

22FV0155P

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AUG 15, 2022 10:28 AM

*Heather Vaughn Hill*  
Heather Vaughn Hill, Clerk  
Franklin County, Georgia

IN THE SUPERIOR COURT OF FRANKLIN COUNTY  
STATE OF GEORGIA

CORRIDOR DEVELOPMENT, INC., )  
JOHN T. BOND, AND CLINTON L. BOND; )

Plaintiff, )

v. )

FRANKLIN COUNTY, GEORGIA a )  
political subdivision of the State of Georgia; )  
and JASON MACOMSON, ROBERT L. )  
FRANKLIN, KYLE FOSTER, RYAN )  
SWAILS, and EDDIE WESTER, in their )  
Official and Individual Capacities; )

Defendants. )

CIVIL ACTION FILE  
NO. 22-FV-0155M

**ANSWER AND DEFENSES OF DEFENDANTS**

COME NOW Franklin County, Georgia; the Franklin County Board of Commissioners, individually, and its respective members, Jason Macomson, Chairman, Robert L. Franklin, Kyle Foster, Ryan Swails, and Eddie Wester (collectively referred to herein as "Franklin County"), by and through undersigned counsel, and hereby respond to Plaintiffs' Complaint as follows:

**FIRST DEFENSE**

Plaintiffs' Complaint fails to state any claim against Franklin County or any of the Franklin County Defendants upon which relief may be granted.

**SECOND DEFENSE**

Plaintiffs' claims are barred by the doctrines of official and sovereign immunity.

### **THIRD DEFENSE**

Defendants raise the defense of legislative immunity.

### **FOURTH DEFENSE**

To the extent Plaintiffs' claims are against Defendants Franklin County Board of Commissioners, individually, and its respective members, Jason Macomson, Chairman, Robert L. Franklin, Kyle Foster, Ryan Swails, and Eddie Wester, in their individual capacities, the claims must be dismissed as such individual capacity claims are not proper in a zoning challenge.

### **FIFTH DEFENSE**

Plaintiffs failed to raise all objections to the rezoning before the Franklin County Board of Commissioners, thereby barring the assertion of same at this time.

### **SIXTH DEFENSE**

Plaintiffs' claims may be barred by the doctrine of laches and/or waiver.

### **SEVENTH DEFENSE**

Plaintiffs' claims are barred due to Plaintiffs' failure to exhaust available administrative remedies.

### **EIGHTH DEFENSE**

Franklin County shows Plaintiffs were not deprived of any constitutionally protected life, liberty, or property interest without due process of law, nor were Plaintiffs; rights under any amendment to or provisions of the United States Constitution or laws violated by Franklin County.

### **NINTH DEFENSE**

The actions taken by Franklin County with respect to Plaintiffs were substantially related to the public health, safety, morality, and welfare of the citizens of Franklin County, Georgia.

#### **TENTH DEFENSE**

Plaintiffs' claims do not establish the necessary prerequisites for issuance of injunctive or declaratory relief.

#### **ELEVENTH DEFENSE**

The granting of injunctive relief to Plaintiffs would be improper as there exists an adequate remedy at law.

#### **TWELFTH DEFENSE**

No acts or omissions on the part of Franklin County either proximately caused or proximately contributed to any injury or damage which Plaintiffs claim to have sustained.

#### **THIRTEENTH DEFENSE**

Plaintiffs lack standing to assert some or all of the causes of action listed in their Complaint.

#### **FOURTEENTH DEFENSE**

Some or all of Plaintiffs' claims may be barred by the applicable statute of limitations.

#### **FIFTEENTH DEFENSE AND BY WAY OF ANSWER TO INTRODUCTION**

The portion of Plaintiffs' Complaint labeled "Introduction" is a statement of claims asserted in this case and requires no response from Franklin County. To the extent a response is required, Franklin County denies that the allegations contained therein state a claim for relief against Defendants.

#### **SIXTEENTH DEFENSE**

For its Sixteenth Defense, Franklin County responds to the specific allegations contained in Plaintiffs' Complaint as follows:

## PARTIES AND JURISDICTION

1.

Franklin County is without knowledge or sufficient information to form a belief as to the truth of the allegations in Paragraph 1 of Plaintiffs' Complaint, and therefore denies same.

2.

In response to Paragraph 2 of Plaintiffs' Complaint, Franklin County admits only that Corridor Development, Inc. applied for rezoning and variances related to certain property located in Franklin County, Georgia. Franklin County is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 2 of Plaintiffs' Complaint, and therefore denies same.

3.

In response to Paragraph 3 of Plaintiffs' Complaint, Franklin County admits only that Franklin County, Georgia is a duly organized and operational body corporate and politic within the State of Georgia. Service of process upon Franklin County has been waived in this case, but may otherwise occur in accord with the provisions of O.C.G.A. § 9-11-4(e)(5).

4.

Franklin County is without knowledge or sufficient information to form a belief as to the truth of the allegations in Paragraph 4 of Plaintiffs' Complaint, and therefore denies same.

5.

Franklin County is without knowledge or sufficient information to form a belief as to the truth of the allegations in Paragraph 5 of Plaintiffs' Complaint, and therefore denies same.

## STATEMENT OF FACT

6.

In response to Paragraph 6 of Plaintiffs' Complaint, Franklin County admits only that Franklin County has adopted and operates pursuant to its Comprehensive Plan, adopted in 2019. Franklin County craves reference to the terms of the document itself and denies Plaintiffs' characterizations of same set forth in the Complaint.

7.

In response to Paragraph 7 of Plaintiffs' Complaint, Franklin County admits only that Franklin County has adopted and operates pursuant to its Comprehensive Plan, adopted in 2019. Franklin County admits only that it is vested with constitutional zoning authority. Pursuant to that authority, Franklin County enacted its Comprehensive Plan which governs, along with the Franklin County Zoning Regulations and the Georgia Zoning Procedures Law, Franklin County's exercise of its zoning power. Franklin County craves reference to the terms of the document itself and denies Plaintiffs' characterizations of same set forth in the Complaint.

8.

Franklin County is without knowledge or sufficient information to form a belief as to the truth of the allegations in Paragraph 8 of Plaintiffs' Complaint, and therefore denies same.

9.

In response to the first sentence of Paragraph 9 of Plaintiffs' Complaint, Franklin County is without knowledge or sufficient information to form a belief as to the truth of the allegations therein, and therefore denies same. The remaining allegations in Paragraph 9 of Plaintiffs' Complaint constitute mere conclusions of the Plaintiffs with respect to the content and intent of Franklin County with respect to the Comprehensive Plan, and reference should instead be made

to the Comprehensive Plan itself. Franklin County therefore denies same.

10.

In response to Paragraph 10 of Plaintiffs' Complaint, the allegations contained therein constitute mere conclusions of the Plaintiffs with respect to the content and intent of Franklin County with respect to the Comprehensive Plan, and reference should instead be made to the Comprehensive Plan itself. Franklin County therefore denies same.

11.

In response to Paragraph 11 of Plaintiffs' Complaint, Franklin County admits only that the property at issue in this case is located in the Gateway Corridor character area pursuant to the Comprehensive Plan. The remaining allegations contained therein constitute mere conclusions of the Plaintiffs with respect to the content and intent of Franklin County with respect to the Comprehensive Plan, and reference should instead be made to the Comprehensive Plan itself. Franklin County therefore denies same.

12.

In response to Paragraph 12 of Plaintiffs' Complaint, the allegations contained therein constitute mere conclusions of the Plaintiffs with respect to the content and intent of Franklin County with respect to the Comprehensive Plan, and reference should instead be made to the Comprehensive Plan itself. Franklin County therefore denies same.

13.

In response to Paragraph 13 of Plaintiffs' Complaint, the allegations contained therein merely constitute broad, general conclusions of the Plaintiffs with respect to the intent of Franklin County with respect to infrastructure development generally, rather than with respect to the subject property specifically, and Franklin County therefore denies same.

14.

In response to Paragraph 14 of Plaintiffs' Complaint, the allegations contained therein merely constitute broad, general conclusions of the Plaintiffs with respect to the intent of Franklin County with respect to infrastructure development generally, rather than with respect to the subject property specifically, and Franklin County therefore denies same.

15.

In response to Paragraph 15 of Plaintiffs' Complaint, Franklin County admits only that it operates a sewer utility with finite capacity. Franklin County denies the remaining allegations in Paragraph 15 of Plaintiffs' Complaint.

16.

In response to Paragraph 16 of Plaintiffs' Complaint, Franklin County admits only that it operates a sewer utility with finite capacity. Franklin County denies the remaining allegations in Paragraph 16 of Plaintiffs' Complaint.

#### THE ZONING REGULATIONS

17.

Franklin County denies the allegations in Paragraph 17 of Plaintiffs' Complaint.

18.

In response to the allegations contained in the first sentence of Paragraph 18 of Plaintiffs' Complaint, Franklin County admits only that the property at issue in this matter is located in the Agricultural Intensive ("AI") zoning district. The remaining allegations contained in Paragraph 18 of Plaintiffs' Complaint are Plaintiffs' characterizations of the content of the Franklin County Zoning Regulations, the actual terms of which Franklin County craves reference; therefore, Franklin County denies the remaining allegations in Paragraph 18 of Plaintiffs' Complaint.

19.

In response to the allegations contained in Paragraph 19 of Plaintiffs' Complaint, Franklin County admits only that the Franklin County Zoning Regulations provide for a Multi-Family Residential ("RM") zoning district at appropriate locations in Franklin County. The remaining allegations contained in Paragraph 19 of Plaintiffs' Complaint are Plaintiffs' characterizations of the content of the Franklin County Zoning Regulations, the actual terms of which Franklin County craves reference; therefore, Franklin County denies the remaining allegations in Paragraph 19 of Plaintiffs' Complaint.

20.

In response to the allegations contained in Paragraph 20 of Plaintiffs' Complaint, Franklin County admits only that the Franklin County Zoning Regulations provide procedures for applicants to seek amendments to the Official Zoning Map of Franklin County pursuant to the Georgia Zoning Procedures Law. The remaining allegations contained in Paragraph 20 of Plaintiffs' Complaint are Plaintiffs' characterizations of the content of the Franklin County Zoning Regulations, the actual terms of which Franklin County craves reference; therefore, Franklin County denies the remaining allegations in Paragraph 20 of Plaintiffs' Complaint.

21.

In response to the allegations contained in Paragraph 21 of Plaintiffs' Complaint, Franklin County admits only that the Franklin County Zoning Regulations provide procedures for applicants to seek amendments to the Official Zoning Map of Franklin County pursuant to the Georgia Zoning Procedures Law. The remaining allegations contained in Paragraph 21 of Plaintiffs' Complaint are Plaintiffs' characterizations of the content of the Franklin County Zoning Regulations, the actual terms of which Franklin County craves reference; therefore,



Franklin County denies the remaining allegations in Paragraph 21 of Plaintiffs' Complaint.

22.

Franklin County denies in the form and manner alleged the allegations in Paragraph 22 of Plaintiffs' Complaint. By way of further response, Franklin County craves reference to the actual terms of the Franklin County Zoning Regulations.

23.

In response to the allegations contained in Paragraph 23 of Plaintiffs' Complaint, Franklin County admits only that the Franklin County Zoning Regulations provide for a Highway Business ("HB") zoning district at appropriate locations in Franklin County. The remaining allegations contained in Paragraph 23 of Plaintiffs' Complaint are Plaintiffs' characterizations of the content of the Franklin County Zoning Regulations, the actual terms of which Franklin County craves reference; therefore, Franklin County denies the remaining allegations in Paragraph 23 of Plaintiffs' Complaint.

24.

In response to the allegations contained in Paragraph 24 of Plaintiffs' Complaint, Franklin County admits only that the Franklin County Zoning Regulations provide for a Highway Business ("HB") zoning district at appropriate locations in Franklin County. The remaining allegations contained in Paragraph 24 of Plaintiffs' Complaint are Plaintiffs' characterizations of the content of the Franklin County Zoning Regulations, the actual terms of which Franklin County craves reference; therefore, Franklin County denies the remaining allegations in Paragraph 24 of Plaintiffs' Complaint.

## THE APPLICATION

25.

Franklin County admits the allegations in Paragraph 25 of Plaintiffs' Complaint.

26.

Franklin County admits the allegations in Paragraph 26 of Plaintiffs' Complaint.

27.

In response to the allegations contained in Paragraph 27 of Plaintiffs' Complaint, Franklin County admits only that Plaintiffs included a site plan with their application to rezone the property and for variances from the requirements of the Franklin County Zoning Regulations. The remaining allegations contained in Paragraph 27 of Plaintiffs' Complaint are denied.

28.

In response to the allegations contained in Paragraph 28 of Plaintiffs' Complaint, Franklin County admits only that Plaintiffs purported to amend their application to rezone the property and for variances from the requirements of the Franklin County Zoning Regulations. The remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint are denied.

29.

Franklin County denies in the form and manner alleged the allegations contained in Paragraph 29 of Plaintiffs' Complaint. Answering further, Franklin County admits that Franklin County staff provided a report regarding the subject application to the Franklin County Planning Commission at its March 17, 2022 meeting, and craves reference to that report for its content.

## THE PUBLIC HEARINGS

30.

Franklin County admits the allegations in Paragraph 30 of Plaintiffs' Complaint.

31.

In response to the allegations contained in Paragraph 31 of Plaintiffs' Complaint, Franklin County admits only that considerable public opposition to the application was presented during a public meeting held by the Planning Commission. The remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint are denied.

32.

Franklin County denies the allegations in Paragraph 32 of Plaintiff's Complaint, and craves reference to the actual comments submitted by the public to the Planning Commission on March 17, 2022.

33.

Franklin County admits the allegations in Paragraph 33 of Plaintiffs' Complaint.

34.

Franklin County denies in the form and manner alleged the allegations contained in Paragraph 34 of Plaintiffs' Complaint. Answering further, Franklin County admits that Franklin County considered Plaintiffs' application for rezoning and associated variances at a public meeting on April 4, 2022.

35.

Franklin County denies the allegations in Paragraph 35 of Plaintiffs' Complaint.

36.

Franklin County denies in the form and manner alleged the allegations in Paragraph 36 of Plaintiffs' Complaint. Answering further, four of the five commissioners voted to deny Plaintiffs' application. The Chairman did not vote.

37.

Franklin County denies in the form and manner alleged the allegations in Paragraph 37 of Plaintiff's Complaint. Answering further, Franklin County admits that certain property in Franklin County is located within the Agricultural Intensive ("AI") zoning district. The remaining allegations contained in Paragraph 37 are denied.

38.

Franklin County denies the allegations in Paragraph 38 of Plaintiffs' Complaint.

39.

Franklin County denies the allegations in Paragraph 39 of Plaintiffs' Complaint.

40.

Franklin County denies the allegations in Paragraph 40 of Plaintiffs' Complaint.

#### **COUNT I – DECLARATORY JUDGMENT**

41.

Franklin County incorporates by reference Paragraphs 1 through 40 above as if fully repeated herein verbatim.

42.

Franklin County denies the allegations in Paragraph 42 of Plaintiffs' Complaint.

43.

Franklin County denies the allegations in Paragraph 43 of Plaintiffs' Complaint.

44.

Franklin County denies the allegations in Paragraph 44 of Plaintiffs' Complaint.

45.

Franklin County denies the allegations in Paragraph 45 of Plaintiffs' Complaint.

46.

Franklin County denies the allegations in Paragraph 46 of Plaintiffs' Complaint.

47.

Franklin County denies the allegations in Paragraph 47 of Plaintiffs' Complaint.

48.

Franklin County denies the allegations in Paragraph 48 of Plaintiffs' Complaint.

49.

Franklin County denies the allegations in Paragraph 49 of Plaintiffs' Complaint.

## **COUNT II—JUST COMPENSATION**

50.

Franklin County incorporates by reference Paragraphs 1 through 49 above as if fully repeated herein verbatim.

51.

Franklin County denies the allegations in Paragraph 51 of Plaintiffs' Complaint.

52.

Franklin County denies in the form and manner alleged the statements set forth in Paragraph 52 of Plaintiffs' Complaint. The statement does not appear to form a complete sentence. As such, Franklin County denies same.

53.

Franklin County denies the allegations in Paragraph 53 of Plaintiffs' Complaint.

54.

Franklin County denies the allegations in Paragraph 54 of Plaintiffs' Complaint.

55.

Franklin County denies the allegations in Paragraph 55 of Plaintiffs' Complaint.

56.

Franklin County denies the allegations in Paragraph 56 of Plaintiffs' Complaint.

### **COUNT III—INJUNCTION**

57.

Franklin County incorporates by reference Paragraphs 1 through 56 above as if fully repeated herein verbatim.

58.

Franklin County denies the allegations in Paragraph 58 of Plaintiff's Complaint.

All other allegations previously unanswered, including the demands for relief set forth in Plaintiffs' Complaint *ad damnum*, are specifically denied.

WHEREFORE, having fully answered, Franklin County prays that:

- (a) Plaintiffs' Complaint against Franklin County be dismissed in its entirety with prejudice;
- (b) Plaintiffs bear all costs of this action, including attorneys' fees and expenses of litigation; and
- (c) Franklin County be granted such other and further relief as this Court deems just, equitable and proper.

Respectfully submitted this 15<sup>th</sup> day of August, 2022.

**THE SAMUELS FIRM**

*S/ Dale R. Samuels*

Dale R. “Bubba” Samuels  
Georgia Bar No. 141974

278 W. Main Street  
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Attorneys for Defendants.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the within and foregoing **ANSWER AND DEFENSES OF DEFENDANTS** by placing a copy in the U.S.

Mail addressed to:

William J. Diehl, Esq.  
Thompson, O'Brien, Kappler & Nasuti, P.C.  
2 Sun Court, Suite 400  
Peachtree Corners, Georgia 30092

This 15<sup>th</sup> day of August, 2022.

S/ Dale R. Samuels  
Dale R. "Bubba" Samuels  
Georgia Bar No. 141974