property impose a significant detriment on Plaintiffs that substantially outweighs any benefit to the health, safety, morality, or general welfare of the public in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, as amended.

92.

Because of Talbot County’s actions in granting the rezoning application, Plaintiffs are in a position of uncertainty and insecurity regarding their ability to continue to use and enjoy their property without undue interference.

93.

Plaintiffs seek a declaratory judgment with respect to the validity of the rezoning of the Subject Property pursuant to the Georgia Declaratory Judgment Act (O.C.G.A. § 9-4-1, et seq.).

94.

The purpose of the Georgia Declaratory Judgment Act is to “settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations . . . and is to be constructed and administered.” O.C.G.A. § 9-4-1.

95.

The Superior Court is authorized to enter a declaratory judgment upon petition in cases of actual controversy (O.C.G.A. § 9-4-2(a)) and “to determine and settle by declaration any justiciable controversy of a civil nature where it appears to the court that the ends of justice require that such should be made for the guidance and protection of the petitioner, and when such a declaration will relieve the petitioner from uncertainty and insecurity with respect to his rights, status, and legal relations.” *Calvary Independent Baptist Church v. East Point of Rome*, 208 Ga. 312, 314 (1951).

96.

The application for rezoning of the Subject Property was patently inconsistent with the criteria of the Talbot County Zoning Ordinance and the Talbot County Comprehensive Plan.

97.

Plaintiffs detrimentally relied on both the existing zoning classification in the area and the Comprehensive Plan when purchasing, maintaining, and improving their properties.

98.

The rezoning constitutes illegal spot zoning.

99.

The Board of Commissioners’ approval of the zoning application for the Subject Property is invalid because evidence presented by Plaintiffs and other members of the public demonstrate

that review of the criteria for consideration demand denial of the application for rezoning of the Subject Property.

100.

The approval was the result of improper influence.

101.

The conditions which induced the County's approval of the rezoning request, constitute improper contract zoning, thereby rendering the approval invalid.

102.

Plaintiffs and the public are in a position of uncertainty or insecurity with regard to the scope of the Board of Commissioners' purported rezoning of the Subject Property and are in need of judicial guidance on this issue given the failure to mention, adopt, or approve the conditions.

103.

Plaintiffs are entitled to a declaration from this Court that the Board of Commissioners' decision approving the rezoning of the Subject Property is invalid and that the zoning status of the Subject Property remains A-1.

104.

Plaintiffs show that there is an actual controversy between Plaintiffs and defendant, growing out of the preceding statement of facts.

105.

The legal issues ripe for judicial determination due to the controversy between the parties are:

- a) Whether Talbot County’s approval of the rezoning application was arbitrary, capricious, procedurally erroneous, without rational basis, a product of improper inducement, conflicts, fraud, corruption, otherwise tainted and, therefore, constitutes a manifest abuse of discretion and deprived Plaintiffs of Due Process.
- b) Whether Talbot County’s approval of the rezoning application imposes a significant detriment on Plaintiffs that substantially outweighs any benefit to the health, safety, morality, or general welfare of the public, and therefore deprived Plaintiffs of due process.

106.

Plaintiffs are entitled to a declaration from the Court that A-1 is the proper zoning for the Subject Property, that the rezoning thereof was unconstitutional, and that the grant of the rezoning application was unlawful, null and void, and of no force or effect.

**COUNT II – DECLARATORY JUDGMENT FOR PROCEDURAL DUE PROCESS
VIOLATIONS WITH RESPECT TO REZONING APPROVAL**

107.

Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 87 of this Appeal as if fully set forth herein.

108.

The Zoning Procedures Law (“ZPL”), O.C.G.A. § 36-66-1 et seq., sets forth the minimum procedures governing the exercise of the zoning power by local governments.

109.

The ZPL provides mandatory minimum procedures, and a local government's failure to follow those minimum procedures in making a zoning decision renders such decision illegal and void. O.C.G.A. § 36-66-5(a).

110.

The purpose of the ZPL is to ensure minimum due process protocols are observed when local governments regulate the use of property through the exercise of zoning power. *City of Roswell v. Outdoor Sys., Inc.*, 274 Ga. 130, 131 (2001).

111.

The ZPL requires local governments to provide the public with a meaningful opportunity to be heard, as opposed to mere notice of a hearing, before action is taken by a local government to approve or deny a rezoning request. *See Schumacher v. City of Roswell*, 344 Ga. App. 135, 141 (2017).

112.

The ZPL was violated because Plaintiffs and other members of the public were denied an opportunity for meaningful public input on the application for rezoning of the Subject Property.

113.

Prior to and during the July 10, 2023, public hearing, Commissioners indicated that they had prejudged the rezoning request, would not consider opposition, and had no choice but to approve the rezoning request because of a previous lawsuit regarding a wholly unrelated matter and property in which the court overturned the County's denial of a rezoning request for a separate and unrelated quarry.

114.

One or more Commissioner has a financial interest in the rezoning decision.

115.

Mr. Chapman's direct participation tainted the entire proceedings.

116.

Mr. Chapman's participation through others tainted the entire proceedings.

117.

Mr. Chapman's direct influence on the voting commissioners along with his influence through others rendered the proceedings tainted.

118.

One or more of the Commissioners indicated that Quarry's promise to provide additional funds to the County unrelated to the increased burden the proposal would have induced the approval of the rezoning application. This approval constitutes illegal contract zoning.

119.

The July 10, 2023, hearing before the Board of Commissioners was a waste of time and resources because the acting chairman and others had already pre-judged the matter.

120.

The Commissioners' actions deprived Plaintiffs of a meaningful opportunity to be heard at the public hearing for the rezoning application and denied Plaintiffs due process.

121.

Local governments are free to provide for procedures in addition to or supplemental to the minimum procedural requirements of the ZPL by ordinance or resolution.

122.

The Talbot County Zoning Ordinance includes several procedural requirements including (1) the requirement that any application for rezoning be evaluated pursuant to the criteria for consideration set forth in Section 18.6 of the Talbot County Ordinance; (2) that the application for rezoning be filed simultaneously with an owner authorization verification if the owner and the applicant are different; (3) the requirement that any conditions be submitted at least seven days prior to the rezoning hearing.

123.

The Board of Commissioners' approval of the zoning application for the Subject Property is invalid because the application for rezoning was not submitted in compliance with the procedures set forth in the Talbot County Zoning Ordinance.

124.

The Board of Commissioners' approval of the zoning application for the Subject Property is invalid because the application for rezoning of the Subject Property was not filed by the appropriate individuals/entities and/or without the appropriate authorizations.

125.

The Board of Commissioners' approval of the zoning application for the Subject Property is invalid because not all of the proposed conditions were filed more than seven (7) days prior to the July 10, 2023, hearing.

126.

The Board of Commissioners' approval of the zoning application for the Subject Property is invalid because the conditions were not properly voted on and/or incorporated at the July 10, 2023.

127.

Plaintiffs seek a declaratory judgment with respect to the validity of the rezoning approval pursuant to the Georgia Declaratory Judgment Act (O.C.G.A. § 9-4-1, et seq.) and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983 as described in “Claim I” above.

128.

The legal issues ripe for judicial determination due to the controversy and uncertainty between the parties in this matter include:

- a) Whether the participation of Mr. Chapman renders the rezoning approval void;
- b) Whether other commissioners were conflicted or unduly influenced, rendering their votes improper and the approval void;
- c) Whether Talbot County Ordinance procedures were violated, rendering the rezoning approval void;

COUNT III – CLAIM IN EQUITY FOR CONSTITUTIONAL ZONING

129.

Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 87 of this Appeal as if fully set forth herein.

130.

Plaintiffs seek a declaration in equity that the I-1 zoning of the Subject Property is unconstitutional.

131.

Plaintiffs are entitled to an order that the Subject Property be zoned to a constitutional zoning classification.

COUNT IV – INJUNCTIVE RELIEF

132.

Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 87 of this Appeal as if fully set forth herein.

133.

Petition brings this claim for injunctive relief pursuant to O.C.G.A. § 9-5-1, et seq., and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, which provides, “Sovereign immunity is further waived so that a court awarding declaratory relief pursuant to this Paragraph may, only after awarding declaratory relief, enjoin such acts to enforce its judgment.” Ga. Const. of 1983, Art. I, Sec. II, Para. V(b)(1).

134.

The ZPL provides that an “appeal or challenge by an opponent” “shall stay all legal proceedings in furtherance of the action appealed from or challenged unless the local government, officer, board, or agency from which or from whom the appeal or challenge is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.” O.C.G.A. § 36-66-5.1(d). Therefore, an interlocutory injunction to maintain the status quo must be granted and a permanent injunction that prohibits development of the Subject Property in any manner inconsistent with the A-1 zoning should be granted.

135.

The Talbot County Board of Commissioners' decision to approve the rezoning request was improper and will allow development of the Subject Property that is contrary to the Talbot County Zoning Ordinance and Comprehensive Plan.

136.

Plaintiffs do not have an adequate remedy at law.

137.

As a result of the failure to follow the procedural requirements of the ZPL and of the Zoning Resolution, the Board of Commissioners' decision to approve the rezoning application for the Subject Property was invalid and without effect.

138.

Because the Board of Commissioners' approval of the application for rezoning of the Subject Property was invalid and without effect, the zoning status of the Subject Property remains A-1.

139.

As property owners residing in the same district as the Subject Property, Plaintiffs are entitled to an injunction against uses of the Subject Property that would not be permitted under A-1 zoning.

140.

If development and other construction activities are allowed to commence, Plaintiffs will suffer immediate and irreparable harm to their property rights.

Injunction should issue to require the application of a constitutional zoning on the Subject Property.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) cause Summons to issue and allow service to issue against Defendant;
- b) vacate Talbot County's approval (by and through its Board of Commissioners) of the rezoning application and order the Talbot County to enforce the constitutional A-1 zoning;
- c) declare the County's actions in granting the rezoning application were arbitrary, capricious, unreasonable, and the result of fraud, corruption, and the manifest abuse of the rezoning power, and, therefore, denied Plaintiffs due process of law, as guaranteed under the Constitution of the State of Georgia
- d) declare that the County's actions in granting the rezoning application are a significant detriment to Plaintiffs, bear no substantial relationship to the public health, safety, morals or general welfare, and are therefore void;
- e) Preliminarily and permanently enjoin Defendant from taking or allowing any action with respect to the Subject Property arising from the approval of the rezoning application.
- f) Order Talbot County to apply and enforce a constitutional zoning classification on the Subject Property;
- g) Award Plaintiffs such other and further relief as this Court deems just, proper, and appropriate.

Respectfully submitted, this 9th day of August, 2023.

STACK & ASSOCIATES, P.C.

/s/ Donald D.J. Stack

Donald D.J. Stack

Ga. Bar No. 673735

Jaclyn Brass

Ga. Bar No. 347817

260 Peachtree Street NW
Suite 1200
Atlanta, Georgia 30303
(404) 525-9205 (Telephone)
(404) 522-0275 (Fax)
dstack@stackenv.com
jbrass@stackenv.com

VERIFICATION OF PLAINTIFF FLINT RIVERKEEPER, INC.

Personally appeared before me, an officer duly authorized by law to administer oaths, **FLINT RIVERKEEPER, INC.**, by and through authorized representative S. Gordon Rogers, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of his knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


on behalf of Flint Riverkeeper, Inc.

Sworn to and subscribed before me
this 8 day of August, 2023.

Kasey Leigh Goins
Notary Public

My Commission Expires: 8/30/24



**VERIFICATION OF PLAINTIFFS SUZANNE AND WILLIAM
HARDAWAY**

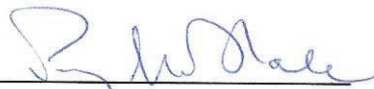
Personally appeared before me, an officer duly authorized by law to administer oaths, **SUZANNE AND WILLIAM HARDAWAY**, who state under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of their knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


Suzanne Hardaway


William Hardaway

Sworn to and subscribed before me
this 8th day of August, 2023.


Notary Public

My Commission Expires:



VERIFICATION OF PLAINTIFF CELEOCHEE CREEK FARM, LLC

Personally appeared before me, an officer duly authorized by law to administer oaths, **CELEOCHEE CREEK FARM, LLC**, by and through its authorized representative Brad Waddell, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of their knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.



Brad Waddell

Sworn to and subscribed before me
this 9 day of August, 2023.



Notary Public

My Commission Expires:



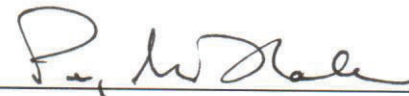
VERIFICATION OF PLAINTIFF CGH PROPERTIES, LLC,

Personally appeared before me, an officer duly authorized by law to administer oaths, **CGH PROPERTIES, LLC**, by and through its authorized representatives Jon Hale and Penny Hale, who state under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of their knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.



Jon Hale



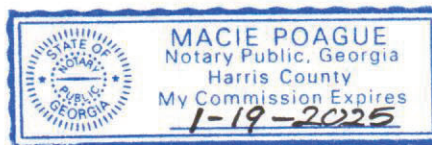
Penny Hale

Sworn to and subscribed before me
this 9th day of August, 2023.



Notary Public

My Commission Expires:



VERIFICATION OF PLAINTIFF KEARNEY GLENN

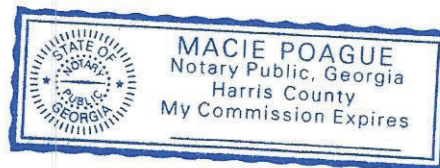
Personally appeared before me, an officer duly authorized by law to administer oaths, **KEARNEY GLENN**, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of his knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


Kearney Glenn

Sworn to and subscribed before me
this 7th day of August, 2023.


Notary Public



My Commission Expires: 1/19/2025

VERIFICATION OF PLAINTIFF JON HALE

Personally appeared before me, an officer duly authorized by law to administer oaths, **JON HALE**, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of his knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.



Jon Hale

Sworn to and subscribed before me
this 9th day of August, 2023.



Notary Public

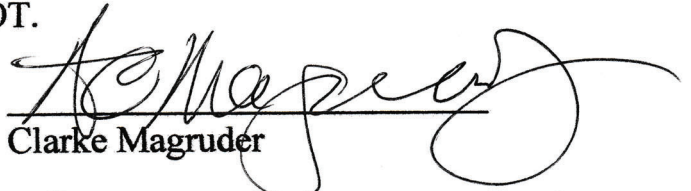
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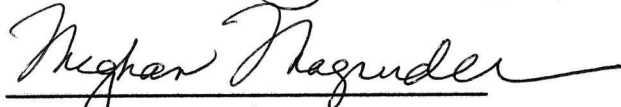


**VERIFICATION OF PLAINTIFF MEGHAN AND CLARKE MAGRUDER
REVOCABLE LIVING TRUST**

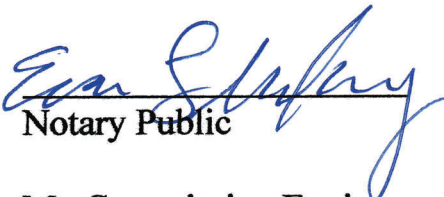
Personally appeared before me, an officer duly authorized by law to administer oaths, **MEGHAN AND CLARKE MAGRUDER REVOCABLE LIVING TRUST**, by and through its trustees Meghan Magruder and Clarke Magruder, who state under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of their knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


Clarke Magruder


Meghan Magruder

Sworn to and subscribed before me
this 8th day of August, 2023.


Notary Public

My Commission Expires:


9/1/25



VERIFICATION OF PLAINTIFF PENNY HALE

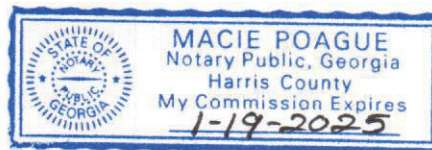
Personally appeared before me, an officer duly authorized by law to administer oaths, **PENNY HALE**, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of her knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


Penny Hale

Sworn to and subscribed before me
this 9th day of August, 2023.


Notary Public

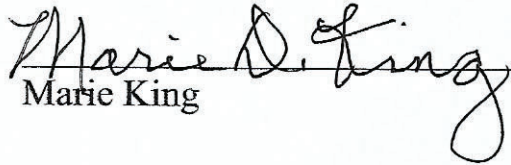


My Commission Expires:

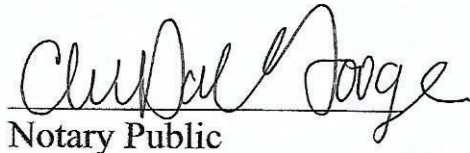
VERIFICATION OF PLAINTIFF MARIE DANIELL KING
REVOCABLE TRUST

Personally appeared before me, an officer duly authorized by law to administer oaths, **MARIE DANIELL KING REVOCABLE LIVING TRUST**, by and through its trustee Marie King, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of her knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


Marie King

Sworn to and subscribed before me
this 7 day of August, 2023.


Notary Public

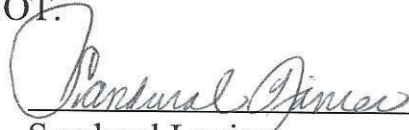
My Commission Expires: 02/01/2026



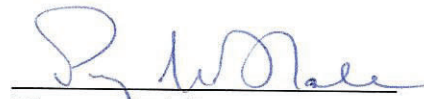
VERIFICATION OF PLAINTIFF SANDURAL LANIER

Personally appeared before me, an officer duly authorized by law to administer oaths, **SANDURAL LANIER**, who states under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of her knowledge and belief.

FURTHER AFFIANTS SAYETH NOT.


Sandural Lanier

Sworn to and subscribed before me
this 7th day of August, 2023.


Notary Public


My Commission Expires:




VERIFICATION OF PLAINTIFFS JAMES & SHIRLEY TERRY

Personally appeared before me, an officer duly authorized by law to administer oaths, **JAMES AND SHIRLEY TERRY**, who state under oath that the facts contained within the foregoing Appeal and Verified Complaint are true to the best of their knowledge and belief.

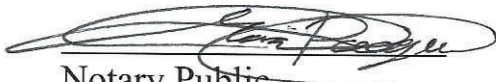
FURTHER AFFIANTS SAYETH NOT.



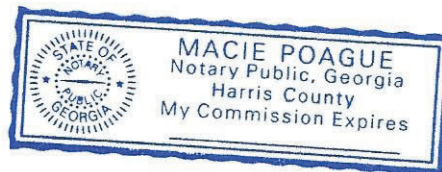
JAMES TERRY


SHIRLEY TERRY

Sworn to and subscribed before me
this 7th day of August, 2023.



Notary Public



My Commission Expires: 1/19/2025