

**IN THE SUPERIOR COURT OF MCINTOSH COUNTY  
STATE OF GEORGIA**

<b>MCINTOSH COUNTY, GEORGIA,</b>	)	
	)	
<b>Petitioner/Plaintiff,</b>	)	
	)	<b>CIVIL ACTION FILE NO.:</b>
<b>v.</b>	)	<b>SUV2024000079</b>
	)	
<b>JUDGE HAROLD WEBSTER, in his official capacity as Probate Court Judge of McIntosh County, Georgia; et. al.</b>	)	
	)	
<b>Respondents/Defendants,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>BARBARA BAILEY, CHRISTOPHER BAILEY, and STANLEY WALKER,</b>	)	
	)	
	)	
<b>Intervenors.</b>	)	

**MCINTOSH COUNTY’S RESPONSE IN OPPOSITION TO INTERVENORS’  
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

COMES NOW Petitioner/Plaintiff McIntosh County, Georgia (“County”), by and through the undersigned counsel, and files this Response in Opposition to Intervenors’ Emergency Motion for Injunction Pending Appeal showing that the relief requested in Intervenors’ Emergency Motion for Injunction Pending Appeal (“Motion”) should be denied. In support of its Response, the County shows this Court as follows:

**I. INTRODUCTION**

Intervenors’ Motion asks this Court to step outside the bounds of its jurisdictional authority and “stay” enforcement of a McIntosh County zoning ordinance – *without* that zoning ordinance having been found unconstitutional, illegal, or improper in any way. Intervenors seek this relief

based upon two untenable hypotheticals, to wit: (i) that the October 1 referendum was lawful and should have proceeded, and (ii) that the referendum would have overturned the Hog Hammock zoning ordinance.<sup>1</sup> The former proposition is legally incorrect, and the latter is conjecture.

The “emergency” injunctive relief sought by Intervenors has nothing to do with the subject matter of the present action and would violate multiple constitutional provisions and statutes. In fact, the opening sentence in Intervenors’ Motion<sup>2</sup> reveals the infirmity in Intervenors’ Motion. Although Intervenors endeavor to explain what is “at stake in this case,” Intervenors miss the mark. This case is about – and only about – the ability of citizens to employ the procedures described in Article IX, Section II, Paragraph 1(b)(2) of the Georgia Constitution (“Referendum Clause”) to petition for a referendum with respect to a zoning decision rendered by a county. The case is confined to a legal interpretation addressing a straightforward constitutional question, to wit: does the Referendum Clause allow for a referendum to address a zoning decision rendered pursuant to a County’s zoning powers under Article IX, Section II, Paragraph IV (“Paragraph IV”). No other claims or issues have been raised by the Parties or Intervenors.

In their Motion, Intervenors ask this Court to upend the current status quo in McIntosh County and step into the shoes of the Board of Commissioners by placing a moratorium on enforcement of its Hog Hammock zoning ordinance. Yet, the constitutionality and/or legality of the Hog Hammock zoning ordinance is not at issue. Those issues *are* presently being litigated in Grovner, et al., v. McIntosh County, Georgia, McIntosh County Superior Court Civil Action No.

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<sup>1</sup> Reference to the “Hog Hammock zoning ordinance” in this Response refers to the September 12, 2023 action by the Board of Commissioners of McIntosh County as described in paragraph 2 of the County’s First Amended Verified Petition for Writ of Prohibition and Writ of Mandamus, and Complaint for Declaratory Relief (“Complaint”) as well as the amendment described in paragraph 1 of the Court’s Final Order Granting Declaratory Judgment and Writ of Prohibition (“Final Order”) in this case.

<sup>2</sup> “At stake in this case is the character of the Hog Hammock community...” (Motion, p. 1)

SUV2024000058 (“Grovner”).<sup>3</sup> (A copy of Grovners’ First Amended Complaint is attached hereto as Exhibit A). Intervenors, here, ask this Court to not only speculate as to the outcome of their appeal of this Court’s well-reasoned decision (i.e., Intervenors ask this Court to ‘assume’ its decision will be overturned), but compound the speculation by further presuming that a referendum will then occur and that the citizens of McIntosh County will vote to overturn the Hog Hammock zoning ordinance. Not one – but two layers of supposition. Then, building upon those layers – Intervenors ask this Court to block enforcement of the code in the name of preserving the status quo. This raises a rhetorical question. How is it that the status quo may be achieved by this Court assuming the outcome of two future contingencies – resolving both contingencies in Intervenors’ favor – and then declaring via judicial fiat that an injunction on enforcement protects the status quo? With respect, such an outcome is the antithesis of the status quo – as it is premised on an unknown and unknowable set of future outcomes.

Furthermore, the requested relief asks the Court to violate the constitutional separation of powers doctrine by stepping into a legislative role and imposing a moratorium on enforcement of the County’s Hog Hammock zoning ordinance – a decision that is constitutionally reserved to the County. City of Roswell v. Outdoor Systems, Inc. 274 Ga. 130, 131 (2001) (temporary moratorium is an “an intermediate step in the legislative [zoning] process...”).

Finally, notwithstanding the foregoing deficiencies, the requested injunctive relief pending appeal fails to satisfy the standards of O.C.G.A. § 9-11-62(c). First, Intervenors do not—in fact cannot—show a likelihood of success on the merits on appeal. This Court has already concluded that the Georgia Constitution does not provide a right of referendum on powers exercised by the

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<sup>3</sup> The Plaintiffs in Grovner seek injunctive relief against the Hog Hammock zoning ordinance. (First Amended Complaint, “Prayer for Relief”, paragraph (f)).

County pursuant to Paragraph IV. Intervenors offer no new analysis or insight to suggest that the Supreme Court will reach a different result. Next, Intervenors fail to establish the irreparable harm they might suffer absent the requested injunction. Instead, Intervenors suggest the mere possibility of an amorphous “alteration” to “the Hogg Hammock community.” In fact, Intervenors’ request would frustrate the County’s [and general public’s] interest in operating under an approved legislative code. Intervenors ask the Court to impose the will of three individuals on the entire populace of the County. As a result, the Motion does not satisfy the criteria required for the issuance of injunctive relief pending appeal.

Quite simply, Intervenors’ Motion seeks unconstitutional relief that would upend the status quo, violates separation of powers principles, and fails to satisfy the necessary requirements to obtain injunctive relief. Intervenors presented their ‘on the merits’-based arguments in the September 20, 2024 final hearing – and those are the same arguments presented here. Those arguments were unsuccessful on September 20th – and fare no better now. For all of the reasons set forth herein, Intervenors’ Motion should be denied.

## **II. ARGUMENT/CITATION OF AUTHORITY**

### **A. Intervenors’ Requested Injunctive Relief Is Improper Because It Upends The Current Status Quo In Favor Of Intervenors’ Desired Ultimate Result**

Intervenors’ Motion violates a basic precept of this Court’s equitable powers. For injunctive relief to be issued pending a final outcome, the general rule is that “[a] trial court may issue an interlocutory injunction to maintain the status quo ... if, by balancing the relative conveniences of the parties it determines that they favor the party seeking the injunction.” Hampton Island Founders, LLC v. Liberty Capital, LLC, 283 Ga. 289, 293 (2008); see also Babies Right Start, Inc. v. Georgia Dept. of Public Health, 293 Ga. 553 554 (2013) (recognizing failure of appellant to utilize section 9-11-62(c) “in an effort to preserve the status quo”); Reddick v. Jones,

251 Ga. 195, 195 (1983) (describing “an O.C.G.A. § 9-11-62(c) injunction to preserve the status quo during the pendency of this appeal”). In Hampton Island Founders, the Supreme Court characterized the “status quo” for injunctions as follows:

The status quo is not defined by the parties’ existing legal rights; it is defined by the reality of the **existing** status and relationship between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties’ legal rights.”

*Id.* (emphasis added). As such, the status quo to be maintained in pending litigation does not measure what the ultimate result of the litigation may be, but the *actual* status as of the filing of the Motion.

So, what is the status quo as of today? In the trial court’s Final Order, the Court noted:

On September 12, 2023, the McIntosh County Board of Commissioners revised the zoning ordinance for the Hog Hammock District of Sapelo Island by adopting the Amendment to the McIntosh County Code of Ordinances Appendix C Sec. 219-HH Hog Hammock District. This amendment, according to the evidence presented, increased the size of the residences allowed from 1400 square feet to 3000 square feet, and nothing else.

(Final Order, p. 2). In that Order, the Court appropriately concluded that “the September zoning amendment would **remain unaffected** by the holding of the referendum election . . . .” *Id.*, p. 14 (emphasis added). Why? Because the “*Probate Court had no authority to order a Par. I, (b)(2) special election since the ordinance at issue was adopted pursuant to Par. IV Zoning rather than Par. I, (b)(1).*” (Order, para. 20). This conclusively demonstrates that the “status quo” is (i) that the Hog Hammock zoning ordinance remains unmolested, (ii) that the Hog Hammock zoning ordinance could not have been annulled by the proposed referendum, and (iii) that Intervenors present request would (in fact) upend the status quo rather than preserve it. Intervenors, along with all residents on Sapelo Island, are subject to the Hog Hammock zoning ordinance and have been for over a year. That is the status quo that this Court is authorized to preserve.

In their Motion, Intervenors seek the following:

[A]n injunction pending the resolution of their appeal in this case. Specifically, Intervenors ask the Court, pursuant to O.C.G.A. § 9-11-62(c) to enjoin the County from enforcing, approving any permits under, or otherwise taking any action pursuant to the amended zoning ordinances that were to be subject to the referendum in this case.

(Motion, p. 2). In so doing, Intervenors do not seek to preserve the status quo as defined by the Supreme Court. Rather, Intervenors seek to enforce a change to the status quo premised upon the idea that (i) Intervenors will win their appeal and (ii) a subsequent referendum will achieve a result to their liking. That is not the status quo – that is a house of cards facing a hurricane wind. It asks for an altogether new reality to be judicially conjured out of thin air. Such relief is inappropriate, and the requested injunctive relief should be denied.

**B. The Injunctive Relief Sought By Intervenors Would Amount To A Judicial Usurpation Of Legislative Powers By Imposing A Moratorium With Respect To The County's Zoning Ordinance In Violation Of The Constitutional Separation Of Powers**

The Georgia Constitution provides that “[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.” Ga. Const. of 1983, Art. I, Sec. II, Par. III (“Separation Clause”). See Roberts v. Cuthpert, 317 Ga. 645, 652 (2023).

Under our system of government, “[t]he legislative branch enacts the law, the judiciary interprets those laws and the executive branch enforces those laws until they are amended or held to be unconstitutional.” *Ga. Dept. of Human Svcs. v. Steiner*, 303 Ga. 890, 904 (V), 815 S.E.2d 883 (2018) (citation and punctuation omitted). “[I]ndeed, there is no liberty, if the power of judging be not separated from the legislative and executive powers.” *Beall v. Beall*, 8 Ga. 210, 229 (1850) (emphasis omitted).

Roberts, 317 Ga. at 652. Intervenors’ Motion violates the Separation Clause by asking the Court to act in a super-legislative capacity.

In their Motion, Intervenors are seeking a judicially-imposed moratorium on an enactment of the legislature (McIntosh County Board of Commissioners) where there has been no underlying finding of constitutional infirmity or illegality. In so doing, Intervenors are asking the Court to invade the province of the legislature<sup>4</sup> merely because one party to a civil lawsuit would find such an outcome convenient or desirable. Stated plainly, Intervenors ask this Court to take on a legislative role rather than a judicial one. Pursuant to the Separation Clause, and respectfully, this Court has no such authority, and the Motion should be denied.

**C. Intervenors Do Not Satisfy The Standards For Granting The Requested Injunctive Relief**

Notwithstanding the insurmountable jurisdictional hurdles associated with Intervenors' Motion, the Court is nonetheless bound to deny the requested relief on the merits because Intervenors have failed to justify the extraordinary injunctive relief requested in the Motion. In seeking the injunction, Intervenors rely on O.C.G.A. § 9-11-62(c), which provides:

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Although the Court may have discretion to consider issuance of an injunction pending appeal pursuant to section 9-11-62(c)<sup>5</sup>, that discretion is not without bounds. Courts must apply a four-

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<sup>4</sup> City of Roswell, 274 Ga. at 131) (temporary moratorium is an “an intermediate step in the legislative [zoning] process...”).

<sup>5</sup> The County is mindful of the general similarity of the relief ordered by the Court to injunctive relief. Nevertheless, the County notes without taking a position, that the Court did not technically “grant, dissolve or deny an injunction” as part of its Final Order. (Final Order, passim.) Instead, the Court issued a declaratory judgment regarding the legal status on seven issues and issued a Writ of Prohibition as to the actions of the McIntosh County Board of Elections, McIntosh County and Judge Webster. (Final Order, pp. 14-15).

factor analysis when considering whether to grant extraordinary injunctive relief pending appeal of a decision granting injunctive relief. See Green Bull Georgia Partners, LLC v. Reg., 301 Ga. 472, 473 (2017). In this case, none of the four factors are met and regardless of the previously addressed deficiencies, the Motion should be denied on the merits.

As set forth below, (i) Intervenors cannot show a likelihood of success on the merits of their appeal (they have merely repeated the same arguments that were unpersuasive in the first instance); (ii) there is no evidence that an injunction will have any positive impact on Intervenors or that its absence will cause Intervenors “irreparable” harm; (iii) by its very nature, the relief sought by Intervenors will frustrate the County’s legislative power over zoning decisions expressly granted to the County by the Georgia Constitution; and (iv) the public interest in having its elected legislative representatives make decisions in the interest of all citizens of the County will be frustrated by the requested injunctive relief.

#### **1. Intervenors Cannot Demonstrate A Likelihood Of Success On The Merits**

The first factor that the Court must consider in determining whether to grant injunctive relief pursuant to O.C.G.A. § 9-11-62(c) is “the likelihood that the appellant will prevail on the merits of his appeal.” Green Bull, 301 Ga. at 473. In addressing this factor, Intervenors essentially suggest that this Court got it wrong.<sup>6</sup> Other than restating their prior arguments, however, Intervenors offer no new insight as to why their arguments will fare better before the Supreme Court than before this Court. As this Court has already correctly concluded, “[t]he Probate Court

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<sup>6</sup> Specifically, Intervenors argue “the Court created an implied grant of legislative power”, “disregarded the language or prior constitutions and the current Georgia constitution, improperly construed different paragraphs of the same section of constitution in isolation, and acted against clear precedent” and “misapplied *Camden County v. Sweat.*” Motion, p. 4. Of course, these arguments are entirely familiar to this Court as they have already been made to this Court in opposition to the relief the Court ultimately granted in its Final Order.



had no authority under Par. 1, (b)(2) special election since the ordinance at issue was adopted pursuant to Par. IV Zoning rather than Par. I, (b)(1).” Final Order, p. 12. Intervenors offer nothing new to suggest that this conclusion failed to consider all arguments previously made. For instance, Intervenors cite to no recent appellate opinion that might change the legal calculus. As such, Intervenors have not shown a likelihood of prevailing on the merits.

## **2. Intervenors Cannot Demonstrate Harm From The Lack Of A Referendum**

The second factor is “the extent to which the applicant will suffer irreparable harm in the absence of a stay or injunction.” Green Bull, 301 Ga. at 473. Here, Intervenors offer up a ‘*parade of horrors*’ to persuade the Court that calamity will occur should enforcement of the zoning ordinance not be blocked. However, the legality of the Hog Hammock zoning ordinance is NOT at issue. There is no outcome in this case that results in the Hog Hammock zoning ordinance being declared unconstitutional. There never has been.

Regardless, even if the issue were relevant to this case, Intervenors fail to establish that they will suffer irreparable harm without the entry of the requested injunctive relief. First, Intervenors do not assert that there will actually be harm as a result of the allegedly nefarious enforcement of the zoning ordinance. Instead, Intervenors merely advance that the County “likely” will enforce the September zoning decision and that, as a result, “[t]he Hogg Hammock community **may** be forever **altered**.” Motion, p. 5 (emphasis added). Nowhere do Intervenors explain how such potential enforcement might alter (much less forever alter) the Hogg Hammock community, nor is there any suggestion that such “alteration” amounts to actual harm. Next, it is particularly noteworthy that there is no assertion that Intervenors themselves would be harmed (much less in what way). All that is asserted is that some undefined entity known as “the Hogg Hammock community” may be affected without the injunction. Likewise missing from Intervenors’ analysis

is the requirement that the harm that Intervenors will suffer must be “irreparable.” Green Bull, 301 Ga. at 473. Because Intervenors have not identified any specific harm, they clearly cannot show that the harm would be “irreparable.”

Indeed, notably missing from Intervenors’ arguments is the assertion of any harm that has occurred in the year since adoption of the September zoning decision. One would expect that if the “Hogg Hammock community would be forever altered” without an injunction preventing enforcement of the Hog Hammock zoning ordinance pending the appeal of this Court’s Final Order, some ‘hint’ of that calamity would already be demonstrable. There is no such showing, nor could there be. The modest increase in residential building sizes that is the touchstone of the Hog Hammock zoning ordinance is hardly the stuff of ‘irreparable harm.’

Presumably recognizing this deficiency, Intervenors pivot and argue that the “will of the people in the Georgia Constitution (in delegating legislative power and a check against local government abuse to local electorates) is subverted” if the injunction is not entered. (Motion, p. 5). Although this argument finally touches on an issue in the present case, it is, nevertheless, irrelevant to the injunctive relief sought in Intervenor’s Motion. The injunction Intervenor’s seek has nothing to do with whether the referendum is appropriate or not; it deals entirely with enforcement of the Hog Hammock ordinance. Even if Intervenor’s were correct that the referendum was constitutionally appropriate, the “will of the people”, as expressed in the Referendum Clause, would only be “subverted” by the referendum not occurring. The “will of the people” as expressed via the hypothetical referendum is unknowable. The “will of the people” – in that regard - cannot be known unless and until the referendum occurs.

The only two possible outcomes of this case are that a referendum advances or does not advance. It is a binary outcome. If the referendum does not go forward, the Hog Hammock zoning

ordinance remains in place and any injunction on its enforcement pending appeal would have only subverted the County's ability to enforce its legislative enactments. Should the referendum ultimately occur, that does not mean that the County could not enforce the zoning ordinance. There is no conceivable way for Intervenors, McIntosh County or this Court to know the outcome of the vote.

Quite simply, Intervenors have not shown any actual, irreparable harm that would befall them if the requested injunction were denied. As such, the requested injunctive relief must be rejected and the Motion denied.

**3. The County Is Harmed By The Postponement Of The Ability To Enforce Its Duly Adopted Ordinances In Favor Of A Minority Of Its Citizens' Self-Interest**

The Supreme Court instructs that the third factor to consider when deciding whether to grant injunctive relief pending appeal is "the extent to which a stay or injunction would harm the other parties with an interest in the proceedings." Green Bull, 301 Ga. 473. In addressing this factor, Intervenors assert that the "only interest the County claims in this case is an interest in protecting the public coffers through not holding an election." Motion, p. 5. This analysis misses the mark insofar as Intervenors' assessment of the County's asserted "interest" evaluates the harm to the County if the referendum were to proceed – not the harm that the County would suffer if it were prevented from enforcing its duly adopted ordinances.<sup>7</sup>

As established in Green Bull, the appropriate analysis considers the harm to the County if the injunction were imposed. In this case, the County, through its elected representatives, undertook legislative action in adopting the Hog Hammock zoning ordinance. Were the injunction

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<sup>7</sup> This appears to be the only time the Intervenors actually address an issue in this case with respect to the referendum rather than the Grovner issues related to the validity of the September zoning decision itself.

to be entered, a duly adopted legislative enactment for which no constitutional or legal infirmity has been shown will have been temporarily annulled because three individuals, whose legal argument have (thus far) been unsuccessful, chose to ask for this relief. The public interest, as reflected in the decisions of the Board of Commissioners, will have been undermined and the Court will have stepped squarely into the legislative realm and decreed by judicial fiat that a moratorium be imposed. The people of McIntosh County should have confidence that acts of their duly elected Board will remain unmolested absent a finding that such acts are unlawful. Such a finding has not occurred here, nor could it occur – as the legality of the Hog Hammock zoning ordinance is not at issue. In order to protect the County from such harm, the Motion must be denied.

**4. The Public Interest In Enforcement Of Ordinances Adopted By A Majority Of The Elected Representatives Of The Entire County Weighs Against Granting Of The Requested Injunctive Relief**

The final factor identified by the Supreme Court when deciding whether to enter an injunction pending appeal is “the public interest.” Green Bull, 301 Ga. at 473. Intervenors suggest that the public interest is “greatly served” by “protecting the Hog Hammock community as well as protecting the right to a referendum.” Motion, pp. 5–6. This one-sided analysis does not address the public interest. It reflects the Intervenors’ interest.

In this case, the public interest is synonymous with the County insofar as the County Board of Commissioners – under our constitutional republic - embodies the public interest through its elected representatives. The will of the public, as expressed through the votes of the individual members of the Board of Commissioners, has already been expressed and shows that the “public interest” is to adopt (and enforce) the Hogg Hammock zoning ordinance. This factor weighs heavily in favor of rejecting the requested injunctive relief and the Motion should be denied based on the merits of the Motion.

### III. CONCLUSIONS

Because Intervenors' Motion is procedurally, legally, and foundationally improper, the Court must deny the Motion.

This 1<sup>st</sup> day of November, 2024.

#### **JARRARD & DAVIS, LLP**

*/s Ken E. Jarrard*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing **RESPONSE IN OPPOSITION TO INTERVENORS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL** in the above-styled action with the Court via PeachCourt e-filing system which will automatically send notice of same to the attorneys of record. Additionally, a true and correct copy of same has been delivered to the following counsel of record:

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This 1<sup>st</sup> day of November, 2024.

**JARRARD & DAVIS, LLP**

*/s/ Ken E. Jarrard* \_\_\_\_\_

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AUG 12, 2024 04:22 PM

*Mandy Harrison*  
Mandy Harrison, Clerk  
McIntosh County, Georgia

IN THE SUPERIOR COURT OF MCINTOSH COUNTY  
STATE OF GEORGIA

Georgette “Sharron” Grovner, Marvin “Kent”  
Grovner Sr., Lula B. Walker, Francine Bailey,  
Mary Bailey, Merden Hall, Florence Hall,  
Yvonne Grovner, and Ire Gene Grovner Sr.;

Plaintiffs,

v.

McIntosh County, Georgia,

Defendant.

Civil Action No. SUV2024000058

**PLAINTIFFS’ VERIFIED AMENDED COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

1. Plaintiffs Georgette “Sharron” Grover, Marvin “Kent” Grovner Sr., Lula B. Walker, Francine Bailey, Mary Bailey, Merden Hall, Florence Hall, Yvonne Grovner, and Ire Gene Grovner Sr. hereby file this Verified Complaint for Declaratory Judgment and Injunctive Relief against McIntosh County, Georgia, and show as follows:

**INTRODUCTION**

2. Plaintiffs bring this action against McIntosh County because the McIntosh County Board of Commissioners (the “Board”) adopted an unlawful zoning amendment that impacts the property and ancestral homeland of Plaintiffs in Hogg Hummock,<sup>1</sup> located on Sapelo Island in McIntosh County, Georgia. The zoning amendment violates state law and Plaintiffs’ constitutional

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<sup>1</sup> Throughout this Complaint, Plaintiffs refer to this district located in their ancestral homeland by its proper name in the Gullah-Geechee community of “Hogg Hummock,” rather than “Hog Hammock,” which is often reflected in official government documents. A hummock is a forested ground that rises above marshland, where the hogs were raised during the antebellum period. “Hogg” is also a Geechee family surname.



rights to due process of law and equal protection as guaranteed by the Georgia and U.S. Constitutions.

### **PARTIES, JURISDICTION, AND VENUE**

3. Plaintiff Georgette “Sharron” Grovner is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

4. Plaintiff Marvin “Kent” Grovner Sr. is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

5. Plaintiff Lula B. Walker is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

6. Plaintiff Florence Hall is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

7. Plaintiff Francine Bailey is a resident, citizen, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

8. Plaintiff Mary Bailey is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County,

9. Plaintiff Merden Hall is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

10. Plaintiff Yvonne Grovner is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

11. Plaintiff Ire Gene Grovner Sr. is a resident, citizen, landowner, and taxpayer of Hogg Hummock on Sapelo Island in McIntosh County.

12. This Court has jurisdiction to issue declaratory and injunctive relief as to the validity and constitutionality of Section 219 to Appendix C of McIntosh County’s Zoning

Ordinance (“Section 219”) pursuant to O.C.G.A. § 15-6-8; O.C.G.A. § 9-4-1, *et seq.* (the “Declaratory Judgment Act”); O.C.G.A. § 9-5-1, *et seq.*; and Ga. Const. art. VI, § 4, ¶ I.

13. This Court also has jurisdiction pursuant to O.C.G.A. § 36-66-1, *et seq.* (the “Zoning Procedures Law”) (Count 1); O.C.G.A. § 50-14-1, *et seq.* (the “Open Meetings Act”) (Count 2); Ga. Const. art. I, § 1 ¶ 1 (Counts 3–4); Ga. Const. art. I, § 1, ¶ II (Count 6); and 42 U.S.C. § 1983 (Count 5).

14. McIntosh County is a political subdivision of the State of Georgia, created and existing by virtue of the Constitution and laws of Georgia. McIntosh County and its relevant sub-entities and officials are responsible for local zoning laws, and McIntosh County is a proper party to this action. *See* O.C.G.A. § 9-4-7; Ga. Const. Art. I, § 2, ¶ V.

15. The County is subject to the venue of this Court pursuant to O.C.G.A. § 9-10-93.

16. Because Plaintiffs are seeking declaratory and, ultimately, injunctive relief, sovereign immunity is waived for all claims in this case against McIntosh County pursuant to Ga. Const. Art. I, § 2, ¶ V.

### **RENEWAL**

17. This is a renewed Complaint pursuant to O.C.G.A. § 9–2–61(a).

18. Plaintiffs initially filed a complaint in the Superior Court of McIntosh County, Civil Action No. SUCV2023000144, against McIntosh County and the individual members of the McIntosh County Board of Commissioners on October 12, 2023. Attached hereto as Exhibit A is a true and accurate copy of the filed complaint in Civil Action No. SUCV2023000144.

19. The October 12, 2023, complaint was properly served on defendants and was not a void suit.

20. The Court dismissed Plaintiffs' October 12, 2023, action without prejudice on March 12, 2024, solely for lack of subject matter jurisdiction and without an adjudication of the merits of the case, after concluding that Plaintiffs were required to sue only the County and no other defendants pursuant to the waiver of sovereign immunity set forth in Ga. Const. Art. I, § 2, ¶ V.

21. This renewal Complaint is filed in the same Court as the Plaintiffs' October 12, 2023, complaint.

22. This action is a valid suit which may be renewed under O.C.G.A § 9-2-61.

23. This renewal Complaint is based substantially on the same causes of action and essential parties as the October 12, 2023, complaint. This renewed Complaint cures any issues with subject matter jurisdiction by naming McIntosh County as the sole Defendant and meets the requirements for renewal under O.C.G.A § 9-2-61. The initial complaint was filed within 30 days of the adoption of Section 219, within the applicable statute of limitations period. *See* O.C.G.A. § 36-66-5(b). This renewed Complaint is filed within six months of the Court's dismissal of the initial complaint on March 12, 2024, *see* O.C.G.A § 9-2-61(a), without prejudice for lack of subject matter jurisdiction, *see* O.C.G.A § 9-2-61(c).

24. Plaintiffs have not exercised their right of renewal prior to the filing of this renewal Complaint.

## **FACTS**

### **Hogg Hummock's Historic Significance and Designation**

25. Hogg Hummock is the last intact Gullah-Geechee Community in the Sea Islands of Georgia and is home to the direct descendants of enslaved people who were brought to Sapelo Island from West Africa in 1802.

26. Sapelo Island is one of Georgia's Barrier Islands and is located within the geographical bounds of McIntosh County. As a result of its relative isolation and historical protection from the mainland, Sapelo Island's Gullah-Geechee community in Hogg Hummock has been able to retain and pass down aspects of its African culture and traditions.

27. In the mid-1900s, Richard J. "RJ" Reynolds Jr. dispossessed Gullah-Geechee descendants on Sapelo Island of 1,000 acres of land that their families had purchased in Raccoon Bluff, on the north end of Sapelo Island, and relocated the Gullah-Geechee descendants from Raccoon Bluff to a 434-acre plot in the south-central area of the Island known as Hogg Hummock.

28. The Reynolds family later sold the land acquired by RJ Reynolds to the State of Georgia for a profit in 1969 and 1976.

29. Today, 96 percent of the land on Sapelo Island surrounding Hogg Hummock is owned by the State and cannot be purchased for development. Descendants currently own less than 250 acres of land in Hogg Hummock.

30. In 1996, Hogg Hummock was added to the National Register of Historic Places.

31. Contemporaneously, Section 16 to Appendix C of McIntosh County's Zoning Ordinance ("Section 16") created the "Hog Hammock" Historic District "to allow continued use and activities of the community of Hog Hammock on Sapelo Island." Appendix C explained that "[t]his community has unique needs in regard to its historic resources, traditional patterns of development, threat from land speculators and housing forms," and further that "[i]t is the intent of this district to reserve this area for low intensity residential and cottage industry uses which are environmentally sound and will not contribute to land value increases which could force removal of the indigenous population."

32. McIntosh County’s Comprehensive Plan recognizes the pristine natural environment on and around Sapelo Island as an “eco-tourism destination,” and the Gullah-Geechee community in Hogg Hummock as “unrivaled historic and cultural resources,” and emphasizes the need to “work with residents to create guidelines that maintain the historic integrity of Hog Hammock.”

33. In 2015, a group of Gullah-Geechee descendants sued McIntosh County, alleging discrimination on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment; 42 U.S.C. §§ 1981, 1982, and 1983; Title VI of the 1964 Civil Rights Act; and the Fair Housing Act of 1968.

34. The parties in that case eventually reached a settlement agreement that, among other things, effectively suspended property tax increases on the entire Island—McIntosh County and the Board of Tax Assessors agreed that the 2022 Fair Market Value for the plaintiffs’ parcels would govern the tax assessment for those parcels through 2025. As a result, the annual uniformity review performed by the Board of Assessors froze values for all parcels on the Island through 2025.

#### Plaintiffs

35. Plaintiff Georgette “Sharron” Grovner has been a resident of Sapelo Island for most of her life. She is a 56-year-old Black woman who was born and raised on the Island. She currently lives with her husband, Marvin “Kent” Grovner Sr., on property that they own on the Island. Ms. Grovner is now mostly retired, but still spends some time working in tourism. She hosts private tours and provides catering for groups visiting the Island. She also hopes to help her mother, Lula B. Walker, expand her restaurant. She was present at the September 7, 2023, meeting of the Planning and Zoning Commission and submitted comments opposed to the proposed amendment. If the property taxes on her home significantly increase, then she will not be able to afford to

continue living there. She relies on her tourism business as a source of income and will need to expand her business, especially if her property taxes increase.

36. Plaintiff Marvin “Kent” Grovner Sr. is Sharron’s husband and lives with her on property that they own on the Island. He is a 60-year-old Black man who was born and raised on the Island and has lived there for most of his life. Like his wife, Mr. Grovner is now retired with limited income. He was present at the September 7, 2023, meeting of the Planning and Zoning Commission and submitted comments opposed to the proposed zoning amendment. If the property taxes on his home significantly increase, then he will not be able to afford to continue living there. Mr. Grovner relies on the business he runs with his wife as a source of income and will need to expand their business, especially if their property taxes increase.

37. Plaintiff Lula B. Walker is Sharron’s mother. She is a 75-year-old Black woman who has lived on the Island for 75 years and owns property on the Island. She currently owns and operates Lula’s Kitchen, the only restaurant on the Island, which she hopes to leave to her children. She also receives Social Security benefits. She was present at the September 7, 2023, meeting of the Planning and Zoning Commission and submitted comments opposed to the proposed zoning amendment. If the property taxes on her home significantly increase, then she will not be able to afford to continue living there. Ms. Walker relies on her restaurant as a source of income and will need to expand her business, especially if her property taxes increase.

38. Plaintiff Florence Hall is an 83-year-old Black woman who was born and raised on the Island. She has lived on the Island continuously since 1994 and plans to live at her current home, which is located on property that she owns on the Island, for the rest of her life. Social Security Benefits are her sole income. If the property taxes on her home significantly increase, then she will not be able to afford to continue living there.

39. Plaintiff Francine Bailey is a 36-year-old Black woman who came to the Island when she was a baby and has lived there almost continuously since then. She and her two children live on the Island on land owned by her mother, Mary Bailey, that has been in their family for generations. Ms. Bailey relies on the ferry to transport herself and her children from the Island to the mainland for school and work. She was present at the September 11, 2023, working session of the McIntosh County Board of Commissioners and the September 12, 2023, regular Board meeting. If the property taxes on the Island significantly increase, then her mother's property will become unaffordable, and neither she nor her mother will be able to continue living there. Ms. Bailey would like to run a crabbing and fishing business from her home. She will need the additional income, especially if her property taxes increase.

40. Plaintiff Mary Bailey, Francine's mother, is a 57-year-old Black woman who was born and raised on the Island. Her home on the Island is situated on property that she owns. She has worked in the kitchen of the RJ Reynolds Mansion for more than 20 years. If the property taxes on the Island significantly increase, then Ms. Bailey will not be able to afford to continue living there.

41. Plaintiff Merden Hall is a 63-year-old Black man who was born and raised on the Island. He moved away from the Island when he was a teenager but moved back to the Island in early 2023. Mr. Hall's home on the Island is situated on property that he owns, and he plans to live there for the rest of his life. He is retired, and his only income is from Social Security Benefits. He was present at the September 7, 2023, meeting of the Planning and Zoning Commission and submitted comments opposed to the proposed zoning amendment. If the property taxes on the Island significantly increase, then he will not be able to afford to continue living there.

42. Plaintiff Yvonne Grovner is a 63-year-old Black woman who has resided on the Island for 43 years. Her home on the Island is situated on property that she owns. She works part-time for the Georgia Department of Natural Resources and has received retirement benefits from the State of Georgia since she retired in 2020. She also has a tourism business and hopes to open additional businesses such as a gift shop and teaching basketweaving classes. She was present at the September 7, 2023, meeting of the Planning and Zoning Commission and submitted comments opposed to the proposed amendment. If the property taxes on the Island significantly increase, then she will not be able to afford to continue living there. Ms. Grovner and her husband currently rely on her tourism business as a source of income and may need to expand their income, especially if their property taxes increase.

43. Plaintiff Ire Gene Grovner, Sr., is Yvonne's husband and lives on property that they own on the Island. He is a 68-year-old Black man who has lived on the Island his entire life. He is now retired after working on the ferry that travels between the Island and the mainland for around 25 years. His source of income is Social Security benefits. If the property taxes on the Island significantly increase, then he will not be able to afford to continue living there. He and his wife currently rely on his wife's businesses for income, and they will need to generate additional income, especially if their property taxes increase.

44. Plaintiffs' land has been in their families for generations, and they plan to bequeath this land to their children and grandchildren.

45. The prospect of being forced to sell land that has been in their families for generations due to Section 219's impact is untenable for Plaintiffs because they will have nowhere else to go. Additionally, they will be deprived of the opportunity to pass on their family land and their legacy and generational wealth to future generations.



### Zoning in Hogg Hummock Prior to September 2023

46. For 25 years, Section 16 has limited construction in Hogg Hummock to single-family dwellings with a maximum of 1,400 heated/cooled square footage. The stated purpose of this regulation was to ensure “low intensity residential and cottage industry uses which are environmentally sound and will not contribute to land value increases.”

47. Section 16’s protections resulted in most homes in the Hogg Hummock district of the Island being small and modest, single-story homes.

48. Sapelo residents have noted in past meetings and listening sessions with McIntosh County Commissioners that the County had been unable to enforce Section 16 effectively. In recent years, several larger homes were constructed, ranging from 2,000–3,000 total square feet, due to a perceived loophole in the limitation on heated/cooled space.

49. Many white landowners and developers wishing to build in Hogg Hummock have complained that the existing zoning guidelines are unfair because the guidelines are more restrictive than those on the Georgia mainland and other parts of Sapelo Island.

50. At least one white developer complained to McIntosh County Commissioners that the Hogg Hummock zoning protections violated white developers’ equal protection rights under the Fourteenth Amendment of the U.S. Constitution.

51. On March 30, 2021, Commissioner Lotson met with roughly 50 Sapelo Island residents and landowners to discuss the potential for a zoning amendment changing the permitted maximum square footage from 1,400 square feet of heated/cooled space to 1,600 square feet.

52. Also present at that listening session were County Commissioner at-large Kelly McClellan, County Manager Patrick Zoucks, County Attorney Adam Poppell, Deputy County

Manager Shawn Jordan, County Clerk Sherrell Davis, City of Darien Councilman Griffin Lotson, and Fred Hay with the Georgia Department of Natural Resources (“DNR”).

53. Attendees at the March 30, 2021, listening session were told that the next step in the process was to hold a public hearing to receive input from constituents.

54. On August 4, 2021, Sapelo Island Cultural and Revitalization Society (“SICARS”) hosted a follow-up meeting with Commissioner Lotson, the McIntosh County Attorney, and McIntosh County’s Director of Building and Zoning to further discuss the March 2021 proposed amendment.

55. In that meeting, all parties agreed that the spirit of current zoning regulations was not being enforced, in part due to perceived loopholes in the regulations. However, they lacked consensus as to when new zoning regulations would move forward.

56. The McIntosh County Attorney specifically stated: “I can tell you that there is no appetite among the Administrative staff to make any changes currently in the McIntosh Zoning Ordinances as it pertains to Hog Hammock.”

57. At the same August 4, 2021, meeting, Commissioner Lotson advised SICARS members that if and when zoning amendments were put forth, the most important way for them to be heard was to attend the related public hearing(s) in large numbers and articulate what zoning regulations the community desired.

58. There were no public hearings before the County Planning and Zoning Commission regarding amendments to Hogg Hummock zoning ordinances between that August 4, 2021, meeting and the September 7, 2023, public hearing that ultimately gave rise to the subject of this Complaint.

The August 2023 Hogg Hummock Proposed Zoning Amendments

59. On July 11, 2023, the Board voted to approve amendments to the McIntosh County Zoning Ordinance but reserved consideration of amendments to the Hogg Hummock District for a future date.

60. The McIntosh County Zoning Ordinance Amendments approved on July 11, 2023, allow all prior nonconforming uses to be considered legal nonconforming uses.

61. On August 16, 2023, the Board notified residents of proposed amendments to the “McIntosh County Zoning Ordinance, specifically the Hog Hammock District.”

62. Notice of the public hearing ran in a McIntosh County newspaper, *The Darien News*, on the same date.

63. The proposed zoning amendments were prepared by the Board with the assistance of a private citizen, a white individual who owns land on the Island and served on the State of Georgia’s Coastal Regional Commission.

64. The proposed zoning amendments presented in August 2023 failed to include any indication as to which language was amended or deleted and whether the existing zoning ordinance would be replaced in part or in full.

65. These amendments were collectively labeled “Section 101,” causing confusion as to whether they were intended to amend the existing Section 16 or were intended to be a standalone ordinance.

66. Section 101 initially contained no maximum square footage for buildings constructed in Hogg Hummock. Additionally, the maximum height for a building was amended from 1.5 stories to 45 feet. Under these changes, there was no limitation on the size of a house being constructed on the Island.

67. Section 101 was incompatible and inconsistent with the existing character and infrastructure of Hogg Hummock and would have radically altered the existing protections for Hogg Hummock in the McIntosh County Comprehensive Plan and Appendix C of the McIntosh Zoning Ordinance in the McIntosh County Code.

The August 16, 2023, Notice of Public Hearing

68. The August 16, 2023, notice advised that a public hearing would be held at 5:30 p.m. on September 7, 2023, before the McIntosh County Planning and Zoning Commission (hereinafter, the “Planning and Zoning Commission”) in Darien, Georgia. The notice also stated that the Board would conduct a working session at 5:00 p.m. on September 11, 2023, before voting on the proposed amendments at a 5:00 p.m. meeting on September 12, 2023.

69. Under the normal weekday ferry schedule to and from Sapelo Island, the last ferry of the day departs the mainland at Meridien, Georgia, for Sapelo Island at 5:30 p.m.

70. On August 22, 2023, undersigned counsel from the Southern Poverty Law Center sent a letter to the Board and the County Attorney advising that holding the meetings in a time and place that, under the daily ferry schedule, precluded the attendance of impacted residents could violate due process and equal protection guarantees under both the Georgia and U.S. Constitutions and the Georgia Open Meetings Act. To avoid these potential violations, the letter proposed that the County move the meeting to Sapelo Island or coordinate with the State of Georgia to provide additional ferry services to leave at least 30 minutes after the public hearings concluded.

71. On September 5, 2023, the Georgia Department of Natural Resources (“DNR”) announced that the 5:30 p.m. ferry departure would be delayed until 7:30 p.m. on September 7, 2023.

72. The County failed to timely communicate to Sapelo Island residents and other interested parties these last-minute changes to the ferry schedule to accommodate the participation of those who needed to return to Sapelo Island.

73. In the days leading up to the September 7, 2023, public hearing, some residents of Hogg Hummock expressed concern as to whether they could or should attend the meeting, given the lack of official information that they would have transportation home.

The September 7, 2023, Planning and Zoning Hearing & Business Meeting

74. On September 7, 2023, the Planning and Zoning Commission held a public hearing at the McIntosh County Courthouse (hereinafter, the “September 7 hearing”). The main courtroom in which the meeting was held had a posted maximum capacity of 125 people. Estimated attendance for this meeting was between 150 and 200 people.

75. This number does not reflect the additional interested or impacted persons who were unable to attend due to lack of notice regarding the availability of ferry transportation.

76. At the hearing, the County issued attendees a written form asking whether they supported or opposed the proposed amendments. There were 111 recorded written responses opposing the amendment. No attendees recorded written responses in favor of the proposed amendments.

77. Attendees asked questions about how the proposal would impact development and existing properties in Hogg Hummock, some of which the members of the Planning and Zoning Commission were unable to answer.

78. No verbatim transcript of the hearing was taken or provided publicly after the hearing.

79. All attendees were prohibited from bringing cell phones or any other recording device. No exceptions were made for attorneys or members of the press.

80. Thirty attendees provided public comment, representing residents, descendant landowners, two local mosques, and numerous other community organizations. None of the speakers supported the proposed zoning amendments.

81. The Board also received over 300 letters from interested or impacted parties regarding the proposed zoning amendments. Approximately 27 letters, including 6 from limited liability corporations, were in support of the proposed zoning amendments. The rest of the letters opposed the amendments.

82. After public comments concluded, the members of the Planning and Zoning Commission ended the hearing and immediately held a business meeting publicly in the same room, wherein they made numerous substantive revisions to the proposed zoning amendments and acknowledged holes remaining in the proposal, but still voted to advance them for consideration by the County Board of Commissioners without further public comment.

83. Among the amendments made at the business meeting were changes to the “Allowed Uses by Zoning District” for Hogg Hummock set forth in Table 2.1.<sup>2</sup> Table 2.1 is incorporated by reference throughout Section 219. Table 2.1 sets forth the land uses that are prohibited, permitted by right, or permitted with special permit. The Planning and Zoning Commission recommended several changes to the allowed land uses for Hogg Hummock, including to cattle ranching and farming (special permit), scenic and sightseeing transportation

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<sup>2</sup> As stated, Table 2.1 was presented to the public as a table accompanying the proposed amendments labeled first as “Section 101” and, subsequently, as Section 219. After adopting Section 219, the County revised Appendix C to the McIntosh Zoning Ordinance in January 2024. Table 2.1 is now set forth in Section 221 of Article 2 to Appendix C of the County’s Zoning Ordinance.

companies (tours) (permitted by right), child daycare services (permitted by right), golf courses (prohibited), marinas (prohibited), bed and breakfast establishments (permitted by right for Airbnb and VRBO), fishing camps and hunting lodges (special permit), caterers (special permit), welding shops (permitted by right), temporary outdoor sales events (special permit), seasonal outdoor events (permitted by right).

84. As the Planning and Zoning Commission discussed the changes to Table 2.1, several Gullah-Geechee community members commented about what uses the community already engaged in. One Gullah-Geechee community member said, “We are just making sure we get a clear understanding so we can follow the rules.” One community member commented that the community raises cows, hogs, goats, and chickens in Hogg Hummock. Another commented that community members provide tours. Another commented, “We have seasonal outdoor events” such as “cultural day, we have Juneteenth, we have a bunch of stuff” that occur every year. Another commented that people on the Island cater and asked if the descendants would be affected by the amendment to that allowed use to require a special permit. The Planning and Zoning Commission responded that, “If they want to have a full-blown operation to support something that they master, then maybe they ought to need a special permit, ok?”

85. The additional changes the Planning and Zoning Commission made were incompatible and inconsistent with the existing character and infrastructure of Hogg Hummock and would have radically altered the existing protections for Hogg Hummock in the McIntosh County Comprehensive Plan and Appendix C to the McIntosh County Zoning Ordinance in the McIntosh County Code.

86. The September 7 hearing and subsequent business meeting concluded after 8:00 p.m.

87. The Hogg Hummock residents who required ferry service back to the Island were forced to leave after the public hearing but before the business meeting to catch the scheduled 7:30 p.m. ferry and were not present when substantive changes were made to the proposal at the business meeting.

The September 11, 2023, County Board of Commissioners' working session

88. On September 10, 2023, DNR announced the 5:30 p.m. ferry departure would be delayed until 7:30 p.m. for the September 11, 2023, working session and the September 12, 2023, regular meeting of the Board.

89. Again, the County failed to timely communicate to Sapelo Island residents and other interested parties these last-minute changes to the ferry schedule to accommodate the participation of those who needed to return to Sapelo Island.

90. On September 11, 2023, the Board held a working session (hereinafter, the "September 11 Board working session") in advance of the final vote scheduled for the next day on September 12, 2023.

91. The September 11 Board working session was held in the same main courtroom with a posted maximum capacity of 125 people. This session did not provide an opportunity for public comment.

92. The Board immediately announced, for the first time, that the correct title for the proposed zoning amendments to Hogg Hummock was "Section 219," and not Section 101, as previously noticed in August. The Board stated that the previous name for the section was a "mistake."



93. In addition to correcting the section title and number of the proposed amendments, the Board announced for the first time additional revisions to the proposed amendments that were made by the Planning and Zoning Commission after its September 7, 2023, business meeting.

94. Among the changes made by the Board of Commissioners was an increased cap on the maximum building size of 3,000 square feet under roof and exterior walls, regardless of the height of the structure. Changes were also made to the “purpose and intent” in the opening paragraph of Section 16.1. Written copies of these changes were not provided to the public prior to or during the working session.

95. The Board of Commissioners also made some additional changes to Table 2.1 at the September 11, 2023, workshop on top of the Planning and Zoning Commission’s changes. For example, it changed the “Allowed Uses by Zoning District” for Hogg Hummock to reflect the following: greenhouse, horticultural nursery, and floriculture production (permitted by right); cattle ranching and farming (permitted by right); hog and pig farming (permitted by right); poultry and egg production (permitted by right); sheep and goat farming (permitted by right); and convenience stores (special permit). With respect to the last land use, the Board of Commissioners noted that convenience stores already in Hogg Hummock would be “grandfathered in” but new ones would require a special permit. Additionally, “historical sites,” such as the churches in Hogg Hummock, were designated in Table 2.1 as permitted by right after it was discovered at the working session by community members that this category was missing from the proposed amendments but should have been included.<sup>3</sup>

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<sup>3</sup> Notably, the Board of Commissioners did not announce to the public additional proposed changes to Section 219 and Table 2.1 before voting on the zoning amendments “as written” the following day. However, there are discrepancies between the proposed changes and the final adopted Section 219 and Table 2.1, as viewable on the County’s municipal code website. For example, caterers; greenhouse, horticultural nursery, and floriculture production; cattle ranching and farming; hog

96. Table 2.1, as incorporated into Section 219, will have long-lasting impacts on Gullah-Geechee community members' ability to undertake subsistence and economic development activities, to hold and observe cultural events, and to otherwise carry out the community's traditional ways of life in Hogg Hummock. It will also dictate whether Plaintiffs and the wider Gullah-Geechee community in Hogg Hummock can engage in land use activities that will permit them to earn additional money in the event their property taxes increase in the future.

97. After the Board's revisions, Section 219's new purpose and intent read as follows: "The purpose of this district is to allow continued use and activities of the community of Hog Hammock on Sapelo Island. This community has unique needs in regard to its historic resources, traditional patterns of development, threat from land speculators and housing forms. It is the intent of this district to reserve this area for low intensity residential and cottage industry uses which are environmentally sound and will not contribute to land value increases which could force removal of the indigenous population. Further, it is the intent of this district to provide for a community on the Island with limited water and/or sanitary sewer facilities. The regulations that apply within this district are designed to encourage the formation and continuance of a stable, healthy environment for several different types of dwellings and small commercial establishments to support this Island community. Industry is not an acceptable form of development in the Hog Hammock district."

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and pig farming; poultry and egg production; sheep and goat farming; seasonal outdoor events; and historical sites are listed as prohibited rather than permitted by right. By contrast, golf courses and marinas are allowed with special permit rather than prohibited. Tours are allowed by special permit rather than permitted by right. Temporary outdoor sales events are prohibited rather than allowed with special permit. *See* Section 221 of Article 2 to Appendix C of the County's Zoning Ordinance, *available at* [https://library.municode.com/ga/mcintosh\\_county/codes/code\\_of\\_ordinances?nodeId=PTIICOG\\_EOR\\_APXCZOR\\_ART2ESLAUSDIIINLAUSDIBO\\_S221SUTALLLAUSZODI](https://library.municode.com/ga/mcintosh_county/codes/code_of_ordinances?nodeId=PTIICOG_EOR_APXCZOR_ART2ESLAUSDIIINLAUSDIBO_S221SUTALLLAUSZODI).

98. This version of Section 219 did not have redlined or tracked changes to indicate which language was being amended or deleted from Section 16 or any other provisions of the existing McIntosh Zoning Ordinance, Appendix C of the McIntosh Code of Ordinances, or whether any section was being replaced in part or in full.

99. Commissioner Lotson moved to postpone the Board vote scheduled for the next day on September 12, 2023, due to outstanding concerns and unanswered questions from the community. His motion failed 3–2, with Commissioners Kate Pontello Karwacki, David Stevens, and Davis Poole voting no, and Commissioners Lotson and Harrell voting yes.

100. Commissioner Stevens stated after the vote that the Board had requested input and received no feedback. He further stated that the amendments were necessary because the County failed to enforce the existing zoning regulations.

101. At the September 11 Board working session, the McIntosh County Courthouse main courtroom was again filled with over 150 attendees who lined the walls and spilled into the hallway. None of the attendees were provided an opportunity for public comment.

102. All attendees were prohibited from bringing cell phones or any other recording device. No exceptions were made for attorneys or members of the press.

103. The September 11 Board working session lasted 35 minutes and did not include any substantive discussion of Section 219.

104. Each Commissioner had at his or her seat a manila envelope. Commissioner Lotson indicated each envelope contained hundreds of written public comments regarding Section 219. The envelopes were not opened, and the contents were not discussed at the September 11 Board working session.

105. Even with the amendments announced at the September 11 Board working session, Section 219 was incompatible and inconsistent with the existing character and infrastructure of Hogg Hummock and would radically alter the existing protections for Hogg Hummock in the McIntosh County Comprehensive Plan and Appendix C to the McIntosh Zoning Ordinance in the McIntosh County Code.

The September 12, 2023, County Board of Commissioners Meeting

106. The McIntosh County Board of Commissioners reconvened for its regular meeting on September 12, 2023 (hereinafter, the “September 12 Board meeting”), to vote on the zoning amendments proposed by the Planning and Zoning Commission, with the additional revisions announced at the Board’s September 11 Board working session.

107. The September 12 Board meeting was again held in the McIntosh County Courthouse main courtroom, with a posted maximum capacity of 125 people.

108. The courtroom was again filled with over 150 attendees who lined the walls and spilled into the hallway.

109. The Board did not provide an opportunity for public comment about the proposed zoning amendments.

110. Normally, the Board permits the public to speak at either the Board meeting or the Board working session. The Board did not follow that practice for Section 219.

111. The County circulated redlined text of Section 219 before the September 12 Board meeting. However, the redlined changes only reflected the changes made to Section 219 at the September 7 business meeting of the Planning and Zoning Commission and the September 11 Board working session.

112. At no point in the legislative process was a version of the proposed zoning amendments to the McIntosh Zoning Ordinance provided to the public, setting forth in writing the new text to be added to the original Section 16 language and the existing text to be deleted from the original Section 16 language. Nor was there any explicit explanation in writing of how Section 219 related to Section 16.

113. At the September 12 Board meeting, attendees with press credentials were permitted to bring cell phones into the room. All other attendees, including attorneys, were prohibited from bringing cell phones or any other recording device.

114. Commissioner Lotson made a motion to amend the September 12 agenda to delete the agenda item pertaining to Hogg Hummock zoning to give the Board time to consider the community's feedback, including the hundreds of letters the Board received. His motion failed 3–2, with Commissioners Karwacki, Stevens, and Poole voting no, and Commissioners Lotson and Harrell voting yes.

115. Commissioner Poole then successfully moved to approve the day's agenda as written, with Commissioners Karwacki, Stevens, and Poole voting yes.

116. Commissioners Karwacki, Stevens, and Poole voted in favor of the Section 219 Hogg Hummock zoning amendment. At the time of the vote, the amendment had been revised twice following the only public hearing held on September 7 by the Planning and Zoning Commission.

117. Section 219, as passed, increased the maximum for Hogg Hummock homes from 1,400 heated /cooled square feet to 3,000 square feet under roof.

118. After voting in favor of Section 219’s zoning amendment, Commissioner Poole advised that the Board’s actions were intended to be fair to non-Gullah residents in Hogg Hummock, whom he estimated comprised 50 percent of Hogg Hummock’s population.

119. After voting in favor of Section 219, Chairman Stevens stated that nobody had ever given him concrete numbers for increasing the square footage of homes in Hogg Hummock, despite attempts to obtain community input via SICARS and the non-profit organization One Hundred Miles.

120. Chairman Stevens stated that Hogg Hummock descendants who do “not want these outsiders . . . do not want these new homes being built to stop selling [their] land.”

121. Listing his relationships with older and deceased Hogg Hummock community members and residents, Chairman Stevens concluded his comments by stating that the Lord had called home his favorites, while “this next generation doesn’t have it, nor will they ever.”

122. Commissioners William Harrell and Roger Lotson voted against Section 219.

123. Lotson stated, “a few millionaires will come and build 3,000-square-foot homes, again—as I said yesterday—at the expense of us, at the expense of our reputation, at the expense of our history and our culture.” Lotson added that, beyond displacing Gullah Geechee landowners, the measure would cost McIntosh County taxpayers an “unknown amount of money” for the additional public services demanded by newcomers.<sup>4</sup>

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<sup>4</sup> See also Benjamin Payne, ‘A few millionaires will come and build’: County board rezones Sapelo Island’s Gullah Geechee area, Georgia Public Broadcasting (Sept. 13, 2023), <https://www.gpb.org/news/2023/09/13/few-millionaires-will-come-and-build-county-board-rezones-sapelo-Islands-gullah>.

124. The minutes from the September 12 Board meeting were approved at the Board's regular meeting on October 5, 2023. They do not provide a detailed accounting of the statements made by the Commissioners following the vote on Section 219.

125. McIntosh County issued a notice on October 2, 2023, advising that Board meetings will no longer be held in the Darien Courthouse courtroom. The notice further stated that the October 2023 regular meeting of the Board would be canceled while staff searched for a new location that complied "with basic requirements of sound, shelter and security."

#### Permitting in Hogg Hummock Subsequent to the Zoning Decision

126. Since the September 12 Board meeting, the County has approved several permit applications that fall under the new requirements set forth in Section 219 but do not comply with the requirements of Section 16. Already, these approved development projects threaten to change the historical character of Hogg Hummock by permitting the construction of homes that are taller and larger than the traditional development patterns that were protected and permissible under Section 16's maximum permitted square footage of 1,400 (heated and cooled) and height of 1.5 stories.

127. On October 12, 2023, the County approved Permit number 23NH67, residential new construction slated to be two stories high.

128. On October 12, 2023, the County approved Permit number 23NH68, residential new construction slated to be two stories high.

129. On January 19, 2024, the County approved Permit NEW24007, new residential construction slated to be 2,133 square feet heated.

130. That the County has already approved at least three permits for construction of residential homes that are knowingly out of compliance with historical and traditional building

standards in Hogg Hummock demonstrates the rapid pace at which Section 219 will wreak havoc on this historical district and its existing residents. The accelerated erosion of the historical characteristics of Hogg Hummock will make it harder for residents to protect this district and easier for development to continue chipping away at any meaningful protections it in the future.

Tax Implications for Residents of Hogg Hummock due to Section 219

131. As the result of a settlement agreement reached in prior litigation, the annual uniformity review performed by the McIntosh County Board of Assessors froze values for all parcels on the Island through 2025, effectively freezing property taxes on the entire Island.

132. With the property tax freeze on Sapelo Island set to expire in 2025, Plaintiffs anticipate that their property valuations will substantially increase, causing their property taxes to substantially increase.

133. Several Plaintiffs can barely meet their current property tax obligations. Even a marginal increase in their taxes will be unaffordable to these Plaintiffs, leaving them with few options other than to sell their land and move from their ancestral homelands with nowhere to go.

134. This will cause these Plaintiffs extreme hardship, given their advanced ages and/or the lack of affordable housing in the area.

135. Section 219 more than doubled the square footage for single-family homes in Hogg Hummock from 1,400 to 3,000 square feet. It also increased the maximum height of buildings. As a result, individuals can now build larger, taller homes on the Island, which will encourage large-scale development that will increase property valuations and taxes on the Island with a disproportionate impact on Plaintiffs.

136. The impact on Hogg Hummock that Section 219's liberal construction will have is inconsistent with its purported intent "to reserve this area for low intensity residential...uses



which...will not contribute to land value increases which could force removal of the indigenous population.”

**Count 1 –  
Violation of Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 *et seq.*,  
Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.***

137. Plaintiffs incorporate by reference paragraphs 1 through 136 of this Complaint as if fully set forth herein.

138. McIntosh County, through the actions taken by the Planning and Zoning Commission and the Board, failed to comply with minimum notice and hearing requirements under state law when it made the decision in September 2023 to adopt the Section 219 Hogg Hummock zoning amendment.

139. Section 219 harms Plaintiffs and is otherwise invalid under state law because it is insubstantially related to the public health, safety, morality, or general welfare. *See* O.C.G.A. § 36-66-5.1(a)(1).

140. The Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 *et seq.*, sets mandatory minimum procedures that the County must follow “to assure that due process is afforded to the general public when local governments regulate the uses of property through the exercise of the zoning power.” O.C.G.A. § 36-66-2(a).

141. The minimum procedures set forth in Georgia’s Zoning Procedures Law applies to all zoning decisions made by local governments after July 1, 2023. O.C.G.A. § 36-66-2(a).

142. Georgia’s Zoning Procedures Law authorizes local governments to adopt procedures that are either consistent with the procedures set forth in the law, or that are supplemental to such procedures. O.C.G.A. § 36-66-2(b).

143. Where a local government has elected to adopt supplemental procedures, those procedures “where so adopted, thereby establish the minimum procedures for such local government’s exercise of zoning powers.” O.C.G.A. § 36-66-2(b)(2).

144. The decision by the Board to adopt Section 219 is a “zoning decision” that is legislative in nature under Georgia’s Zoning Procedures Law. O.C.G.A. § 36-66-3(4).

145. Zoning decisions that are legislative in nature are subject to de novo review by the superior court wherein such review brings up the whole record and all competent evidence shall be admissible.

146. Although Section 219 has a presumption of validity, Plaintiffs overcome this presumption because the facts demonstrate that the zoning classification is a significant detriment to them and is insubstantially related to the public health, safety, morality, or general welfare.

147. The procedures used by the Planning and Zoning Commission and the Board to adopt Section 219 did not comply with the minimum procedures under Georgia’s Zoning Procedures Law, O.C.G.A. § 36-66-4 (“Notices and Hearings”), or the existing supplemental procedures then in place by McIntosh County for the adoption or amendment of the McIntosh Zoning Ordinance, Appendix C, Article XII (“Amendments to the Zoning Ordinance”) and Chapter 1, Sec. 1-7 (“Amendments to Code”) of the McIntosh County Code of Ordinances.<sup>5</sup>

*A. Failure to Publish Text*

148. The text of the proposed zoning amendments to the McIntosh Zoning Ordinance never made “specific reference to the section number of the Code in the following language: ‘That

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<sup>5</sup> As stated, after adopting Section 219, the County revised Appendix C to the McIntosh Zoning Ordinance in January 2024. However, to the extent any of the procedures were substantively revised, the County was required to comply with the procedures in place, as set forth in the Zoning Ordinance in September 2023, at the time it adopted Section 219.

section \_\_\_ of The Code of McIntosh County, Georgia, is hereby amended to read as follows....’  
The new section may then be set out in full as desired.” Chapter 1, Sec. 1-7, McIntosh County  
Code of Ordinances.

149. There was no indication from any of the versions of the proposed text amendments of “the new text to be added and the existing text to be deleted,” as is required for applicants requesting text amendments to the McIntosh Zoning Ordinance. Art. II, Section 6.3 of Appendix C, McIntosh County Code of Ordinances.<sup>6</sup>

150. At no time did the proposed text amendments refer to any specific provision of the McIntosh County Zoning Ordinance, leaving the public, including Plaintiffs, uncertain as to how it interacted with the existing land use district regulation for Hogg Hummock, set forth in Section 16, and whether it supplanted Section 16 or other code sections, in whole or in part.

151. The failure of the Planning and Zoning Commission and the Board to specify which text was to be added or deleted with respect to Section 219, as required under Section 6.3, deprived interested parties, including Plaintiffs, of the opportunity to fully understand what was being proposed in relation to Section 16.1, to fully prepare for the public hearing on Section 219, and to be fully and meaningfully heard by written comment throughout the deliberative process.

*B. Failure to Hold Properly Noticed Public Hearings*

152. McIntosh County failed to comply with the procedural requirement to hold a public hearing prior to adopting Section 219, consistent with Georgia’s Zoning Procedures Law, O.C.G.A. § 36-66-4(a), and McIntosh County Code of Ordinances, Appendix C, Article XII.<sup>7</sup>

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<sup>6</sup> Under the revised County Code of Ordinances passed in January 2024, this requirement is now set forth in Art. 7, Section 702 of Appendix C.

<sup>7</sup> Under the revised County Code of Ordinances passed in January 2024, the requirements for public hearings are now set forth in Art. 8, Section 801 of Appendix C.

153. The purpose of the statutory notice and hearing requirements is to afford interested citizens a meaningful opportunity to be heard on a proposed zoning decision. *Hoechstetter v. Pickens Cnty.*, 303 Ga. 786, 787 (2018) (“[T]he whole point of the statutory notice-and-hearing requirements is to afford interested citizens a *meaningful* opportunity to be heard on a proposed zoning decision.”) (emphasis in original).

154. The County’s initial plan was to hold a public hearing and two other public meetings on Section 219 at a time and location that excluded the attendance and participation of individuals who live in Hogg Hummock on Sapelo Island—the very community that Section 219 singularly and exclusively regulates.

155. Although the County complied with the technical statutory notice requirements by publishing in a newspaper of general circulation notice of the time, place, and purpose of the hearing, the notice was defective because it provided for a hearing at a time and location when Hogg Hummock community members had no access to a ferry to return home to the Island.

156. The County’s last-minute efforts to change the ferry schedule did not remedy this problem for two reasons. First, the changes came too close in time to the hearings to give Sapelo Island residents adequate notice so that they could arrange to attend. Second, the changes to the ferry schedule made prior to the September 7 public hearing were not sufficient to accommodate the length of that hearing. Although the schedule was changed so that the last ferry would leave at 7:30 pm, the meeting did not end until after 8:00 pm, requiring individuals who needed to catch the last ferry to leave before the Planning and Zoning Commission had deliberated on the ordinance and made decisions to materially amend its provisions. This denied Hogg Hummock residents a meaningful opportunity to participate in the notice and hearing process mandated by Georgia law.

*C. Failure to Afford Interested Citizens a Meaningful Opportunity to Be Heard*

157. The Planning and Zoning Commission has no authority to make a final zoning decision. It only has the authority to make a recommendation to the Board. However, no amendment to the McIntosh Zoning Ordinance shall be considered by the Board unless it is first approved or disapproved by the Planning and Zoning Commission.

158. At least one public hearing is required prior to any amendment to the McIntosh Zoning Ordinance, and additional public hearings may be held if deemed appropriate by the local governing authority.

159. The September 7 public hearing before the Planning and Zoning Commission does not satisfy the notice and hearing requirements of the Georgia Zoning Procedures Law and the supplemental procedures in the McIntosh County Code of Ordinances.

160. The version of the proposed zoning amendments that the public reviewed and commented on during the September 7 public hearing was subsequently materially amended twice—once by the Planning and Zoning Commission at the business meeting following the public hearing on September 7 and once by the Board at the September 11 working session. There was no opportunity for the public to comment and raise objections to the additional substantive amendments that were ultimately adopted as Section 219. This denied citizens a meaningful opportunity to be heard.

161. Article XII, Section 5.9 of Appendix C to McIntosh County’s Code of Ordinances (“Section 5.9”) required that “[t]he Planning Commission shall reach a decision following a public hearing within a reasonable period of time; however, said period shall not exceed forty-five (45)

days.”<sup>8</sup> After its September 7 public hearing and business meeting, the Planning and Zoning Commission needlessly rushed to make a recommendation about Section 219 to the Board, despite its own open acknowledgment at the hearing that the proposal before it had significant “holes,” and despite considerable opposition from the public at that hearing and in writing. The Planning and Zoning Commission did not make its decision within a “reasonable time” given the circumstances. The rush to approve Section 219 denied interested parties who raised objections at the public hearing a meaningful opportunity to be heard.

162. There was no public hearing before the Board at any time. Since the Planning and Zoning Commission has no authority to make a final zoning decision, and only has the authority to make recommendations to the Board, there is no evidence that the final decision of the Board was meaningfully informed by what happened at the September 7 public hearing. Accordingly, the September 7 public hearing before the Planning and Zoning Commission did not afford interested citizens a meaningful opportunity to be heard by the Board.

163. The September 7 public hearing was also too attenuated in circumstance from the final zoning decision because it concerned a version of Section 219 that was twice revised in substantive and material ways after the public hearing. Therefore, there was no meaningful opportunity for the Board to hear testimony from the public and their objections to the version of Section 219 that was ultimately adopted. Under these circumstances, at minimum, the Board was required to hold a public hearing with a public comment period prior to making the final zoning decision. The failure to do so violates Georgia’s Zoning Procedures Law.

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<sup>8</sup> Under the revised County Code of Ordinances passed in January 2024, this requirement is now set forth in Art. 8, Section 801(C)(9) of Appendix C.

164. Section 219 is void for McIntosh County's failure to comply with the procedural due process protections codified in Georgia's Zoning Procedures Law and the supplemental laws referenced above.

**Count 2 –  
Violation of Georgia Open Meetings Act, O.C.G.A. § 50-14-1,  
Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.***

165. Plaintiffs incorporate by reference paragraphs 1 through 164 of this Complaint as if fully set forth herein.

166. Defendant McIntosh County is a political subdivision of the State of Georgia, created and existing by virtue of the Constitution and laws of Georgia.

167. The Planning and Zoning Commission is a commission of McIntosh County.

168. Pursuant to Georgia's Open Meetings Act, all meetings of the governing body of a county must be open to the public. O.C.G.A. § 50-14-1.

169. Georgia's Open Meetings Act requires that "[a]ll votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter." O.C.G.A. § 50-14-1(b)(1).

170. A zoning decision of a county commission must be taken at a meeting open to the public. O.C.G.A. § 50-14-1.

171. Any action, including a zoning decision, is not binding if it is not taken at a meeting open to the public.

172. The September 7 public hearing before the Planning and Zoning Commission was a public meeting subject to the Open Meetings Act.

173. The September 11 Board working session and September 12 Board meeting, were public meetings subject to the Open Meetings Act.

174. The public is required to have access to public meetings at all times, subject to certain exemptions, none of which apply to the September 7 public hearing before the Planning and Zoning Commission, nor to the September 11 Board working session and September 12 Board meeting. *See* O.C.G.A. § 50-14-1.

175. The County violated Georgia's Open Meetings Act by prohibiting visual and sound recordings.

176. Visual and sound recording during open meetings "shall be permitted." O.C.G.A. § 50-14-1(c).

177. The County restricted the ability of the public and the press to bring in recording devices, such as cell phones, at the September 7 public hearing and again at the September 11 Board working session, despite objections raised by many people on September 7. At the September 12 Board meeting, the County permitted only the press to record the meeting but did not permit members of the public to do so.

178. O.C.G.A. § 50-14-1(c)'s guarantee that the "public" must be permitted to record public meetings does not distinguish members of the public from the press.

179. There is no exemption under Georgia's Open Meetings Act that would allow the County to prohibit the public from taking audio or visual recordings, and the County did not cite any legal authority for prohibiting the public from recording at these public meetings.

180. The County did not explain why it permitted the press to record the September 12 Board meeting while continuing to prohibit the general public from recording. Nor did it provide any legal authority for its actions.

181. The County's arbitrary restrictions violated the procedural due process protections codified at O.C.G.A. § 50-14-1(c), impacted the dissemination of critical information about the



proposal and last-minute changes made by the County at the September 7 business meeting of the Planning and Zoning Commission and the September 11 Board working session, and had the cumulative effect of excluding many residents of Hogg Hummock from meaningful participation in the passage of Section 219.

182. Section 219 is void for the County's failure to comply with Georgia's Open Meetings Act.

**Count 3 -  
Violation of Ga. Const. Art. I § 1 ¶ I – Procedural Due Process,  
Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.***

183. Plaintiffs incorporate by reference paragraphs 1 through 182 of this Complaint as if fully set forth herein.

184. The Georgia Due Process Clause provides, "No person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. Art. I § 1 ¶ I.

185. The Georgia Constitution's grant of procedural due process is generally co-extensive with the Fourteenth Amendment of the U.S. Constitution.

186. For the reasons stated under Count 1 and throughout this Complaint, the Board's actions denied Plaintiffs adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

187. The County's original notice indicated that it planned to hold a public hearing and two other public meetings on Section 219 at a time and location that excluded individuals who are dependent on ferry access because they live in Hogg Hummock—the very community that Section 219 singularly and exclusively regulates.

188. Knowingly holding a meeting at a time and place when certain members of the public are unable to attend fails to meet the standard for procedural due process under the Georgia constitution.

189. The County's actions to extend the ferry schedule on the dates when the hearing and meeting were held, and its actions to inform the public of those changes, came too late to remedy this issue. The last ferry on September 7 departed at 7:30 pm, after the public comment portion of the September 7 hearing had closed—denying Hogg Hummock residents the opportunity to hear deliberations by the Planning and Zoning Commission that extended beyond 8:00 p.m. and that included decisions to materially amend the zoning ordinance under review. This resulted in a public hearing that was not open to the public at all times and specifically excluded residents of the community regulated by the zoning changes.

190. The County's actions violated Plaintiffs' procedural due process rights because many interested parties who live or reside in Hogg Hummock were excluded from attending, participating, or observing all or part of the public hearing and meetings. These meetings did not provide a meaningful opportunity at a meaningful time for affected residents to be heard on their objections to the County's proposed zoning amendments.

191. The County failed to hold the public hearing or the other two public meetings related to this zoning decision at a location sufficient to allow participants an opportunity to see and hear the full proceedings. Holding the public hearing and meetings in a room with a maximum capacity of 125 people forced many in attendance to line the walls of the hallway outside the courtroom with reduced access to the discussions. At the very least, the County had notice of the volume of interest and the inadequacy of the space after the September 7 public hearing yet failed

to remedy the problem for the September 11 and September 12 Board meetings. This resulted in a hearing and meetings that were not open to the public at all times.

192. As such, the date, time, and location of the hearing and meetings, along with the County's last-minute communications about the ferry accommodations, created a chilling effect on participation and attendance in these official proceedings and deprived Plaintiffs of their protected property interests without due process of law.

193. For these reasons, Section 219, as adopted by the Board, violated Plaintiffs' procedural due process rights under the Georgia Constitution.

**Count 4 –  
Violation of Ga. Const. Art. I § 1 ¶ I – Substantive Due Process,  
Declaratory Judgment Act, O.C.G.A. § 9-4-1 et seq.,**

194. Plaintiffs incorporate by reference paragraphs 1 through 193 of this Complaint as if fully set forth herein.

195. As stated, the Georgia Due Process Clause provides, "No person shall be deprived of life, liberty, or property except by due process of law," Ga. Const. Art. I § 1 ¶ I.

196. When the governing authority exceeds the police power in regulating land use for zoning building standards or for any other purpose, the governing authority runs afoul of the due process clause of the Georgia Constitution.

197. Section 219 is arbitrary and capricious and presents a significant detriment to Plaintiffs without substantially advancing the health, safety, morality, and welfare of the public. *See, e.g., Diversified Holdings, LLP, v. City of Suwanee*, 302 Ga. 597, 611 (2017).

198. Section 219 will increase the density and intensity of development in Hogg Hummock and raise individual property values, leading to increased property taxes on Plaintiffs'

land, and the continued forced displacement of the Gullah-Geechee community from the last of their ancestral homelands on Sapelo Island.

199. Section 219 and Table 2.1 alter the allowable land uses in Hogg Hummock, which has a direct impact on the cultural, economic, and daily activities of Gullah-Geechee residents.

200. Section 219 deviates from longstanding protections for Hogg Hummock in its laws and policies. It is an aberration from the County's recognition in Section 16 of the importance of preserving Hogg Hummock through intentional, thoughtful, low-density, and low-intensity development that considers the needs of the Hogg Hummock Gullah-Geechee population.

201. The Board had a duty to consider the Comprehensive Plan, a planning tool that it adopted, in analyzing zoning requests related to the Hogg Hummock Zoning District, and to pass land use regulations that are consistent with the Comprehensive Plan. *See* O.C.G.A. § 36-70-3(2); McIntosh Cty. Code Ord., Append. C, Art. XII, Sec. 7.1(N).

202. Section 219 is fundamentally at odds with the stated long-term planning goals of McIntosh County and its community members with respect to Sapelo Island, as set forth in the County's 2018–2038 Comprehensive Plan. Section 219 is incompatible with the Comprehensive Plan's specific vision for Hogg Hummock and its Gullah-Geechee residents. It is inconsistent with the framework and requirements set forth in the Comprehensive Plan's Housing Section to foster affordable housing. It is inconsistent with the goals and requirements of the Comprehensive Plan and will make Hogg Hummock and Sapelo Island less resilient and more vulnerable to disasters. It ignores the robust public input that gave rise to the Comprehensive Plan's community vision and protections for the County, including Hogg Hummock.

203. Section 219 does not substantially advance the health, safety, morals, and general welfare of the public. Instead, it will change the cultural, racial, and economic composition and

character of the Hogg Hummock Historic District forever and be a catalyst for the increased gentrification that will harm Plaintiffs and continue forced displacement of the last intact Gullah-Geechee community in the United States.

204. For these reasons, Section 219, as adopted by the Board, violated Plaintiffs' substantive due process rights under the Georgia Constitution.

**Count 5 –  
Violation of Fourteenth Amendment – Equal Protection,  
42 U.S.C. § 1983**

205. Plaintiffs incorporate by reference paragraphs 1 through 204 of this Complaint as if fully set forth herein.

206. The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits official conduct that discriminates on the basis of race.

207. Section 219 is a marked aberration from the County's existing laws and policies governing zoning and land use regulations in Hogg Hummock, which are protective of this distinctive and important place that the Gullah-Geechee community has called home for generations since their enslaved ancestors were emancipated.

208. The County's decision to pass Section 219, a zoning ordinance that singularly and exclusively regulates Hogg Hummock, has a disproportionate impact on this historic Black community and constitutes a violation of the equal protection guarantees of the Fourteenth Amendment.

209. While property valuations and taxes will increase on the entire Island after the tax freeze expires in 2025, Plaintiffs and other Gullah-Geechee residents will be disproportionately affected primarily due to past and current racial discrimination, compounded by their low income,

age, and inability to move elsewhere due to the lack of affordable housing options on Sapelo Island and on the mainland.

210. Section 219 will permit and encourage development that will increase land values and property taxes, further disproportionately harming Plaintiffs and other Gullah-Geechee residents of the Island.

211. Though the Board added some of the protective language from Section 16.1 back into Section 219's purpose and intent after receiving feedback from the public, the other changes to the zoning ordinance reflected in Section 219 are fundamentally at odds with and will undermine "the intent of th[e] district to reserve this area for low intensity residential and cottage industry uses which are environmentally sound and will not contribute to land value increases which could force removal of the indigenous population."

212. The County has offered no compelling government interest for scaling back the existing protections for the Hogg Hummock Gullah-Geechee community or for creating zoning and land use regulations that are inconsistent with its own priorities and requirements, as set forth in Section 16 and the Comprehensive Plan.

213. In its discussions about adopting Section 219, County officials stated that the County has been unable to enforce the restrictions in the existing zoning ordinance effectively.

214. The Board's discussions at the public hearing were illustrative of the motivating factors at play in the County's decision. Chairman Stevens opined that the solution for Hogg Hummock descendants "who do not want these houses being built" was to simply "stop selling [their] land."

215. Touting his relationships with older and deceased Hogg Hummock residents, Chairman Stevens concluded his comments by stating that the Lord called home his favorites

among the Gullah-Geechee community on Sapelo Island, while “this next generation doesn’t have it, nor will they ever.”

216. As stated, the historical background of the zoning decision, the specific sequence of events leading up to the zoning decision, the County’s procedural and substantive departure from its usual procedures for making zoning decisions (including procedures required by state law) and longstanding protections for Hogg Hummock, and contemporary statements and actions of key County officials are direct evidence of a racially discriminatory purpose that motivated the County’s zoning decision.

217. For these reasons, Section 219’s zoning standards violate the Fourteenth Amendment’s Equal Protection Clause.

**Count 6–  
Violation of Ga. Const. Art. I § 1 ¶ II – Equal Protection,  
Declaratory Judgment Act, O.C.G.A. § 9-4-1 et seq.**

218. Plaintiffs incorporate by reference paragraphs 1 through 217 of this Complaint as if fully set forth herein.

219. Article I, Section I, Paragraph II of the Constitution of the State of Georgia guarantees that “no person shall be denied the equal protection of the laws.”

220. Georgia’s Equal Protection Clause is generally coextensive with and substantially equivalent to the Equal Protection Clause of the Fourteenth Amendment.

221. For these reasons, the actions of the County and Section 219’s zoning standards and stated purpose and intent for the Hogg Hummock Zoning District violate the Equal Protection Clause of the Georgia Constitution.

**WHEREFORE**, for the aforementioned reasons, Plaintiffs pray that:

(a) The Court find and declare Section 219 to be an unconstitutional violation of Plaintiffs' substantive and procedural due process rights under the Georgia and U.S. Constitutions;

(b) The Court find and declare that Section 219 imposes a significant detriment on Plaintiffs and is insubstantially related to the public health, safety, morality, or general welfare of the public, in violation of Georgia's Zoning Procedures Law, and that Section 219 is therefore void;

(c) The Court find and declare that the County's meetings and hearing on Section 219, as previously described, violated Georgia's Open Meetings Act, and that Section 219 is therefore void;

(d) The Court find and declare Section 219 to be an unconstitutional violation of Plaintiffs' equal protection rights under the Georgia and U.S. Constitutions, including but not limited to, a declaration that Section 219 discriminates against the historically and culturally important Gullah-Geechee community on Sapelo Island on the basis of race;

(e) Summons and process issue and that Defendant be served as required by law;

(f) Upon granting the declaratory relief Plaintiffs seek, the Court issue an injunction permanently prohibiting the County from enforcing Section 219 with respect to property located in Hogg Hummock, pursuant to Ga. Const. Art. I, § 2, ¶ V; and

(g) The Court order such other and further relief as this Court deems equitable, just, and proper.

This 12th day of August, 2024.

Respectfully submitted,

/s/ Crystal McElrath

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\* *Pro hac vice application forthcoming*

Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF MCINTOSH COUNTY  
STATE OF GEORGIA**

Georgette “Sharron” Grovner, Marvin “Kent”  
Grovner Sr., Lula B. Walker, Francine Bailey,  
Mary Bailey, Merden Hall, Florence Hall,  
Yvonne Grovner, and Ire Gene Grovner Sr.;

Plaintiffs,

v.

McIntosh County, Georgia,

Defendant.

Civil Action No. SUV2024000058

**VERIFICATION**

Attached hereto, in support of Plaintiffs’ Verified Complaint for Declaratory Judgment and  
Injunctive Relief, are:

1. Affidavit of Yvonne Grovner;
2. Affidavit of Ire Gene Grovner, Sr.;
3. Affidavit of Merden Hall;
4. Affidavit of Georgette Sharron Grovner;
5. Affidavit of Marvin “Kent” Grovner;
6. Affidavit of Lula B. Walker;
7. Affidavit of Mary Bailey;
8. Affidavit of Francine Bailey; and
9. Affidavit of Florence Hall.

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Yvonne Grovner, having first been duly sworn, state as follows:

1. My name is Yvonne Grovner and I am a 63-year-old resident of McIntosh County, Georgia.

I am in all respects competent to execute this affidavit.

2. I am a long-time resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
3. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock since before the 1990s.
4. I work in tourism and as an employee of the Georgia Department of Natural Resources and have personal knowledge of the history and culture of Hogg Hummock.
5. I have lived in Hogg Hummock under the protection of Section 16's Zoning regulations since Section 16 was drafted.
6. I have personally seen homes ranging from 2,000 to 3,000 square feet being built because of loopholes in Section 16's limits on heated/cooled space.
7. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the County Planning and Zoning Commission.
8. I personally reviewed the proposed zoning amendments circulated ahead of the September 7, 2023 public hearing and September 12, 2023 vote. Section 101 did not clearly identify what language was being deleted or added to the zoning ordinance in place, and there was no limitation on how big a house could be on in Hogg Hummock.

9. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meeting of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively because I rode the ferries to and from those meetings.
10. I was present at the overcrowded September 7, 2023 hearing before the Planning and Zoning Commission and submitted comments opposed to the proposed amendment.
11. Signs and security officers at the McIntosh County Courthouse told me I was not permitted to bring my cell phone into the September 7, 2023 public hearing.
12. I was one of the Hogg Hummock residents who required ferry service back to the Island and had to leave after the public hearing but before the business meeting.
13. I personally attended the September 11, 2023, the Board held a working session in advance of the vote scheduled for September 12, 2023.
14. I personally attended the Board's regular meeting on September 12, 2023, to vote on the zoning amendments proposed by the Planning and Zoning Commission, subject to the few revisions from the full Board of Commissioners.
15. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing my property taxes to increase to an amount I cannot afford.
16. In the past, McIntosh County has stopped my tourism activities for reasons I do not fully understand. I have several business ideas, such as opening a gift shop and teaching basketweaving classes, which are now even more uncertain because of the confusing zoning amendments passed on September 12, 2023. I would appreciate the court clarifying what we are allowed to do with our land. I rely on these activities as a source of income and will need additional income, especially if my property taxes increase.
17. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.
18. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
\_\_\_\_\_  
Yvonne Grovner

SWORN TO AND SUBSCRIBED BEFORE ME this 10<sup>th</sup> day of

August, 2024.

Jasper L Watts  
NOTARY PUBLIC  
Cobb County  
State of Georgia  
My Comm. Expires November 30, 2025

  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Ire Gene Grovner Sr, having first been duly sworn, state as follows:

1. My name is Ira Gene Grovner, Sr., and I am a 68-year-old resident of McIntosh County, Georgia.
  2. I am in all respects competent to execute this affidavit.
  3. I am a life-long resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. As such, I have personal knowledge of Hogg Hummock's history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
- 
1. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock since before the 1990s.
  2. I was a Plaintiff in a 2015 fair housing and race discrimination lawsuit against McIntosh County and have personal knowledge of the lawsuit, including its settlement.
  3. I have lived in Hogg Hummock under the protection of Section 16's Zoning regulations since Section 16 was adopted as law.
  4. I have personally seen homes ranging from 2,000 to 3,000 square feet being built because of loopholes in Section 16's limits on heated/cooled space.
  5. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the County Planning and Zoning Commission.
- 
4. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meeting of the Board of Commissioners on September 11, 2023, and September

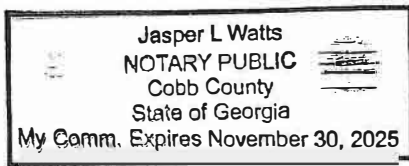
12, 2023.

5. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing my property taxes to increase to an amount I cannot afford.
  6. I, along with my wife Yvonne, also want clarification on what land uses are permitted after the zoning amendment passed on September 12, 2023 because my wife has been pursuing several businesses here in Hogg Hummock, and we will need the extra income, especially if our property taxes increase.
  7. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.
6. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
Ire Gene Grovner, Sr

SWORN TO AND SUBSCRIBED BEFORE ME this 10<sup>th</sup> day of August, 2024.



  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Merden Hall, having first been duly sworn, state as follows:

1. My name is Merden Hall, and I am a 63-year-old resident of McIntosh County, Georgia.
2. I am in all respects competent to execute this affidavit.
3. I am a native of and resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. As such, I have personal knowledge of Hogg Hummock's history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
4. I have personally seen large homes ranging from 2,000 to 3,000 square feet built in Hogg Hummock.
5. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meeting of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively because I rode the ferries to and from those meetings.
6. I was present at the overcrowded September 7, 2023 hearing before the Planning and Zoning Commission and submitted comments opposed to the proposed amendment. The courtroom could not fit everyone who came for the public hearing.
7. Signs and security officers at the McIntosh County Courthouse told me I could not bring my cell phone in to the September 7, 2023 public hearing.
8. I was one of the Hogg Hummock residents who required ferry service back to the Island and had to leave after the public hearing.



9. I think I attended the September 11, 2023, the Board held a working session in advance of the vote scheduled for September 12, 2023, but am not sure.
10. I think I also attended the Board's regular meeting on September 12, 2023, to vote on the zoning amendments proposed by the Planning and Zoning Commission, subject to the few revisions from the full Board of Commissioners, but I am not sure.
11. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing my property taxes to increase to an amount I cannot afford.
12. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.
13. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

Merden Hall  
Merden Hall

SWORN TO AND SUBSCRIBED BEFORE ME this 10<sup>th</sup> day of August, 2024.

Jasper L Watts  
NOTARY PUBLIC  
Cobb County  
State of Georgia  
My Comm. Expires November 30, 2025

Jasper L Watts  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Georgette “Sharron” Grovner, having first been duly sworn, state as follows:

1. My name is Sharron Grovner, and I am a 56-year-old resident of McIntosh County, Georgia.
2. I am in all respects competent to execute this affidavit.
3. I am a life-long resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. As such, I have personal knowledge of Hogg Hummock’s history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
4. Because I work in tourism and provide private tours, I also have personal knowledge regarding the history of Sapelo Island’s Gullah Geechee community, culture and traditions.
5. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock since the 1990s.
6. I have lived in Hogg Hummock under the protection of Section 16’s Zoning regulations since Section 16 was adopted by law.
7. I have seen large homes, ranging from 2,000 to 3,000 square feet, being built using loopholes in Section 16’s limitation on heated/cooled space.
8. I have personal knowledge of white landowners and developers complaining that our zoning regulations are unfair to them.
9. I think I attended a meeting On March 30, 2021 with Commissioner Lotson and with roughly 50 Sapelo residents and landowners to discuss the potential for a zoning amendment changing the permitted maximum square footage from 1,400 square feet of heated/cooled space to 1,600 square feet, but I do not remember for sure. Also present at

that listening session were County Commissioner at-large Kelly McClellan, County Manager Zoucks, County Attorney Poppell, Deputy County Manager Jordan, County Clerk Davis, City of Darien Councilman Griffin Lotson, and Fred Hay with the Georgia Department of Natural Resources (DNR).

10. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the McIntosh County Planning and Zoning Commission.
11. I personally reviewed the proposed zoning amendments that became Section 101 circulated on August 16, 2023. Section 101 did not clearly identify what language was being deleted or added to the zoning ordinances in place, and there was no limitation on how big a house could be in Hogg Hummock.
12. I have personal knowledge of white developers and landowners helping to draft Section 101.
13. I personally reviewed the August 16, 2023, notice which advised that a public hearing would be held at 5:30 p.m. on September 7, 2023, before the McIntosh County Planning and Zoning Commission. The notice also stated that the Board would conduct a working session at 5:00 p.m. on September 11, 2023, before voting on the proposed amendment at a 5:00 p.m. meeting on September 12, 2023.
14. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meeting of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively because I rode the ferries to and from those meetings.
15. On September 5, 2023, I learned the 5:30 p.m. ferry departure would be delayed on September 7, 2023.
16. I was present at the overcrowded September 7, 2023 public hearing before the Planning and Zoning Commission and submitted comments opposed to the proposed amendment.
17. Signs and security officers at the McIntosh County Courthouse told me I could not bring my cell phone into the public hearing.
18. I personally reviewed later drafts of Section 101 which were made after the hearing.
19. I was one of the Hogg Hummock residents who required ferry service back to the Island and had to leave after the public hearing but before the business meeting.
20. I personally attended the September 11, 2023, the Board held a working session in advance of the vote scheduled for September 12, 2023.
  1. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing my property taxes to

increase to an amount I cannot afford.

2. I am working on a tourism business plan which includes a rental property, but I am not sure what is currently permitted in terms of land use or how the zoning amendment will impact my plans. I also hope to help my mother, Lula Walker, add a meet and greet space to her restaurant. The zoning amendment has created unnecessary confusion about whether we can proceed with those plans as well. We rely on these activities as a source of income and will need to generate            additional income, especially if our property taxes increase.
3. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.

21. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

Georgette Sharron Grovner  
Georgette Sharron Grovner

SWORN TO AND SUBSCRIBED BEFORE ME this 10<sup>th</sup> day of

August, 2024.

Jasper L Watts  
NOTARY PUBLIC  
Cobb County  
State of Georgia  
My Comm. Expires November 30, 2025

[Signature]  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Marvin “Kent” Grovner, having first been duly sworn, state as follows:

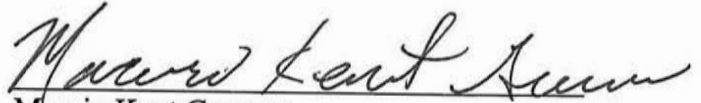
1. My name is Marvin “Kent” Grovner, and I am a 60-year-old resident of McIntosh County, Georgia. I am married to Georgette Sharron Grovner.
2. I am in all respects competent to execute this affidavit.
3. I am a native of and long-time resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. As such, I have personal knowledge of Hogg Hummock’s history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
4. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock since the 1990s.
5. I have lived in Hogg Hummock under the protection of Section 16’s Zoning regulations since Section 16 was adopted as law.
6. I think I personally attended a meeting on March 30, 2021 with Commissioner Lotson and with roughly 50 Sapelo residents and landowners to discuss the potential for a zoning amendment changing the permitted maximum square footage from 1,400 square feet of heated/cooled space to 1,600 square feet, but I am not sure. Also present at that listening session were County Commissioner at-large Kelly McClellan, County Manager Zoucks, County Attorney Poppell, Deputy County Manager Jordan, County Clerk Davis, City of Darien Councilman Griffin Lotson, and Fred Hay with the Georgia Department of Natural Resources (DNR).
7. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the McIntosh County Planning and Zoning Commission.
8. I personally reviewed the proposed zoning amendments that became Section 101

circulated on August 16, 2023. Section 101 did not clearly identify what language was being deleted or added to the zoning ordinances in place, and there was no limitation on how big a house could be in Hogg Hummock.

9. I personally reviewed the August 16, 2023, notice which advised that a public hearing would be held at 5:30 p.m. on September 7, 2023, before the McIntosh County Planning and Zoning Commission. The notice also stated that the Board would conduct a working session at 5:00 p.m. on September 11, 2023, before voting on the proposed amendment at a 5:00 p.m. meeting on September 12, 2023.
10. I was present at the overcrowded September 7, 2023 public hearing before the Planning and Zoning Commission and submitted comments opposed to the proposed amendment. There was not enough space for everyone to fit inside the courtroom and people stood out in the hallway, struggling to hear.
11. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meetings of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively because I rode the ferries to and from those meetings.
12. Signs and security officers at the McIntosh County Courthouse told me I could not bring my phone in to the public hearing.
13. I personally reviewed later drafts of Section 101 which were made after I made my comment and left the public hearing.
14. I was one of the Hogg Hummock residents who required ferry service back to the Island and had to leave after the public hearing but before the business meeting.
15. I personally attended the September 11, 2023, the Board held a working session in advance of the vote scheduled for September 12, 2023.
16. I personally attended the Board's regular meeting on September 12, 2023, to vote on the zoning amendments proposed by the Planning and Zoning Commission, subject to the few revisions from the full Board of Commissioners.
  1. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing my property taxes to increase to an amount I cannot afford.
  2. I am also concerned and uncertain about how the land uses in the zoning amendment will impact the businesses my wife and I run. We rely on these businesses for our current income, and we will need additional income, especially if our property taxes increase.
  3. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.

17. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
Marvin Kent Grovner

SWORN TO AND SUBSCRIBED BEFORE ME this 10<sup>th</sup> day of  
August, 2024.

Jasper L Watts  
NOTARY PUBLIC  
Cobb County  
State of Georgia  
My Comm. Expires November 30, 2025

  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.


I, Lula B Walker, having first been duly sworn, state as follows:

1. My name is Lula Walker, and I am a 75-year-old resident of McIntosh County, Georgia.
2. I am in all respects competent to execute this affidavit.
3. I have lived in Hogg Hummock for 75 years. As such, I have personal knowledge of Hogg Hummock's history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
4. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock.
5. I have lived in Hogg Hummock under the protection of Section 16's Zoning regulations since Section 16 was adopted as law.
6. I believe I personally attended a meeting On March 30, 2021 with Commissioner Lotson and roughly 50 Sapelo residents and landowners to discuss the potential for a zoning amendment changing the permitted maximum square footage from 1,400 square feet of heated/cooled space to 1,600 square feet, but I am not sure. Also present at that listening session were County Commissioner at-large Kelly McClellan, County Manager Zoucks, County Attorney Poppell, Deputy County Manager Jordan, County Clerk Davis, City of Darien Councilman Griffin Lotson, and Fred Hay with the Georgia Department of Natural Resources (DNR).
7. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the McIntosh County Planning and Zoning Commission.
8. I personally reviewed the proposed zoning amendments that were circulated ahead of the September 7, 2023 public hearing and September 12, 2023 vote.



9. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and regarding the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meetings of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively because I rode the ferries to and from those meetings.
10. On September 5, 2023, I learned the 5:30 p.m. ferry departure would be delayed on September 7, 2023.
11. I was present at the September 7, 2023 hearing before the Planning and Zoning Commission and submitted comments opposed to the proposed amendment.
12. I personally reviewed later drafts of Section 101 with revisions made after I made my comment and had to leave the public hearing to catch the ferry.
13. I was one of the Hogg Hummock residents who required ferry service back to the Island and had to leave after the public hearing but before the business meeting.
14. I personally attended the September 11, 2023 working session in advance of the vote scheduled for September 12, 2023.
  1. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing my property taxes to increase to an amount I cannot afford.
  2. I own and run a restaurant in Hogg Hummock, and I hope to leave it to my children. I am not sure if the zoning amendment will impact my ability to do so, or prevent my children from operating the restaurant under the new zoning regulations. I rely on my restaurant as a source of income and will need additional income, especially if my property taxes increase.
  3. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.
15. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
Lula Walker

SWORN TO AND SUBSCRIBED BEFORE ME this 11<sup>th</sup> day of

August, 2024.

Jasper L Watts  
NOTARY PUBLIC  
Cobb County  
State of Georgia  
My Comm. Expires November 30, 2025

  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Mary Bailey, having first been duly sworn, state as follows:


1. My name is Mary Bailey, and I am a 57-year-old resident of McIntosh County, Georgia.
2. I am in all respects competent to execute this affidavit.
3. I am a life-long resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia and an employee of the RJ Reynolds Mansion for over 20 years. As such, I have personal knowledge of Hogg Hummock's history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
4. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock since the 1990s.
5. I have lived in Hogg Hummock under the protection of Section 16's Zoning regulations since Section 16 was adopted as law.
6. I have seen large homes, ranging from 2,000 to 3,000 square feet, being built using loopholes in Section 16's limitation on heated/cooled space.
7. I have personal knowledge of white landowners and developers complaining that our zoning regulations are unfair to them.
8. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the McIntosh County Planning and Zoning Commission.
9. I personally reviewed the proposed zoning amendments that became Section 101 ("Section 101") circulated ahead of the September 7, 2023, public hearing and September 12, 2023, vote. Section 101 did not clearly identify what language was being deleted or added to the zoning ordinances in place, and there was no limitation on how big a house

could be in Hogg Hummock.

10. I have personal knowledge of white developers and landowners helping to draft Section 101.
11. I personally reviewed the August 16, 2023, notice which advised that a public hearing would be held at 5:30 p.m. on September 7, 2023, before the McIntosh County Planning and Zoning Commission. The notice also stated that the Board would conduct a working session at 5:00 p.m. on September 11, 2023, before voting on the proposed amendment at a 5:00 p.m. meeting on September 12, 2023.
12. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023, public hearing as well as the working session and public meeting of the Board of Commissioners on September 11, 2023, and September 12, 2023.
13. On September 5, 2023, I learned the 5:30 p.m. ferry departure would be delayed on September 7, 2023.
14. I personally reviewed later drafts of Section 101, which were made after the September 7, 2023, public hearing.
15. With the property tax freeze on the Island set to expire in 2025, I anticipate that my property valuations will substantially increase, causing my property taxes to increase to an amount I cannot afford.
  1. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.

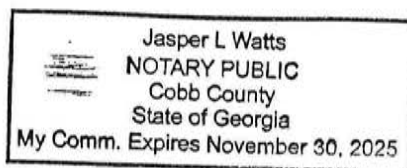
16. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
Mary Bailey

SWORN TO AND SUBSCRIBED BEFORE ME this 11<sup>th</sup> day of

August, 2024.



  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Francine Bailey, having first been duly sworn, state as follows:

1. My name is Francine Bailey, and I am a 36-year-old, full-time resident of McIntosh County, Georgia, presently residing on Sapelo Island.
2. I am in all respects competent to execute this affidavit.
3. I am a life-long resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. As such, I have personal knowledge of Hogg Hummock's history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802.
4. I own my trailer, and it sits on property owned by my mother in Hogg Hummock. I have personal knowledge of the property taxes in Hogg Hummock.
5. I have seen large homes, ranging from 2,000 to 3,000 square feet, being built using loopholes in Section 16's limitation heated/cooled space.
6. I have personal knowledge of white landowners and developers complaining that our zoning regulations are unfair to them.
7. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the County Planning and Zoning Commission.
8. I personally reviewed the proposed zoning amendments circulated on August 16, 2023. Those proposed amendments did not clearly identify what language was being deleted or added, but there was no limitation to how big a house could be on the Island.
9. I personally reviewed the August 16, 2023, notice that a public hearing would be held at 5:30 p.m. on September 7, 2023, before the McIntosh County Planning and Zoning Commission. The notice also stated that the Board would conduct a

working session at 5:00 p.m. on September 11, 2023, before voting on the proposed amendment at a 5:00 p.m. meeting on September 12, 2023.

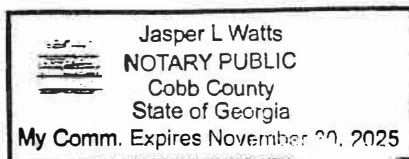
10. I have personal knowledge regarding the regular schedule for the ferry from Meridien to Sapelo Island.
11. I also have personal knowledge of the adjustments made to the ferry schedule for the working session and public meetings of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively, because I rode the ferries to and from those meetings.
12. I personally attended the September 11, 2023, Board working session in advance of the vote scheduled for September 12, 2023.
13. I personally attended the Board's regular meeting on September 12, 2023, to vote on the zoning amendments proposed by the Planning and Zoning Commission.
14. At the September 12 Board meeting, signs and security officers at the McIntosh County Courthouse told me I could not bring my cell phone into the public hearing.
15. With the property tax freeze on the Island set to expire in 2025, I anticipate that property valuations on the Island will substantially increase, causing my mother's property taxes to increase to an amount that neither she nor I can afford.
16. I would like to run a crabbing and fishing business from my home in Hogg Hummock to earn extra money, especially if my property taxes increase. The zoning amendments passed on September 12, 2023 have created confusion about what land uses are permitted on my property and in my community.
17. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.
18. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
Francine Bailey

SWORN TO AND SUBSCRIBED BEFORE ME this 11<sup>th</sup> day of

August, 2024.



  
NOTARY PUBLIC

## VERIFICATION & AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, the individual signatory below, who, upon being duly sworn, depose and state under oath that the information contained in the foregoing Verified Amended Complaint for Declaratory Judgement and Injunctive Relief are true and accurate. In support of the information contained in the Verified Amended Complaint for Declaratory Judgement and Injunctive Relief, affiant offers the following personal knowledge, information, and belief.

I, Florence Hall, having first been duly sworn, state as follows:

1. My name is Florence Hall, and I am an 83-year-old resident of McIntosh County, Georgia, presently residing in McIntosh County.

I am in all respects competent to execute this affidavit.

2. I am a native of and long-time resident of Hogg Hummock, the last intact Gullah-Geechee Community in the Sea Islands of Georgia. As such, I have personal knowledge of Hogg Hummock's history—which has been traced back to slaves that were brought to Sapelo Island from West Africa in 1802. I have personally seen the decrease in land ownership among these descendants in Hogg Hummock.
3. I am a property-tax paying landowner in Hogg Hummock and have personal knowledge of the property taxes in Hogg Hummock since the 1990s.
4. I was a Plaintiff in a 2015 fair housing and race discrimination lawsuit against McIntosh County and have personal knowledge of the lawsuit, including its settlement.
5. I have lived in Hogg Hummock under the protection of Section 16's Zoning regulations since Section 16 was drafted.
6. I personally attended a meeting on March 30, 2021 with Commissioner Lotson and with roughly 50 Sapelo residents and landowners to discuss the potential for a zoning amendment changing the permitted maximum square footage from 1,400 square feet of heated/cooled space to 1,600 square feet. Also present at that listening session were County Commissioner at-large Kelly McClellan, County Manager Zoucks, County Attorney Poppell, Deputy County Manager Jordan, County Clerk Davis, City of Darien Councilman Griffin Lotson, and Fred Hay with the Georgia Department of Natural Resources (DNR).
7. Attendees at the March 30, 2021 listening session were assured that the next step

in this process was to have a public hearing to receive input from constituents.

8. I personally attended/watched the recording of an August 4, 2021 follow-up meeting at Sapelo Island Cultural and Revitalization Society (SICARS) with Commissioner Lotson, the McIntosh County Attorney, and McIntosh County's Director of Building and Zoning to further discuss the March 2021 proposed amendments. All parties agreed that the spirit of current zoning regulations was not being enforced in part due to loopholes in the regulations, but they lacked consensus as to when new zoning regulations would move forward. McIntosh's County Attorney specifically stated: "I can tell you that there is no appetite among the Administrative staff to make any changes currently in the McIntosh Zoning Ordinances as it pertains to Hog Hammock."
9. At the same August 4, 2021, meeting, Commissioner Lotson advised SICARS members that if and when zoning amendments were put forth, the most important way for them to be heard was to attend the hearing in large numbers and articulate what zoning regulations the community desired.
10. I am not aware of any public hearings regarding amendments to Hogg Hummock zoning ordinances between August 2021 and the September 7, 2023, public hearing before the County Planning and Zoning Commission.
11. I personally reviewed the proposed zoning amendments circulated ahead of the September 7, 2023 public hearing and September 12, 2023 vote. The proposed amendments did not clearly identify what language was being deleted or added, but there was no limitation to how big a house could be on the Island.
12. I personally reviewed the August 16, 2023, notice advising that a public hearing would be held at 5:30 p.m. on September 7, 2023, before the McIntosh County Planning and Zoning Commission (hereinafter, "Planning and Zoning Commission"). The notice also stated that the Board would conduct a working session at 5:00 p.m. on September 11, 2023, before voting on the proposed amendment at a 5:00 p.m. meeting on September 12, 2023.
13. I have personal knowledge regarding the regular schedule for the ferry schedule from Meridien to Sapelo Island, and to the schedule adjustments made for the September 7, 2023 public hearing as well as the working session and public meeting of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively because I rode the ferries to and from those meetings.
14. On September 5, 2023, I learned the 5:30 p.m. ferry departure would be delayed on September 7, 2023.
15. I was present at the overcrowded September 7, 2023 hearing before the Planning and Zoning Commission and submitted comments opposed to the proposed amendment.
16. I personally reviewed later drafts of the Zoning Amendment with revisions made



after I made my comment and had to leave the public hearing to catch the ferry.

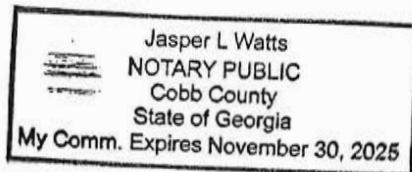
17. I was one of the Hogg Hummock residents who required ferry service back to the Island and had to leave after the public hearing but before the business meeting.
18. I personally attended the September 11, 2023, the Board held a working session (hereinafter, "September 11 Board working session") in advance of the vote scheduled for September 12, 2023.
19. I personally attended the Board's regular meeting on September 12, 2023 (hereinafter, "September 12 Board meeting"), to vote on the zoning amendments proposed by the Planning and Zoning Commission, subject to the few revisions from the full Board of Commissioners.
20. With the property tax freeze on the Island set to expire in 2025, I anticipate that their property valuations will substantially increase, causing their property taxes to increase to an amount I cannot afford.
21. I have read the Amended Complaint in this action and state that its contents are true and correct based upon my personal knowledge outlined above.
22. I declare under penalty of perjury that the above is true and correct.

Further affiant sayeth not.

  
\_\_\_\_\_  
Florence Hall

SWORN TO AND SUBSCRIBED BEFORE ME this 11<sup>th</sup> day of

August, 2024.



  
\_\_\_\_\_  
NOTARY PUBLIC