

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
)	
WILLIAM CALFEE, JR. and)	
SAVE CAPE ROMAIN, LLC,	)	Case No.: 2022-CP-10-2298
)	
Plaintiffs/Appellants,)	
	)	DEFENDANT/RESPONDENT TOWN OF
vs.	)	AWENDAW, SOUTH CAROLINA'S
	)	INITIAL ANSWER AND REPLY TO
TOWN OF AWENDAW, SOUTH	)	PLAINTIFFS'/APPELLANTS' PETITION
CAROLINA	)	FOR DECLARATORY JUDGMENT AND
	)	APPEAL OF PLANNING COMMISSION
Defendant/Respondent.	)	DECISION
)	

COMES NOW Defendant/Respondent Town of Awendaw, South Carolina ("Defendant" or the "Town"), by and through its undersigned counsel, and hereby responds to Plaintiffs/Appellants William Calfee, Jr. ("Calfee") and Save Cape Romain, LLC's ("SCR") (collectively "Plaintiffs") Petition for Declaratory Judgment and Appeal of Planning Commission Decision.

FOR A FIRST DEFENSE

Awendaw hereby denies each and every allegation in the Petition and Appeal that is not expressly admitted herein.

FOR A SECOND DEFENSE

1. Defendant denies the allegation contained in Paragraph 1 of the Petition and Appeal. Defendant further responds that Plaintiffs' improper action should be dismissed and that an award of attorneys' fees and costs should be entered against Plaintiffs.

2. Defendant denies the allegation contained in Paragraph 2 of the Petition and Appeal, as it does not have specific knowledge sufficient to form a response to the allegations.

3. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 3 of the Petition and Appeal and therefore denies the same.

4. Defendant denies the allegation contained in Paragraph 4 of the Petition and Appeal.

5. In response to the allegations contained in Paragraph 5 of the Petition and Appeal, Defendant admits only that the Town of Awendaw Planning Commission approved a subdivision concept plan submitted by Pulte Homes on April 18, 2022. The approval, which is within the Town's authority to grant and is supported by evidence in the record, allows a residential subdivision development on property currently owned by the White Family Partnership. The Property is located on Bull Island Road within the Town's corporate boundaries. The Town denies all remaining allegations contained in Paragraph 5 of the Petition and Appeal.

6. In response to the allegations contained in Paragraph 6 of the Petition and Appeal, Defendant admits only so much that one or more Plaintiffs attended the April 18, 2022 Planning Commission and opposed the subdivision concept plan. The Town's Planning Commission received and heard the objections. However, the members of the Planning Commission are immune under South Carolina law and federal law from being interrogated about the specific reasons, thoughts or motivations behind their vote. Defendant denies all remaining allegations contained in Paragraph 6 of the Petition and Appeal.

7. Defendant lacks sufficient information to confirm or deny the allegations contained in Paragraph 7 of the Petition and Appeal.

8. Defendant lacks sufficient information to confirm or deny the allegations contained in Paragraph 8 of the Petition and Appeal.

9. In response to the allegations contained in Paragraph 9 of the Petition and Appeal, Defendant cannot speak as to Petitioners' motivations for their actions or for their improper lawsuit against the Town.

10. Defendant denies the allegations contained in Paragraphs 10 through 15 of the Petition and Appeal.

11. In response to the allegations contained in Paragraph 16 of the Petition and Appeal, Defendant admits only that the subject Property was previously approved to be rezoned as a Planned Unit Development ("PUD") in 2006, and retained "Planned Development" zoning in accordance with the Town's ordinances and state law. Defendant denies the remainder of the allegations contained in the remainder of Paragraph 16 of the Petition and Appeal.

12. In response to the allegations contained in Paragraph 17 of the Petition and Appeal, Defendant states the 2022 plan stands on its own and is proper action that is consistent with the Town's police powers.

13. Defendant denies the allegations contained in Paragraph 18 of the Petition and Appeal, and further states that the Property continues to have PD zoning.

14. In response to the allegations contained in Paragraph 19 of the Petition and Appeal, Defendant craves reference to the Record on Appeal and denies anything inconsistent therewith.

15. Defendant lacks sufficient knowledge or information to admit or deny all of the allegations contained in Paragraph 20 of the Petition and Appeal and further states that the approval of the 2022 plan is proper and is not subject to attack by Petitioners on appeal (or through declaratory judgment).

16. The allegations contained in Paragraphs 21 through 28 of the Petition and Appeal are denied.

17. In response to the allegations contained in Paragraph 29 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

18. The allegations contained in Paragraphs 30 through 39 of the Petition and Appeal are denied.

19. The allegations contained in Paragraphs 40 through 46 of the Petition and Appeal contain purported conclusions of law and are denied.

20. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 47 of the Petition and Appeal, and therefore denies the same.

21. In response to the allegations contained in Paragraph 48 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

22. In response to the allegations contained in Paragraphs 49 and 50 of the Petition and Appeal, Defendant states the approval of the 2022 plan is proper and is not subject to attack on appeal (or through declaratory judgment).

23. In response to the allegations contained in Paragraph 51 of the Petition and Appeal, Defendant denies the allegations and craves reference to the Record on Appeal.

24. In response to the allegations contained in Paragraphs 52 through 57 of the Petition and Appeal, Defendant states the 2022 plan stands on its own and is proper. In further response, Defendant craves reference to the Record on Appeal and denies anything inconsistent therewith.

25. In response to the allegations contained in Paragraph 58 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

26. Defendant denies the allegations contained in Paragraph 59 of the Petition and Appeal. Further responding, Plaintiffs' exhibits are not consistent with the description provided in Paragraph 59 of the Petition and Appeal and do not contain an email nor a statute as listed.

27. Defendant denies the allegations contained in Paragraph 60 of the Petition and Appeal.

28. Defendant denies the allegations contained in Paragraph 61 of the Petition and Appeal.

29. In response to the allegations contained in Paragraph 62 of the Petition and Appeal, Defendant admits so much that an employee for the County of Charleston reviewed the plan and provided "staff comments." The remainder of the allegations in Paragraph 62 are denied.

30. Defendant denies the allegations contained in Paragraph 63 of the Petition and Appeal.

31. Defendant denies the allegations contained in Paragraph 64 of the Petition and Appeal and further states "Exhibit 5" referenced by Plaintiffs is not provided with the Petition and Appeal.

32. In response to the allegations contained in Paragraph 65 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

33. Defendant denies the allegations contained in Paragraphs 66 and 67 of the Petition and Appeal.

34. The allegations contained in Paragraph 68 of the Petition and Appeal contain conclusions of law and do not require a response. To the extent a response is required, the allegations in Paragraph 68 of the Petition and Appeal are denied.

35. Defendant denies the allegations contained in Paragraph 69 of the Petition and Appeal.

36. The allegations contained in Paragraph 70 of the Petition and Appeal contain conclusions of law and do not require a response. To the extent a response is required, the allegations in Paragraph 70 of the Petition and Appeal are denied.

37. Defendant denies the allegations contained in Paragraph 71 of the Petition and Appeal.

38. The allegations contained in Paragraph 72 of the Petition and Appeal contain conclusions of law and do not require a response. To the extent a response is required, the allegations in Paragraph 72 of the Petition and Appeal are denied.

39. Defendant denies the allegations contained in Paragraphs 73 through 78 of the Petition and Appeal.

40. The allegations contained in Paragraph 79 of the Petition and Appeal contain conclusions of law and do not require a response. To the extent a response is required, the allegations in Paragraph 79 of the Petition and Appeal are denied.

41. Defendant denies the allegations contained in Paragraphs 80 through 84 of the Petition and Appeal.

42. In response to the allegations contained in Paragraph 85 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

43. In response to the allegations contained in Paragraphs 86 through 88 of the Petition and Appeal, Defendant craves reference to the Record on Appeal and states that these allegations are not contained in the Record on Appeal. Therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraphs 86 through 88 of the Petition and Appeal.

44. Defendant denies the allegations in Paragraph 89 of the Petition and Appeal.

45. The allegations contained in Paragraphs 90 and 91 of the Petition and Appeal contain conclusions of law and do not require a response. To the extent a response is required, the allegations in Paragraphs 90 and 91 of the Petition and Appeal are denied, as written.

46. Defendant denies the allegations in Paragraph 92 of the Petition and Appeal.

47. In response to the allegations contained in Paragraph 93 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

48. Defendant denies the allegations in Paragraphs 94 through 98 of the Petition and Appeal.

49. In response to the allegations contained in Paragraph 99 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

50. Defendant denies the allegations in Paragraphs 100 through 108 of the Petition and Appeal.

51. In response to the allegations contained in Paragraph 109 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

52. Defendant denies the allegations contained in Paragraphs 110, including all subparts, and 111 of the Petition and Appeal.

53. In response to the allegations contained in Paragraph 112 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

54. In response to the allegations contained in Paragraphs 113 through 115 of the Petition and Appeal, Defendant craves reference to the Record on Appeal and states that these allegations are not contained in the Record on Appeal. Therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraphs 113 through 115 of the Petition and Appeal.

55. Defendant denies the allegations in Paragraphs 116 through 118 of the Petition and Appeal.

56. In response to the allegations contained in Paragraph 119 of the Petition and Appeal, Defendant restates and re-alleges each of its prior responses as if fully set forth herein.

57. Defendant denies Paragraph 120 of the Petition and Appeal. Petitioners are not entitled to pre-litigation mediation.

FOR A THIRD DEFENSE

(Failure to State a Claim)

58. The Petition and Appeal fails to state a claim for which relief can be granted and therefore should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH DEFENSE

(Lack of Subject Matter Jurisdiction)

59. The Petition and Appeal fails for lack of subject matter jurisdiction.

FOR A FIFTH DEFENSE

(Absence of Justiciable Controversy)

60. The Petition and Appeal fails to present a justiciable controversy as would be necessary in order for the Court to hear and adjudicate a declaratory judgment action.

FOR A SIXTH DEFENSE

(Existence of Statutory Remedy)

61. Plaintiffs are not entitled to seek a declaratory judgment due to the existence of a specific, applicable statutory remedy (S.C. Code § 6-29-820) which Plaintiffs failed to pursue.

FOR A SEVENTH DEFENSE

(Estoppel)

62. Plaintiffs' claims are barred by estoppel.

FOR AN EIGHTH DEFENSE

(Waiver)

63. Plaintiffs' claims are barred by waiver.

FOR A NINTH DEFENSE

(Laches)

64. Plaintiffs' claims are barred by the doctrine of laches.

FOR A TENTH DEFENSE
(Failure to Join Necessary Party)

65. Plaintiffs' claims are barred by failure to join a necessary party to the litigation.

FOR AN ELEVENTH DEFENSE
(Reservation of Additional Defenses)

66. Town of Awendaw, South Carolina reserves the right to assert all additional affirmative defenses that may be revealed during the course of discovery in this action.

WHEREFORE, having fully answered Plaintiffs Petition and Appeal, Defendant Town of Awendaw, South Carolina, respectfully requests that the Court dismiss the Petition and Appeal with prejudice and grant such other and further relief to Defendant as the Court may deem just and proper.

By: s/ Ellis R. Lesemann
Ellis R. Lesemann (S.C. Bar No. 15315)
erl@lalawsc.com
Benjamin H. Joyce (S.C. Bar No. 100949)
bhj@lalawsc.com
LESEMANN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155

*Attorneys for Respondent Town of
Awendaw, South Carolina*

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Charleston, South Carolina