

Georgette “Sharon” Grover; Marvin “Kerl” Grover Sr.; Lula B. Walker; Francine Bailey; Mary Bailey; Marden Hall; Florence Hall; Yvonne Grover; and Lhe Gere Grover Sr.;

Plaintiffs,

v.

McIntosh County, McIntosh County Board of Commissioners Kate Portello Kawada, David Stevens, Davis Pote, William E. Hanel, and Roger Lotson in their official capacities,

Defendants

Civil Action No

Plaintiffs Georgette “Sharon” Grover; Marvin “Kerl” Grover Sr.; Lula B. Walker; Francine Bailey; Mary Bailey; Marden Hall; Florence Hall; Yvonne Grover and Lhe Gere Grover Sr. hereby file this Complaint for Writ of Mandamus, Declaratory Judgment, Injunctive Relief, and Equitable Relief against the above named Defendants, and show as follows

Plaintiffs bring this action because the Defendants adopted an unlawful zoning amendment

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

Sapelo Island in McIntosh County, Georgia The zoning amendment violates state law and Plaintiffs' constitutional rights to due process of law and equal protection, guaranteed by both the Georgia and U.S. Constitutions

1 Plaintiff Georgette "Sharon" Gwomer is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

2 Plaintiff Marvin "Ker" Gwomer Sr. is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

3 Plaintiff Lula B. Walker is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

4 Plaintiff Florene Hall is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

5 Plaintiff Francine Bailey is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

6 Plaintiff Mary Bailey is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

7 Plaintiff Maden Hall is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

8 Plaintiff YIY * M/leIsl

9 Plaintiff Gene Gower Sr. is a resident, citizen, and taxpayer of Sapelo Island and McIntosh County.

10 This Court has jurisdiction to issue declaratory relief as to the validity and constitutionality of Section 219 to Appendix C of McIntosh County's Zoning Ordinance ("Section 219), Courts 1 through 4 and Court 6 below pursuant to O.C.G.A. § 941, (the "Declaratory Judgment Act"), § 951, § 9620 § 9624, § 36651, and § 50141, (the "Open Meetings Act"); and to include the Court's equitable powers as to Court 8 below pursuant to O.C.G.A. § 943

11 This Court has jurisdiction to issue relief as to the constitutionality of Section 219 Court 5 below pursuant to 42 U.S.C. § 1983

12 This Court has jurisdiction to issue relief compelling Defendants to comply with the laws of the State of Georgia and McIntosh County as to Court 7 below pursuant to O.C.G.A. § 943 and to compel Defendants to perform their official constitutional duties

13 Defendant 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 is responsible for local zoning law and is a proper party to this action. O.C.G.A. § 947

14 The County is subject to the venue of this Court pursuant to O.C.G.A. § 91093

15 Defendants are the McIntosh County Board of Commissioners (hereinafter "the Board"). The current members of the Board are Kate Portello Karvadi, David Stevens, Davis Rode, William E. Hanell, and Roger L. Lison, who are sworn to uphold the constitutions of the United States and the State of Georgia, and the laws of the State of Georgia and McIntosh County.

Hogg Hummock's Historic Significance and Designation

16 Hogg Hummock is the last intact Gullah Geechee Community in the Sea Islands of Georgia and is comprised of direct descendants of slaves that were brought to Sapelo Island from West Africa in 1802

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

18 In the mid 1900s, Richard J 'RJ' Reynolds Jr. dispossessed Gullah Geechee descendants on Sapelo Island of 1000 acres of land that their families had purchased in Racon Bluff, on the north end of Sapelo Island, and relocated the Gullah Geechee descendants to a 434 acre plot in the south central area of the Island known as Hogg Hummock

19 The Reynolds family later sold the land acquired by RJ Reynolds to the State of Georgia in 1969 and 1976

20 Today, 98% of the land on Sapelo Island surrounding Hogg Hummock is owned by the State and cannot be purchased for development. This State ownership coupled with the limited access to the community on the Island has resulted in descendants currently owning less than 250 acres of land in Hogg Hummock

21 In 1996 Hogg Hummock was added to the National Register of Historic Places

22 Contemporaneously, the McIntosh County Code of Ordinances created the "Hog Hummock[sic]" Historic District "to allow continued use and activities of the community of Hog Hummock 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” Section 16 to Appendix C of McIntosh County’s Zoning Ordinance (“Section 16”).

23 McIntosh County’s Comprehensive Plan emphasizes the need to “work with residents to create guidelines that maintain the historic integrity of Hog Hammock [sic].”

24 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.

25 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 plaintiff 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

26 Plaintiff Georgette “Sharon” Gwoner is practically a lifelong resident of Sapelo Island. She is Black, 56 years old, and was born and raised on the Island. She currently lives with her husband, Marvin “Ker” Gwoner Sr., on the Island. Ms. Gwoner is now mostly retired, but still spends some time involving in tourism. She hosts private tours and provides catering for groups visiting the Island. 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, she will not be able to afford to continue living there.

27 Plaintiff Marvin "Kert" Gomer Sr. is Sharcis husband. He is Black, 60 years old, and was born and raised on the Island and has lived there for most of his life. Like his wife, Mr. Gomer 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 amendment. If the property taxes on his home significantly increase, he will not be able to afford to continue living there.

28 Plaintiff Lula B. Walker is Sharcis mother. She is 74 years old, Black, and has lived on the Island for 71 years. She currently owns and operates Lula's Kitchen, the only

He 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, he will not be able to afford to continue living there.

35 Plaintiffs' land has been in their families for many years, and they plan to bequeath this land to their children and grandchildren.

36 Selling land that has been in their families for decades or generations is untenable for Plaintiffs not only because they will have nowhere else to go, but also because they will be

40 At least one white developer alleged to McIntosh County Commissioners that the Hgg Hammock zoning protections violated white developers' Fourteenth Amendment Equal Protection rights

41 On March 30, 2021, Commissioner Lotson met with roughly 50 Sapelo residents and landowners to discuss the potential for zoning an 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 Zorck, 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).

42 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

43 On August 4, 2021, Sapelo Island Cultural and Revitalization Society (SICARS) hosted a followup meeting 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 Hgg Hammock"

44 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

45 There were no 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

The August 2023 Hogg Hummock Proposed Zoning Amendments

46 On July 11, 2023, the Board voted to approve amendments to the McIntosh County Zoning Ordinance, reserving revisions to the Hogg Hummock District for a future date

47 to be determined

53 Section 101 initially contained no maximum square footage for buildings constructed in Hoggs Hammock. Additionally, the maximum height for a building was changed from one and one half stories to 45 feet. These changes meant that there was now no limitation to how big a house could be on the Island.

54 Section 101 was incompatible and inconsistent with the current character and infrastructure of Hoggs Hammock and would have radically altered the current protections for Hoggs Hammock in the McIntosh County comprehensive plan and the McIntosh Zoning Ordinance, Appendix C of the Code of McIntosh County.

The August 16, 2023, Notice of Public Hearing

55 The August 16, 2023, notice advised that a public hearing would be held at 5:30 pm 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 pm on September 11, 2023, before voting on the proposed amendment at a 5:00 pm meeting on September 12, 2023.

56 Generally, the last ferry departs Menden, Georgia, for Sapelo Island at 5:30 pm.

57 The County scheduled the public hearing before the Planning and Zoning Commission on September 7, 2023, and the working session and public meeting of the Board of Commissioners on September 11, 2023, and September 12, 2023, respectively. All of these hearings were scheduled to begin or to be held after the last ferry departed Menden, Georgia, for Sapelo Island at 5:30 pm.

58 On August 22, 2023, undersigned counsel from the SPLC sent a letter to the Board and the County Attorney advising that holding the meetings in a time and place that, given the ferry schedule, precluded the attendance of impacted residents could violate due process and equal

protection required under both Georgia and U.S. constitutional law and the Georgia Open Meeting 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 an additional ferry to leave at least 30 minutes after the public hearing concluded.

59. On September 5, 2023, DNR announced the 5:30 pm ferry departure would be delayed until 7:30 pm on September 7, 2023.

60. The County failed to communicate last minute changes to the ferry schedule to accommodate the participation of those who needed to return to Sapelo Island.

61. Some residents of Hoggs Hammock expressed concerns as to whether they could or should attend the meeting given the lack of official information that they would have transportation home in the days leading up to the September 7, 2023 public hearing.

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

65 Attendees asked questions—which members of the Planning and Zoning

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

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

87 Each Commissioner had at their 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 working session.

88 Even with the amendments announced at the September 11 Board working session, Section 219 was still incompatible and inconsistent with the current character and infrastructure of Hogg Hummock and would radically alter the current protections for Hogg Hummock in the McIntosh County comprehensive plan and the McIntosh Zoning Ordinance, Appendix C of the Code of McIntosh County.

September 12, 2023 County Board of Commissioners' Meeting

89 The Board reconvened for their 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.

90 The McIntosh County Courthouse main courtroom was again filled with over 150 attendees who lined the walls and spilled into the hallway.

91 The Board did not provide an opportunity for public comment about the proposed zoning amendments. This procedure was different from the Board's typical practice of allowing

the public to speak at either the Board meeting or the Board working session held on the previous day, but the Board did not follow that practice for Section 219

92 The County circulated the redlined text of Section 219 before the September 12 Board meeting but the redlined changes only reflected the changes made at the September 7 public hearing before the Planning and Zoning Commission and the September 11 Board working session

93 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

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

95 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 community feedback. His motion failed 3-2, with Commissioners Kawada, Stevens, and Poble voting no, and Commissioners Lotson and Hanell voting yes

96 Commissioner Poble then successfully moved to approve the day's agenda as written, with Commissioners Kawada, Stevens, and Poble voting yes

97 Commissioners Kawada, Stevens, and Poble voted in favor of the Section 219 Hogg Hummock zoning amendment that had been revised twice after the only public hearing held on September 7 by the Planning and Zoning Commission. The twice revised zoning amendment

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

98 After voting in favor of Section 219's zoning amendment, Commissioner Pote advised that the Board's action was intended to be fair to non-Gullah residents in Hogg Hummock, whom he estimated comprised 50% of Hogg Hummock's population.

99 After voting in favor of the 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 One Hundred Miles (OMH).

100 Chairman Stevens told Hogg Hummock descendants who [do] "not want these outsiders... don't want these new homes being built to stop selling your land"

101 Touting his relationships with older and deceased Hogg Hummock 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."

102 Voting against Section 219 were William Handell and Roger Lotson. Lotson remarked, "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 new homes.²

² Benjamin Payne, 'A few millionaires will come and build: County board rezones Sapelo Islands 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>

109 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.

110 Section 219 Hogg Hummock Plaintiffs are otherwise invalid under state law because it is substantially related to the public health, safety, morality, or general welfare.

111 The Georgia Zoning Procedure Law, O.C.G.A. § 36-66-1, 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.” Ga. Code Ann. § 36-66-2(a).

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

113 Georgia’s Zoning Procedure 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).

114 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 power” O.C.G.A. § 36-66-2(b)(2).

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

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

117 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 the land and is substantially related to the public health, safety, morality, or general welfare.

118 The procedures used by the Planning and Zoning Commission and the Board to adopt Section 219 do not comply with the minimum procedures under Georgia's Zoning Law, Ga. Code Ann. § 36-6-4 ("Notices and Hearings"), or the supplemental procedures adopted by McIntosh County for the adoption or amendment of the McIntosh Zoning Ordinance, Appendix C, Article XII ("Amendments to the Zoning Ordinance") and Sec. 1-7 ("Amendments to Code") of the McIntosh County Code of Ordinances.

119 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 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" Sec. 1-7, McIntosh County Code of Ordinances.

120 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 usually required for applicants requesting text amendments to the McIntosh Zoning Ordinance Art. II, Section 63 of Appendix C, McIntosh County Code of Ordinances.

121 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 High Density, set forth in Article VI, Section 16 of Appendix C to McIntosh County's Code of Ordinances ("Section 16").

122 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 63, deprived interested parties, including Plaintiffs, of the opportunity to fully understand what was being proposed in relation to Section 161, to fully prepare for the public hearing on Section 219 and to be fully and meaningfully heard by written comment throughout the deliberative process

123 McIntosh County failed to comply with the procedural requirement to hold a public hearing prior to adopting Section 219 consistent with Georgia's Zoning Procedure Law, Ga Code Ann § 36-66-4(a), and McIntosh County Code of Ordinances, Appendix C, Article XII

124 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

125 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 individuals who live in Hogg Hammock on Sapelo Island—the very community that Section 219 singularly and exclusively regulates

126 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, this notice was defective because it provided for a hearing on a *vac* vs *defect*, *right* vs *purpose*

days” After its September 7 public hearing and closed 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 had significant “holes” and despite considerable opposition from the public at that hearing and in writing. The Planning and Zoning

136 Plaintiffs incorporate by reference paragraphs 1 through 135 of this Petition as if fully set forth herein.

137 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.

138 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).

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

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

152. 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 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.

153. 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.

154. 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.

155. The County did not explain why it permitted the press to record the September 12 Board meeting but prohibited the general public from recording.

156. The County's arbitrary restrictions violated the procedural due process protections codified at O.C.G.A. 50-14-1(c) and impacted the dissemination of critical information about the proposal and last minute changes made by the County at the September 7 public hearing and the September 11 working session and had the cumulative effect of excluding many Gullah/Gædree residents of Hog Hammock from meaningful participation in the passage of Section 219.

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

165 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 ¶ 1, and due process

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.

172 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

177 The County's decision to pass Section 219 zoning ordinance that singularly and retroactively regulates Hogg Homestead, has a disproportionate impact on this historic Black community and constitutes a violation of the equal protection guarantees of the 14th Amendment to the U.S. Constitution

178 While property valuations and taxes will increase on the entire Island after the tax

183 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

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