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Grant Walraven, Clerk
Gordon County, Georgia

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

TINY HOUSE HAND UP, INC.,)	
)	
Plaintiff/Petitioner,)	Civil Action File
v.)	
)	No. 21-CV-71784
CITY OF CALHOUN, GEORGIA, JAMES)	
F. PALMER, individually and in his official)	
capacity as mayor of Calhoun, CALHOUN)	
CITY COUNCIL, and ED MOYER, RAY)	
DENMON, AL EDWARDS, and)	
JACQUELINE PALAZZOLO, individually)	
and in their official capacities as members of)	
the Calhoun City Council,)	
)	
Defendants/Respondents.)	

**PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE
AND STATEMENT OF THEORIES OF RECOVERY**

Under Uniform Superior Court Rule 6.5, Plaintiff Tiny House Hand Up, Inc. submits this Statement of Material Facts Not in Dispute and Statement of Theories of Recovery.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

It is undisputed that Tiny House Hand Up wants to build smaller, more affordable homes on land that it owns in Calhoun, Georgia.

1. The availability of affordable housing is a serious problem, both nationwide and around Gordon County and the City of Calhoun. Expert Aff. of Eric Kronberg (“Kronberg Aff.”)

¶ 46.

2. In 2016, a group of local residents who were concerned about the problem of unaffordable housing in Gordon County and the City of Calhoun formed Tiny House Hand Up,

Inc., a nonprofit dedicated to helping alleviate the problem of affordable housing in the area. Aff. of Susan Brown (“Brown Aff.”) ¶ 4; Verified Compl. ¶¶ 6, 19.¹

3. Tiny House Hand Up seeks to provide a “hand up” by providing smaller housing options that are naturally affordable at market rates, rather than requiring a subsidy. Brown Aff. ¶ 4; Verified Compl. ¶¶ 25–26.

4. Tiny House Hand Up initially tried a few different concepts, but after further research and consideration, it focused its mission in 2019 on providing cottage homes. Other groups helped residents with low incomes who needed subsidized housing, but Tiny House Hand Up saw a need for residents with modest incomes who still struggled to afford a home. Tiny House Hand Up decided to help fill that need by building a beautiful community of small but charming one- or two-bedroom homes with covered porches. Brown Aff. ¶ 5; Verified Compl. ¶ 21.

5. The cottages Tiny House Hand Up wants to build would not be “tiny homes” as that term is often used, meaning homes smaller than 400 square feet. It currently wants to build single-family homes between about 540 and 600 square feet. Brown Aff. ¶ 6; Verified Compl. ¶ 40.

6. The cottages that Tiny House Hand Up wants to build would cost much less to build than comparable larger homes, making them naturally affordable at market rates to more people, like workers with more modest incomes, younger people looking for a starter home, and retirees on a fixed income. Brown Aff. ¶ 7; Kronberg Aff. ¶¶ 31–37, 42–44; Verified Compl. ¶¶ 24–25.

¹ The Complaint is listed as docket entry number 2. It was verified by the Affidavit of Cindy Tucker ¶ 5, Oct. 26, 2021, docket entry number 4 (filed Oct. 27, 2021).

7. The cottages would also appeal to people who prefer a smaller space for other reasons: retirees whose children have grown up, people who want to reduce their environmental footprint, or others who prefer the simplicity of a smaller home. Brown Aff. ¶ 8; Kronberg Aff. ¶¶ 47–50.

8. In November 2019, 7.9 acres of land at the corner of Harris Beamer Road and Beamer Road were donated to Tiny House Hand Up. Tiny House Hand Up refers to the property as King Corner and to the community it wants to build there as the Cottages at King Corner. Brown Aff. ¶ 9; Verified Compl. ¶ 37.

9. King Corner is an area surrounded by industrial uses, commercial buildings, and undeveloped land. There’s a mobile home directly across the street, a manufacturing facility next door, commercial buildings across the street on the other side, and undeveloped land immediately to the north. There is also single-family-home subdivision across the street from the northwest corner and a motocross track down the street. Brown Aff. ¶ 11; Verified Compl. ¶ 38; Aff. of Joseph Gay (“Gay Aff.”) Ex. T (Zoning Review Committee Minutes at 2–3).

10. At the time Tiny House Hand Up acquired the land, and through June 14, 2021, King Corner was zoned “Ind-G general industrial district.” Brown Aff. ¶ 10; Gay Aff. Ex. E at 28 (Calhoun Zoning Code § 7.11); Gay Aff. Ex. T (Zoning Review Committee Minutes at 2–3).

11. At that time, land in the Ind-G general industrial district could be used by right for uses such as warehousing, wholesaling, truck terminals, storage yards and lumberyards, automobile service stations and gas stations, commercial recycling collections centers, and any industry that “does not cause injurious or obnoxious noise, vibrations, smoke, gas fumes, odor, dust, fire hazard, or other objectionable conditions.” Single-family dwellings are not a permitted use. Gay Aff. Ex. E at 28–29 (Calhoun Zoning Code § 7.11).

12. There is no evidence of any issues or complaints relating to the King Corner property being zoned for industrial uses. Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 274:22-275:12).

13. Along with acquiring land, Tiny House Hand Up was making concrete plans for the Cottages at King Corner. It was holding fundraisers and raising money to help with infrastructure costs, identifying contractors, meeting with financial institutions about financing for prospective purchasers, and selecting house plans. Brown Aff. ¶ 12; Verified Compl. ¶ 42.

14. Tiny House Hand Up could not and cannot proceed with its plans to build the Cottages at King Corner, however, because the Calhoun Zoning Code does not permit single-family homes smaller than 1,150 square feet to be built. Brown Aff. ¶ 15; Verified Compl. ¶¶ 53, 72–80.

It is undisputed that homes of any size that comply with the International Residential Code and other applicable building codes are safe and healthy.

15. Tiny House Hand Up is not challenging any requirements in any of the applicable building codes that apply to building single-family homes in Calhoun, Georgia. Any single-family homes that Tiny House Hand Up builds will be subject to all of the applicable building codes that apply to single-family homes. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 40:2–19); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 301:3–7); Verified Compl. ¶¶ 4, 62.

16. Building codes ensure that buildings are safe and healthy for their intended uses. They do this by mandating specific characteristics based on the building and its intended use. For one- and two-bedroom homes, for example, the building code will dictate how close they can be

to other homes based on the fire rating of the exterior walls. Kronberg Aff. ¶ 16; Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 38:9–12).

17. The building code establishes these technical requirements by drawing on national and international expertise from building professionals, architects, and regulators to determine what is necessary for the building to be safe and healthy. Kronberg Aff. ¶ 17.

18. In most jurisdictions in the United States, single-family homes like Tiny House Hand Up’s proposed cottages are subject to the International Residential Code, or IRC. The purpose of the IRC is to ensure that one- and two-family homes and townhomes are safe and healthy to live in. Kronberg Aff. ¶¶ 20–21.

19. Georgia has also adopted the 2018 version of IRC with some Georgia-specific amendments and has made it mandatory statewide. Calhoun has also expressly adopted the 2018 IRC with Georgia amendments. In addition, Georgia has adopted other statewide building codes, like the International Fire Code, that are mandatory statewide, as well as a few statewide codes that local jurisdictions are allowed (but not required) to adopt and enforce. Kronberg Aff. ¶ 20; Gay Aff. Ex. P (Calhoun Ordinance 1000 adopting statewide codes (Dec. 9, 2019)); Gay Aff. Ex. DD (Calhoun Ordinance 1031 adopting statewide codes (Dec. 27, 2021)); O.C.G.A. §§ 8-2-20(9)(B)(i), 8-2-25(a).

20. Local governments cannot use less stringent building codes, but there is a statutory process for imposing stricter requirements “based on local climatic, geologic, topographic, or public safety factors.” O.C.G.A. § 8-2-25(c). Calhoun has not invoked this statutory process. Gay Aff. Ex. P (Calhoun Ordinance 1000 adopting statewide codes (Dec. 9, 2019)); Gay Aff. Ex. DD (Calhoun Ordinance 1031 adopting statewide codes (Dec. 27, 2021)).

21. The smaller cottages that Tiny House Hand Up wants to build are consistent with the IRC and other applicable building codes. Kronberg Aff. ¶ 22.

22. The IRC itself does not mandate a minimum home size. It only requires certain habitable rooms like bedrooms and living rooms to have at least 70 square feet of floor area and to be at least 7 feet wide. If those conditions are satisfied, homes of any size are consistent with the IRC and other building code requirements relating to health and safety. Kronberg Aff. ¶ 22 & Ex. 2.

23. Other building code standards and standards developed by public-health and housing experts also do not mandate a minimum home size. Kronberg Aff. ¶ 22 n.2.

24. Homes that are smaller than 1,150 square feet that comply with the IRC are safe and healthy. Kronberg Aff. ¶ 23.

25. Homes that are between 540 and 600 square feet that comply with the IRC are safe and healthy. Kronberg Aff. ¶ 24.

26. Homes smaller than 540 square feet that comply with the IRC are safe and healthy. Kronberg Aff. ¶ 25.

27. In terms of fire safety, smaller homes perform as well as or better than larger homes. In a fire, a home will burn at the same rate regardless of its size. Instead, the biggest factors for fire safety are notification of the fire and the time and distance to exit the building. The IRC addresses notification by mandating the appropriate placement of smoke alarms to alert occupants of a fire. The IRC addresses the time and distance to exit by mandating doors or windows in certain locations that can be used to escape, or to be rescued from, in an emergency. Kronberg Aff. ¶ 26.

28. On the two key factors of notification and time to exit, smaller homes perform as well as or better than larger homes. In a smaller home, an occupant will be in a position to hear any smoke alarms and be notified of a potential fire. And in a smaller home, an occupant will inherently always be close to a door or window that can be used to exit the building, and thus the time and distance to exit will typically be shorter compared to a larger home. Kronberg Aff. ¶ 27.

29. Many zoning codes do not impose minimum sizes on single-family homes and other residential dwellings. In jurisdictions that do impose minimum size requirements, there are usually smaller homes that were built before that requirement was imposed. Historically, smaller homes were quite common. And still other jurisdictions often cap the sizes of certain homes, such as accessory dwelling units, at 400 to 800 square feet. Yet there is no evidence that the size of a home that otherwise complied with the applicable building codes has ever caused an issue with health or safety. Kronberg Aff. ¶¶ 28–29.

30. Tiny House Hand Up’s expert, Eric Kronberg, testified that in his decades of work in architecture, homebuilding, and zoning and land-use policy issues, he has never encountered a situation where the size of a home that otherwise complied with the applicable building codes has caused an issue with health or safety. Kronberg Aff. ¶¶ 28–29.

31. Tiny House Hand Up’s expert, Eric Kronberg, testified that in his decades of work in architecture, homebuilding, and zoning and land-use policy issues, he has never encountered a situation where the size of a home that was legally capped at between 400 and 800 square feet led to an issue with health or safety. Kronberg Aff. ¶ 29.

32. Smaller homes, including homes between 500 and 600 square feet, are widely recognized as safe and healthy. Kronberg Aff. ¶¶ 22 & n.2, 28–29.

It is undisputed that Calhoun’s zoning code banned single-family homes smaller than 1,150 square feet in 2001.

33. Zoning codes seek to separate incompatible uses of land by dividing land into zones and districts. Each district typically has two sets of restrictions. First, there are “use” restrictions, listing how land in that district is allowed to be used (*e.g.*, as a single-family residence versus an office building). Second, there are “bulk and area” restrictions, which seek to ensure that buildings are consistent with the allowed use (*e.g.*, requiring single-family homes to be a certain distance from the property lines). Kronberg Aff. ¶ 18; Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 37:6–17); O.C.G.A. § 36-66-3(3).

34. For much of its history, until 2001, Calhoun’s zoning code did not impose a minimum size requirement on single-family homes. Gay Aff. Ex. F (Calhoun Zoning Ordinance § 8.1 (Sept. 27, 1999)).

35. Before 2001, Calhoun’s zoning code restricted many areas to single-family homes, and dictated the size of the lots, the width of the lots, and how far the home had to be from the property lines. It could deny permission to build things like duplexes or to build on smaller lots. But as long as the home stayed within those bounds and complied with the building code, single-family homes could be any size the property owner wanted. Gay Aff. Ex. F (Calhoun Zoning Ordinance § 8.1); Gay Aff. Ex. I (Coosa Valley Regional Development Center, *Review of Multi-Family Zoning: City of Calhoun, Georgia* (Spring 2001) at 2–3 (single-family zoning percentages)); Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 46:16–20).

36. Before 2001, the City of Calhoun could deny permission to build things like duplexes or to use smaller lots, but it could not directly address complaints that the homes built

on those lots might not be as big and expensive as existing homeowners preferred. Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 46:16–20).

37. There is no evidence that allowing property owners to choose the size of their single-family homes caused any tangible problems in Calhoun or anywhere else. Kronberg Aff. ¶¶ 28–29.

38. The City of Calhoun’s 30(b)(6) designee (Mayor Palmer) testified that existing homeowners in 2000 and 2001 and continuing through today express ongoing concerns “about having single-family housing and more expensive housing” built near their homes. Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 51:6–19, 52:1–12, 55:5–13).

39. At a City of Calhoun City Council Meeting on June 12, 2000, there was a public hearing on a request to zone land as R-1 (residential) and for a variance to reduce the lot sizes to 10,000 square feet. The request was controversial. Gay Aff. Ex. G (City Council Meeting Minutes at 3–4).

40. During the June 12, 2000, hearing, as reported by the meeting minutes, one speaker “stated he is concerned about the size of the houses proposed.” Gay Aff. Ex. G (City Council Meeting Minutes at 4).

41. During the June 12, 2000, hearing, the meeting minutes report the following statement by another speaker: “He would request that houses of 1,500 to 1,600 square feet be built, rather than the smaller units, which would be the same as dismantling the apartments and scattering them over the area, primarily for rent. He stated in this type of environment, he is concerned about the safety of the elderly in the community.” Gay Aff. Ex. G (City Council Meeting Minutes at 4).

42. During the June 12, 2000, hearing, the meeting minutes reported the following statement by another speaker: “She stated she is opposed to the size of houses to be built for rent. Houses of 1,600 to 2,000 square feet are needed to be compatible with the area.” Gay Aff. Ex. G (City Council Meeting Minutes at 5).

43. At the end of the June 12, 2000, hearing, the City Council voted to approve the request to zone the property R-1 but to deny the variance requesting smaller lot sizes. Gay Aff. Ex. G (City Council Meeting Minutes at 5).

44. At a City of Calhoun City Council Meeting on January 8, 2001, there was a public hearing on a request to rezone land as R-2 to permit single-family homes and duplexes on half of the property, with the other half donated to the City of Calhoun to use as green space and for an easement, to help address stormwater issues. Gay Aff. Ex. H (City Council Meeting Minutes at 6).

45. During the January 8, 2001, hearing, as reported by the meeting minutes, one speaker “stated he would like to see the developers build single-family housing and more expensive housing than proposed, in order to protect the value of the property in the immediate area.” Gay Aff. Ex. H (City Council Meeting Minutes at 7).

46. At the end of the January 8, 2001, hearing, the City Council voted to deny the request to rezone the property R-2, so that there would be single-family homes on the entire property instead of duplexes on half the property. Gay Aff. Ex. H (City Council Meeting Minutes at 8).

47. At a City of Calhoun City Council Meeting on October 13, 2003, there was a public hearing on a request to zone land as R-1B and variances to reduce the required width of certain lots. The report from the Zoning Advisory Board stated that it “felt the homes in this

development should be no less than 1400 square feet, rather than the minimum of 1,150 as provided in the code. This would allow the homes to be more in line with the homes in the area.” The City Council voted to grant the zoning and variance requests on the condition that the property owner add restrictive covenants to the land requiring the homes to be at least 1,400 square feet. Gay Aff. Ex. K (City Council Meeting Minutes at 5–7).

48. At a City of Calhoun City Council Meeting on August 8, 2005, there was a public hearing on a request to annex land into the City of Calhoun with a zoning of R-1A, which required homes to be at least 1,400 square feet. There was opposition to zoning the property as R-1 instead of R-1A. Gay Aff. Ex. L (City Council Meeting Minutes at 8).

49. During the August 8, 2005, hearing, as reported by the meeting minutes, one speaker presented a petition with 138 signatures that opposed the R-1A zoning, noting the “smaller lot size, shorter setbacks and the heated square footage [i.e., the minimum floor area] for houses.” The speaker also noted that nearby homeowners “have covenants to ensure houses of no less than 2,000 square feet would be built.” Gay Aff. Ex. L (City Council Meeting Minutes at 9–10).

50. During the August 8, 2005, hearing, the meeting minutes report that the property owner, responding to the opposition to R-1A zoning, had offered to include similar covenants on the proposed development if it was zoned R-1A, because he wanted flexibility to build on smaller lots than the R-1 zoning would allow. Gay Aff. Ex. L (City Council Meeting Minutes at 9–10).

51. During the August 8, 2005, hearing, the meeting minutes reported that another speaker “stated he is concerned with property values and concerned with the size of houses propos[ed] to be built. He stated if an agreement with the developer could be reached, regarding

2,500 square feet of heated space this might be an option.” Gay Aff. Ex. L (City Council Meeting Minutes at 10).

52. At the end of the August 8, 2005, hearing, the City Council voted to zone the property R-1. Gay Aff. Ex. L (City Council Meeting Minutes at 11).

53. At a City of Calhoun City Council Meeting on May 14, 2007, there was a public hearing on a request to annex land into the City of Calhoun with a zoning of PR-D (planned residential development). According to the meeting minutes, the report from the Zoning Advisory Board began by “warning that [it] would include single family housing and townhouses.” The report also “stated that the proposed developer has met with residents on more than one occasion and has agreed to increase the size of the single family homes that will be developed.” The Zoning Advisory Board’s vote on whether to recommend approving or denying the request had been a tie. Gay Aff. Ex. M (City Council Meeting Minutes at 2).

54. During the May 14, 2007, hearing, as reported by the meeting minutes, one nearby homeowner “stated that the homeowners had met with [the applicant] on more than one occasion,” and that “the property owners had received some concessions by the developer and they were not as opposed at this time as they had been previously.” Gay Aff. Ex. M (City Council Meeting Minutes at 2–3).

55. At the end of the May 14, 2007, hearing, the City Council voted to approve the requested PR-D zoning. Gay Aff. Ex. M (City Council Meeting Minutes at 3–4).

56. At a City of Calhoun City Council Meeting on June 14, 2021, there was a public hearing on a request to annex land into the City of Calhoun with a zoning of PRD (planned residential development). According to the meeting minutes, Mayor Palmer “questioned the home sizes as the application states 1,400 to 2,000 square foot homes and the site plan shows

1,200 square feet.” The minutes reflect that the applicant responded that they had used 1,200 on the site plan because that was “the minimum requirement per the ordinance.” Gay Aff. Ex. U (City Council Meeting Minutes at 12).

57. During the June 14, 2021, hearing, as reported by the meeting minutes, one nearby homeowner stated that they had a “concern ... that refugees could be moved in but stated they do feel better about that since [the applicant] had told them that the purchase price would begin around \$200,000.” Gay Aff. Ex. U (City Council Meeting Minutes at 12).

58. At the end of the June 14, 2021, hearing, the City Council voted to approve the requested PR-D zoning (subject to conditions relating to the sewer system and a letter of credit). Gay Aff. Ex. U (City Council Meeting Minutes at 13).

59. On August 13, 2001, the City of Calhoun enacted a major revision to its zoning code. Among other things, the revisions introduced a minimum floor area for single-family homes. Homes in the R-1 district had to be at least 1,800 square feet. Homes in the R-1A district had to be at least 1,400 square feet. And homes in the R-1B district had to be at least 1,150 square feet. Gay Aff. Ex. J (Aug. 13, 2001, City of Calhoun Zoning Ordinance §§ 7.1.3, 7.2.3, 7.3.3).

60. The minimum floor area requirements enacted in August 2001 remain in effect. Gay Aff. Ex. E at 16, 19, 22 (City of Calhoun Zoning Ordinance §§ 7.1.3, 7.2.3, 7.3.3).

61. The August 13, 2001, amendments to the zoning code also permitted single-family and multi-family homes in a new “Planned Development District,” or PRD, which gives the City of Calhoun discretion to allow different arrangements of homes and other buildings based on a property owner’s detailed plan for developing the property. Single-family homes in PRD districts are subject to the same 1,150 minimum floor area requirement that applies in R-1B

districts. Gay Aff. Ex. S (Email, “RE: Tiny House Hand Up” (Aug. 26, 2020)); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 270:20–271:10, 278:20–24, 280:10–14); Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 133:1–22).

62. Because of the minimum floor area requirements in the Calhoun Zoning Code, Tiny House Hand Up cannot build its proposed community of cottage homes with 540 to 597 square feet on its King Corner property or anywhere else in the City of Calhoun. Brown Aff. ¶ 15; Verified Compl. ¶¶ 53, 72–80.

It is undisputed that Calhoun city officials told Tiny House Hand Up it could not build its proposed community of cottage homes because the homes were too small.

63. Tiny House Hand Up had several meetings with city officials about its plans over the years. Through these discussions, Tiny House Hand Up understood that there was flexibility on some zoning requirements, like the number of allowed homes and the minimum lot sizes. But Tiny House Hand Up’s desire to build smaller single-family homes remained the obstacle. Brown Aff. ¶ 13; Verified Compl. ¶¶ 39 n.2, 44–46; Gay Aff. Ex. Q (City Council Work Session Meeting Minutes (Dec. 16, 2019) at 1–2); Gay Aff. Ex. S (Email, “RE: Tiny House Hand Up (Aug. 26, 2020)); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 246:5–7, 269:22–270:1, 277:7–280:14).

64. On August 15, 2020, Tiny House Hand Up’s executive director, Cindy Tucker, emailed the Calhoun City Administrator (Paul Worley) about resuming discussions about the Cottages at King Corner following the COVID “hiatus.” Gay Aff. Ex. R (Email, “FW: Tiny House Hand Up” (Aug. 15, 2020)).

65. Prior to Cindy Tucker’s August 15, 2020 email, however, the Calhoun Mayor (James Palmer), certain councilmembers, and City Administrator (Paul Worley) had already

discussed Tiny House Hand Up’s project at the previous City Council Work Session, on about August 10, 2020. During that meeting, they discussed communications Mr. Worley and Mayor Palmer had received from members of the Layson family, a prominent family of local developers who are well-known to local elected officials. Gay Aff. Ex. R (Email, “FW: Tiny House Hand Up” (Aug. 17, 2020)); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 267:4–268:4); Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 100:20-101:3).

66. Mr. Worley summarized those communications as follows: “As we discussed at the work session, I received a call from Jamie Layson that was concerned about this project. Mayor Palmer has also talked with Butch Layson who indicated many residents in Madison Gardens have grave concerns about this project being next to their new subdivision. Jamie let me know that they are in the engineering phase on an additional 11.3 acres (marked on the attached map) for additional single family homes and a townhome development. Obviously he is concerned that this could negatively impact all the investment they have put into single family housing in the area.” Gay Aff. Ex. R (Email, “FW: Tiny House Hand Up” (Aug. 17, 2020)).

67. In his August 17, 2020, email to Mayor Palmer and the City Council, Mr. Worley also predicted that Dwight and Brian Wilson, other local developers who were also looking to develop property near King Corner, would oppose Tiny House Hand Up’s project as well. He warned that “we will be hearing more from Madison Garden residents, Brookstone residents, Kings Point residents, etc.” Gay Aff. Ex. R (Email, “FW: Tiny House Hand Up” (Aug. 17, 2020)).

68. During the discussion among the mayor and councilmembers at the work session on about August 10, 2020, “there was not support for a development that was looking to build 300 – 600 square foot homes.” As Mr. Worley summarized, the current zoning code did not

permit homes that small, and it was “hard to envision allowing a 300-600 square foot development that is so out of conformance to current codes that have served us well for many years.” Gay Aff. Ex. R (Email, “FW: Tiny House Hand Up” (Aug. 17, 2020)).

69. After Mayor Palmer’s and Mr. Worley’s discussions with the Laysons, followed by discussions among the Mayor, Council, and Mr. Worley at work sessions on about August 10 and 24, 2020, Mr. Worley responded to Tiny House Hand Up by email on August 26, 2020. He stated: “The Mayor and Council did discuss this project at Monday’s work session, and I would like to give you some feedback. After a deeper analysis of our current PRD, Planned Residential Development, the proposed Tiny Home community would not be allowed. The PRD has specific square foot minimum requirements.” After discussing the applicable zoning code requirements, he continued: “As you can see, to allow a tiny home community would take a significant rewrite of the housing ordinances. As of right now, there does not seem to be support for a major rewrite to include dwelling units in the 400-600 square feet range.” Referring to his and the Mayor’s discussions with the Laysons, Mr. Worley said that “we have received a lot of feedback from the surrounding neighborhoods voicing their concern.” And he concluded: “The City definitely supports affordable housing and the City has made significant investments in affordable housing over the years. However, again, there are concerns about the square footage proposal. The general consensus is there are multiple affordable housing construction options already available that fit within the existing ordinance structure.” Gay Aff. Ex. S (Email, “RE: Tiny House Hand Up (Aug. 26, 2020)).

70. On March 12, 2021, Tiny House Hand Up’s executive director, Cindy Tucker, asked the Calhoun City Administrator, Paul Worley, by email if they could “at least try to make progress on getting the property rezoned,” while still “try[ing] to figure out a way to address the

minimum square footage issue.” Tucker Aff. Ex. 2 (Email, “RE: King Property” (Mar. 12, 2021)).

71. On March 12, 2021, Paul Worley responded by email that Tiny House Hand Up could go forward with rezoning. Tucker Aff. Ex. 2 (Email, “RE: King Property” (Mar. 12, 2021)).

72. In May 2021, Tiny House Hand Up applied to rezone the King Corner property from Industrial-G to R-1B. On May 27, 2021, city staff on the Zoning Review Committee held a meeting to discuss the application. According to the meeting minutes, R-1B zoning was “consistent with the future land use map for the area.” There were no concerns with traffic, utilities, or police and fire service. Gay Aff. Ex. T (Zoning Review Committee Minutes at 2–3); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 285:21–286:3, 287:11–288:3).

73. On June 14, 2021, the mayor and council unanimously approved rezoning the property to R-1B. Gay Aff. Ex. U (Calhoun City Council Minutes at 13).

It is undisputed that the Mayor and Council denied Tiny House Hand Up’s variance application after hearing complaints that the proposed homes were “going to be priced less” and would attract “riff-raff.”

74. On August 30, 2021, Tiny House Hand Up applied for a variance from Section 7.3.3 (and Section 8.1) of the Calhoun Zoning Code, which require homes to have a minimum floor area of at least 1,150 square feet. The application specifically asked for permission to build single-family home cottages with 540 to 597 square feet of floor area each. Gay Aff. Ex. V (Variance Application).

75. Tiny House Hand Up did not seek a variance from any of the other bulk and area requirements that apply to R-1B. If the variance from the minimum floor area had been granted,

Tiny House Hand Up would have remained bound by the remaining R-1B bulk and area requirements like density (3 homes per acre), lot sizes (10,000 square foot lots), and setbacks. Gay Aff. Ex. V (Variance Application); Gay Aff. Ex. E at 22 (Calhoun Zoning Code § 7.3.3); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 291:7–292:9); Verified Compl. ¶ 39 n.2.

76. Tiny House Hand Up also did not seek a variance from the permitted uses of the King Corner property. Its zoning permitted the land to be used for single-family homes, and if the variance were granted, it would still be limited to single-family-home uses. Gay Aff. Ex. V (Variance Application); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 258:11–20); Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 102:14–20).

77. In describing the reason for the variance, Tiny House Hand Up’s variance stated that Tiny House Hand Up wanted to build a community of “modestly sized cottage homes that are affordable to financially responsible workers in Calhoun who are increasingly priced out of the local housing market.” The minimum floor area requirement, it explained, “irrationally increases building and construction costs above the economic reach of many in our community, making it impossible for THHU to fulfill its mission.” The application further stated Tiny House Hand Up planned to “build beautiful cottages” that “would contribute to the nearby area and provide a vital ladder for economic advancement within the community.” It also stated that the minimum floor area requirement violates the Georgia Due Process Clause. Gay Aff. Ex. V (Variance Application).

78. Tiny House Hand Up’s variance application also provided examples of the types of cottages that Tiny House Hand Up planned to build, like the following:



Gay Aff. Ex. V (Variance Application).

79. On September 30, 2021, city staff on the Zoning Review Committee held a meeting to discuss the variance. That review indicated no problems with traffic or utilities. Gay Aff. Ex. W (Zoning Review Committee Minutes at 2); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 297:1–11).

80. According to the minutes from the Zoning Review Committee meeting, the Fire Department asked that the proposed single-family homes only use electrical appliances rather than gas or wood-burning appliances, but there was no indication of any basis for this request in any applicable building codes. Gay Aff. Ex. W (Zoning Review Committee Minutes at 2).

81. Using electrical appliances was not necessary for safety or health, but Tiny House Hand Up had no objection to complying with the request to use electrical appliances. Brown Aff. ¶ 14; Kronberg Aff. ¶¶ 21–22, 24, 26–29.

82. According to the minutes from the Zoning Review Committee meeting, the Police Department representative referred to “reported” crime increases in other areas where smaller homes had been built. The representative explained: “Two cities in Seattle WA had a 103% rise

in a two-block radius of these type of homes.” That referred to news reporting about Seattle, Washington’s only “low barrier” homeless shelter, which was described as a type of homeless shelter open to drug and alcohol users. The low barrier homeless encampment described in the story reportedly housed its residents in tiny homes. And according to reporting, there may have been an increase in crime around the homeless encampment, although that was disputed, because the increased number of crimes might have reflected an unrelated, large theft ring that had just been busted. Gay Aff. Ex. W (Zoning Review Committee Minutes at 2); Gay Aff. Ex. X (Hana Kim, FOX 13 Seattle, *Crime rate rose 103% in a two city block radius of tiny-home village in north Seattle, according to data* (July 18, 2018)); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 309:13–311:6).

83. The Zoning Review Committee meeting minutes do not reflect any attempt to explain how media reports about a “low barrier” homeless encampment would be informative for a proposed neighborhood of homeowners with modest incomes and mortgages. Gay Aff. Ex. W (Zoning Review Committee Minutes at 2); Gay Aff. Ex. X (Hana Kim, FOX 13 Seattle, *Crime rate rose 103% in a two city block radius of tiny-home village in north Seattle, according to data* (July 18, 2018)); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 313:13–20).

84. According to the minutes from the Zoning Review Committee meeting, the Police Department also pointed to potential unknowns based on how many units were built and concerns about which building standards would apply. The “maximum density” and “minimum lot size” requirements, however, would limit the number of units that could be built, and the IRC would continue to apply, even if the variance was granted. Gay Aff. Ex. W (Zoning Review Committee Minutes at 2); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 301:3–7, 307:19–25).

85. Before the Mayor and Council decide whether to grant or deny a variance, the variance application goes before the Zoning Advisory Board, which holds a public meeting and then votes to recommend granting or denying the variance application. Gay Aff. Ex. E at 71–72 (Calhoun Zoning Code §§ 13.2, 13.3).

86. On October 7, 2021, Tiny House Hand Up’s variance application went before the Zoning Advisory Board. The meeting minutes reflect that Butch Layson and Dwight Wilson, two developers who planned to develop land they owned nearby, attended and spoke in opposition to allowing smaller homes to be built. Another member of the public spoke in opposition and expressed concern about “who will be in the homes.” Gay Aff. Ex. Y (Zoning Advisory Board Minutes § 6.A & § 6.A.q, .r, .s); Gay Aff. Ex. R (Email, “FW: Tiny House Hand Up”).

87. Leading up to the public hearings, the local developers who owned land near King Corner were providing “feedback” “loud and clear to the elected members of the city council,” the Calhoun City Administrator (Paul Worley), and the Zoning Advisory Board members. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 49:8–50:11).

88. After hearing those public comments, the presiding officer called for a motion to recommend granting or denying the variance. No one on the Board was willing to make a motion for or against the variance, so the “item died for lack of a motion” without a vote, meaning it was sent to the Mayor and Council with no recommendation. Gay Aff. Ex. Y (Zoning Advisory Board Minutes § 6.A.v); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 314:21–24).

89. The lack of a vote was unusual and reflected the board members’ concerns about potential criticism or controversy if they took a public stand on the issue. As the City of Calhoun’s 30(b)(6) designee (City Administrator Paul Worley) testified, the board members “get put on the hot seat” and “nobody is willing to make that motion.” The City understands that to

operate as a recommendation to deny. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 63:4–19); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 314:25–315:15, 317:20–318:4).

90. On October 11, 2021, Tiny House Hand Up’s variance application went before the Mayor and City Council, who make the final determination to grant or deny a variance. Gay Aff. Ex. Z (Calhoun City Council Meeting Minutes at 11); Gay Aff. Ex. E at 13–14 (Calhoun Zoning Code § 6.6).

91. During the October 11, 2021, public hearing on Tiny House Hand Up’s variance application, Butch Layson, who had asked to purchase the King Corner property from Tiny House Hand Up, spoke in opposition. The audio recording reflects that he made the following statement: “My biggest concern is the fact that you’re going to put these very, very small houses into a neighborhood area, and it’s going to hurt the value of the surrounding homes, and that was the thing for the Madison subdivision got together and brought a petition.” Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 118:12–14, 119:22–120:2, 121:18–122:3); Gay Aff. Ex. AA (Excerpt of Audio Recording of Hearing at 0:00–0:02, 3:58–4:19); Tucker Aff. Ex. 1 (Full Audio Recording of Hearing at 21:33–21:53); Gay Aff. Ex. Z (Calhoun City Council Meeting Minutes at 12).

92. During the October 11, 2021, public hearing on Tiny House Hand Up’s variance application, another speaker stated the following: “[I]f they put the[m] little tiny houses in all this big neighborhood and we’re all in bigger houses, the first thing I’m thinking of is they’re going to be priced less. Then it’s going to bring everybody’s value down.” She further explained that the homes in her neighborhood were over 1,150 square feet and that the area was not a good place for smaller homes. Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 123:10–124:14); Gay

Aff. Ex. BB (Excerpt of Audio Recording of Hearing at 00:10–22, 0:58–1:08); Tucker Aff. Ex. 1 (Full Audio of Recording of Hearing at 23:00–23:14, 23:49–23:58); Gay Aff. Ex. Z (Calhoun City Council Meeting Minutes at 12–13).

93. During the October 11, 2021, public hearing on Tiny House Hand Up’s variance application, another speaker stated the following: “But they’re keying on a low-income housing. Okay. And they’re keying on a hundred thousand dollar homes. So you think of low income, how are they going to keep up with everything -- a trash pickup and this and that -- and then it’s not going to cause more issue[s] and more riff-raff than what we’re already dealing with, because it is bad in that area.” Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 126:16–127:10); Gay Aff. Ex. BB (Excerpt of Audio Recording of Hearing at 00:43–01:13); Tucker Aff. Ex. 1 (Full Audio of Recording of Hearing at 28:49–29:21); Gay Aff. Ex. Z (Calhoun City Council Meeting Minutes at 13).

94. Much later, Mayor Palmer would express a similar sentiment about his opposition to allowing smaller homes to be built, wondering about the homeowners and whether “they really take pride in ownership.” Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 109:18–20).

95. After hearing these comments at the October 11, 2021, public hearing on Tiny House Hand Up’s variance application, no one on the City Council was willing to vote for or against the variance. The application therefore died “for lack of a motion” without a vote. Gay Aff. Ex. Z (Calhoun City Council Meeting Minutes at 13).

96. The lack of a vote was an “unusual situation.” It reflected a desire as “elected officials” who have been “put on the hot seat” to avoid taking a public stand on a contentious issue, to “walk the line the best they can,” and to “make as few people mad as they can.” Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 93:7–16, 94:6–23).

97. In denying the variance, the Mayor and Council did not hold any public discussion or deliberation. They did not address any of the four independent grounds in Section 6.6.1 that warrant granting a variance. They did not address any of the eight standards in Section 14.5 for considering zoning decisions. And they did not make any factual findings. Gay Aff. Ex. Z (Calhoun City Council Meeting Minutes at 13); Tucker Aff. Ex. 1 (Full Audio of Recording of Hearing at 31:37– 31:54 (close of hearing following by silence followed by request failing for lack of motion)); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 319:4–9); Gay Aff. Ex. C (Calhoun 30(b)(6) Dep. (Palmer) 129:20–23).

It is undisputed that banning smaller homes does not serve any legitimate government interests and instead harms the public.

98. While the City of Calhoun was developing the amendments to its zoning ordinance that resulted in the enactment of the minimum floor area requirement for single-family homes on August 13, 2001, it asked for assistance from the Coosa Valley Regional Development Center, which had a planning department that provided technical zoning assistance to local governments. According to the report provided by the center, the City of Calhoun was concerned about becoming an “Apartment City” and wanted guidance about “possible methods for controlling over-development of apartments.” The report explained that apartments occurred “where a demand exists,” and that Calhoun “contains more Rental Occupied Housing Units than Owner Occupied Housing Units.” It continued: “This situation may be created by a lack of affordable housing for sale to low and moderate-income persons and families. If this is considered a problem area, incentives can be offered to developers that build a certain number of homes for sale at a lower price range.” Gay Aff. Ex. I (Coosa Valley Regional Development Center, *Review of Multi-Family Zoning: City of Calhoun, Georgia* (Spring 2001) at 1–2).

99. In 2007, the City of Calhoun prepared a Comprehensive Plan Community Agenda to guide its policy decisions, describe its vision for the future, identify issues and opportunities, and identify policy statements that would provide a basis for making decisions in implementing the Comprehensive Plan. Among the “Issues” relating to “Housing,” the City’s plan stated: “Industry expansion will require additional workforce housing.” Among the “Opportunities” for “Housing,” the City’s plan stated: “Encourage alternatives to conventional subdivisions including ‘conservation subdivisions,’ which typically permits reduced house sizes and contributes to the available range of housing in the area.” Gay Aff. Ex. N (City of Calhoun Comprehensive Plan 2007-2027: Community Agenda (Aug. 2007) at 1-1, 3-29).

100. In the “Implementation Program” section of the 2007 Comprehensive Plan Community Agenda, the Plan (at page 4-33) identified “the specific measures to be undertaken by the City of Calhoun to implement the Comprehensive Plan,” including the “Policies” “adopted to provide ongoing guidance and direction to local officials” and to “provide a basis for making decisions.” The “Housing” policies included the following: (1) “We will support opportunities for low-to-moderate income families to move into affordable owner-occupied housing”; (2) “We will accommodate our diverse population and help ensure that all those who work in the community have a viable option to live in the community by encouraging a compatible mixture of housing types, densities and costs in the City”; and (3) “We will encourage housing policies, choices and patterns that move people upward on the housing ladder from dependence to independence (home-ownership).” Gay Aff. Ex. N (City of Calhoun Comprehensive Plan 2007-2027: Community Agenda (Aug. 2007) at 4-33).

101. In 2018, the City of Calhoun, Gordon County, and other cities and towns within Gordon County issued a Joint Comprehensive Plan. Among the “Joint Community Goals”

relating to “Housing Options,” the Plan stated: “A wide range of quality, affordable housing options will be promoted for all ages, incomes and housing preferences.” Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan, 2018-2028: Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 29–30).

102. The 2018 Joint Comprehensive Plan’s section on the City of Calhoun’s “residential opportunities” included the following among its “Development Strategies”:

- “Starter Houses: Modern-day subdivisions may include one type of housing as opposed to traditional neighborhood developments with housing at various prices and in differing house and lot sizes. Entry-level homebuyers may be limited to older houses in need of renovations.”
- “Alternative Housing Styles: Young professionals are increasingly looking for low maintenance properties like lofts, townhouses or condos. Smaller, more efficient homes are also becoming more desirable, as opposed to the ‘mc-mansions’ of the early 2000s. Incentives should be offered to developers who are willing to include homes of varying sizes and prices. Infill development of existing residential areas should also be encouraged.”

Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan: 2018-2028, Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 51).

103. The 2018 Joint Comprehensive Plan’s section on Economic Development includes a section on housing. In that section, the Plan described feedback from residents “that housing is an issue.” The Plan explained: “The early 2000’s saw the rise of the ‘mc-mansions’ which have also now fallen out of favor thanks to rising energy costs and costs associated with maintenance of things like the roof. Survey respondents and interviews with local young

professionals identified the need for additional starter houses in the \$100,000 - \$200,000 range. Currently, these entry-level buyers typically have to purchase an older house that has already risen in value and may need extensive updating or renovation, if it has not been properly maintained. These issues are a deterrent to many young homebuyers and prevent others [from] becoming homeowners due to properties' no longer being affordable. Survey respondents identified the desire for additional single-family houses as the most desirable style of housing.” Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan: 2018-2028, Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 141).

104. The Defendants/Respondents concede that banning smaller homes is unrelated to morality. Gay Aff. Ex. D at 18–19 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 9–10).

105. Smaller homes cost significantly less to build overall than comparable larger homes. Kronberg Aff. ¶¶ 31–38.

106. The additional cost of a larger home versus a smaller home can often determine whether the home is within reach for workers with modest incomes or retirees with fixed incomes. Kronberg Aff. ¶ 43; Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan: 2018-2028, Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 141–42).

107. Prohibiting smaller homes therefore risks locking many people out of the housing market altogether. This hurts younger people and first-time home buyers looking for starter homes, and it can be particularly harmful to seniors on fixed incomes. Kronberg Aff. ¶¶ 43–45; Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan: 2018-2028, Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 51, 141–42).

108. Apart from affordability, the community benefits from having a variety of housing types and sizes to choose from. Households come in many different sizes, from large families to young couples to single retirees. Allowing smaller homes to be built provides options for smaller households, which have become increasingly common over time, as well as for people who simply prefer less space. Kronberg Aff. ¶¶ 47–49; Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan: 2018-2028, Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 51, 142).

109. Allowing people who want to downsize to a smaller home to do so does not just make them better off; it also makes their previous, larger home available to larger households or people who prefer more space, providing additional benefits to the community at large. Kronberg Aff. ¶ 50.

It is undisputed that banning smaller homes does not advance any of Defendants/Respondents’ identified interests.

110. Asked to identify each legitimate government interest that Defendants/Respondents contend is advanced by the minimum floor area requirement, they identified the following eleven interests: “Specific governmental interests served by regulation of interior size and spacing concern the very title of this subsection in the ordinance. Calhoun Code ‘bulk and area regulation’ as plainly stated in the unequivocally clear language and text of the zoning regulations impacting:

- (1) compliance with DCA approved comprehensive plan;
- (2) statutory service delivery and intergovernmental coordination;
- (3) compliance with State dictated building codes and requirements;
- (4) population;

- (5) economic development;
- (6) adequate housing;
- (7) natural resources;
- (8) community tax payer funded infrastructure, facilities and services and responsible spending of taxpayer funding;
- (9) transportation, streets and traffic control;
- (10) public health and safety;
- (11) responsible and governed land use[.]”

Gay Aff. Ex. D at 6 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. No. 3).

111. When Defendants/Respondents explained the “entire factual basis” for their belief that the minimum floor area requirement furthers each of the eleven interests they identified, they described concerns related to other types of zoning, land-use, and building-code regulations, not the minimum floor area requirement, such as the following: efforts to coordinate between local governments to prevent “duplication” of public services (at 9); efforts to control the “density of homes in a particular district” (at 10); problems after a bankrupt company closed “an entire factory overnight” (at 11); the need for “setback controls” to “maintain green space and ensure plant life necessary not only for aesthetics, but production of oxygen” (at 12); concerns about having “to pay for two fire departments” between the county and city government, or about traffic and parking problems “because the driveways built by the developer were too short” (at 12); ensuring that “streets are capable of handling UPS delivery vehicles, Amazon vans, garbage trucks and even the USPS can get to the home of each resident” (at 13); maintaining “[p]roper distance between structures and fire hydrants” and regulating “[p]opulation density” (at 13); and ensuring a “new public park will not be sitting next to the industrial poultry grower” (at

14). Gay Aff. Ex. D at 9–14 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. No. 4).

112. As the first of their eleven identified interests, Defendants/Respondents have asserted an interest in creating and following a comprehensive plan approved by the Georgia Department of Community Affairs (DCA). But neither the DCA nor the comprehensive planning process require local governments to ban smaller homes, and jurisdictions can comply with DCA-approved plans without banning smaller homes. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 116:19–117:4, 148:16–23, 151:7–152:4). Gay Aff. Ex. D at 6–8 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

113. As the second of their eleven identified interests, Defendants/Respondents have asserted an interest in coordinating with the county and other local governments about which governments provide which services in specific areas of the county. Gay Aff. Ex. D at 6, 8–9 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

114. An interest in coordinating with the county and other local governments about which governments provide which services in specific areas of the county has nothing at all to do with the sizes of individual single-family homes. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 181:23–183:21, 196:15–197:10 (furthers interest in service delivery because “it’s one part of our service delivery”)).

115. There is no evidence that local jurisdictions that do not ban smaller homes have encountered any issues coordinating the delivery of services with other local governments or with intergovernmental coordination. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 215:13–19, 216:22–217:6).

116. As the third of their eleven identified interests, Defendants/Respondents have asserted an interest in complying with Georgia’s statewide building codes. Gay Aff. Ex. D at 6, 9 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

117. As the fourth of their eleven identified interests, Defendants/Respondents have asserted an interest in ensuring the population grows in a safe, reasonable, and responsible manner by controlling the number of homes that are built. Gay Aff. Ex. D at 6, 9–10 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

118. The “maximum density” requirement (the maximum number of homes per acre) and minimum lot size requirement (the minimum square feet for the lot) address density and population, not the minimum floor area requirement for individual homes. Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 107:9–108:3, 189:2–8).

119. As the fifth of their eleven identified interests, Defendants/Respondents have asserted an interest in developing economic development strategies. Gay Aff. Ex. D at 6, 10–11 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

120. As the sixth of their eleven identified interests, Defendants/Respondents have asserted an interest in ensuring that housing is adequately designed, built and occupied. Gay Aff. Ex. D at 6, 11 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

121. As the seventh of their eleven identified interests, Defendants/Respondents have asserted an interest in protecting the water supply and maintaining green space to ensure the plant life necessary for aesthetics and oxygen production. Gay Aff. Ex. D at 6, 12 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

122. Smaller homes cost less to heat and cool and have higher energy costs. Kronberg Aff. ¶ 39; Gay Aff. Ex. O (Gordon County Joint Comprehensive Plan, 2018-2028: Including the cities/towns of Calhoun, Fairmount, Plainville, Ranger and Resaca, at 141).

123. As the eighth of their eleven identified interests, Defendants/Respondents have asserted an interest in adequately locating things like fire stations and police departments based on population, providing adequate access for emergency services, and planning to responsibly spend funds on public goods and services. Gay Aff. Ex. D at 6, 12–13 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

124. As the ninth of their eleven identified interests, Defendants/Respondents have asserted an interest in the design of new residential streets. Gay Aff. Ex. D at 6, 13 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

125. New homes will be subject to the same requirements for street design regardless of their size. As the Zoning Review Committee meeting minutes state, if the minimum floor area variance is granted, “Any new streets developed must be built to City of Calhoun specifications.” Gay Aff. Ex. W (Zoning Review Committee Minutes at 2); Gay Aff. Ex. A (Calhoun 30(b)(6) Dep. (Worley Vol. I) 40:2–19); Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 285:2–3).

126. As the tenth of their eleven identified interests, Defendants/Respondents have asserted an interest in ensuring that buildings are safe, in preparing for increased crime that may follow increased population density, and in avoiding traffic problems. Gay Aff. Ex. D at 6, 13 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

127. As the eleventh and final of their eleven identified interests, Defendants/Respondents have asserted an interest in planning for the “different types of land

uses permitted” and separating incompatible uses (like putting a park next to an industrial poultry grower). Gay Aff. Ex. D at 6, 14 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. Nos. 3, 4).

It is undisputed that Defendants/Respondents cannot articulate how the minimum floor area requirement advances any of the governmental interests it identified.

128. Defendants/Respondents asserted that the minimum floor area requirement could not be analyzed separately from the other 13 “bulk and area” requirements applicable to the R-1B district (“such as minimum lot width, minimum lot size, maximum density per acre, maximum building coverage of the lot area, maximum impervious surface, and setback mandates”), and that instead the requirement “work[s] in unison with” the other bulk and area requirements, and that they “work collectively” to achieve those “governmental interests.” Gay Aff. Ex. D at 5 (Resp’ts’ Combined Resps. to Pl.’s First Continuing Interrogs. No. 3).

129. The City of Calhoun’s 30(b)(6) designee, City Administrator Paul Worley, testified that among the eleven interests Defendants/Respondents said were furthered by the minimum floor area requirement, there were none for which the City could “look at the minimum floor area requirement in a vacuum and articulate how it would advance that specific interest.” He further testified:

[Q.] ... And of these eleven, are there any specific ones you would highlight as separate and apart from the other bulk and area requirements being advanced by the minimum floor area requirement?

A. No. I can’t separate and parse out individual sections. As I said in my answer before, it all works together as a whole, so, no.

Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 322:12–19, 329:1–19).

130. The City of Calhoun's 30(b)(6) designee, City Administrator Paul Worley, also testified as follows:

Q: And if Calhoun was told that it was no longer allowed to enforce the minimum floor area requirement, but it could enforce the other thirteen bulk and area requirements are you able to articulate any issues that Calhoun would have with achieving any of these eleven interests?

A. Again, they all work together. I think there would be major concerns and pushback when it comes to density, development, plan growth, and overreach, based on the local government's zoning laws and regulations, land use plans, comprehensive plans.

Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 329:20–330:9).

131. The City of Calhoun's 30(b)(6) designee, City Administrator Paul Worley, also testified as follows:

Q. And, again, if Calhoun was told that it was no longer allowed to enforce the minimum floor area requirement, but it can enforce the other thirteen bulk and area requirements, apart from the fact that the bulk and area requirements work together, are you able to articulate any issues Calhoun would have with achieving any of these eleven interests?

A. No.

Gay Aff. Ex. B (Calhoun 30(b)(6) Dep. (Worley Vol. II) 331:10–19).

STATEMENT OF THEORIES OF RECOVERY

1. Tiny House Hand Up is moving for summary judgment on Counts I and II of its Complaint. (Tiny House Hand Up is not seeking summary judgment on Count III because it concerns attorneys' fees and costs, which are not properly addressed at the summary judgment stage, and it reserves all rights with respect to that claim.)

Georgia's Due Process Clause (Count I)

2. Georgia's Due Process Clause guarantees that "[n]o person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. art. I, § 1, ¶ 1.

3. When the right to use private property "confronts the police power under which zoning is effected, due process guarantees act as a check against the arbitrary and capricious use of that police power." *Diversified Holdings, LLP v. City of Suwanee*, 302 Ga. 597, 611, 807 S.E.2d 876, 888 (2017).

4. A zoning restriction comports with due process of law only if it bears a "substantial relationship" to the public health, safety, or general welfare. *Barrett v. Hamby*, 235 Ga. 262, 265, 219 S.E.2d 399 (1975).

5. Accordingly, zoning restrictions cannot "be unreasonable, arbitrary or capricious, and . . . the means adopted must have some real and substantial relation to the object to be attained." *Rockdale County v. Mitchell's Used Auto Parts, Inc.*, 243 Ga. 465, 465, 254 S.E.2d 846, 847 (1979).

6. Under Georgia's "substantial relation" inquiry, a plaintiff challenging a zoning restriction must initially provide "clear and convincing evidence" that the restriction is "insubstantially related to the public health, safety, morality, and welfare." *Gradous v. Bd. of Comm'rs of Richmond Cnty.*, 256 Ga. 469, 471, 349 S.E.2d 707, 709–10 (1986).

7. “The burden then shifts to the [governing authority] to justify the zoning.” *DeKalb County v. Flynn*, 243 Ga. 679, 680, 256 S.E.2d 362, 363 (1979). This “must be shown by ‘clearly more than “any” evidence.’” *Id.* (quoting *Barrett*, 235 Ga. at 265 n.1, 219 S.E.2d at 402 n.1).

8. Georgia’s Due Process Clause “requires more than a talismanic recitation of an important public interest.” *Raffensperger v. Jackson*, 316 Ga. 383, 396, 888 S.E.2d 483, 495 (2023). Rather, the restriction must be “reasonably necessary to advance a specific health, safety, or welfare concern” identified by the government. *Id.* at 397, 888 S.E.2d at 496.

9. The undisputed evidence here demonstrates that the Calhoun’s ban on single-family homes with under 1,150 square feet of floor area fails to meet these constitutional requirements.

10. The undisputed evidence here shows that there is no justification for ever banning homes smaller than 1,150 square feet anywhere homes may be built.

11. Banning smaller homes from being built does not bear a substantial or even a rational relationship to the public health, safety, or general welfare and thus denies due process of law.

12. Banning homes with under 1,150 square feet of floor area from being built does not bear a substantial or even a rational relationship to the public health, safety, or general welfare and thus denies due process of law.

13. The undisputed evidence shows that prohibiting Tiny House Hand Up from using its King Corner property to build affordable, Southern-style cottages with 1–2 bedrooms and 540 to 600 square feet of floor area does not bear a substantial relationship to the public health, safety, or general welfare and thus denies due process of law.

14. The only purpose served by the City of Calhoun's ban on smaller homes is to abridge property owners' right to decide what type of home they want to build and live in, unnecessarily inflate the cost of building a home, and impermissibly exclude hardworking residents who cannot afford larger homes.

15. In addition, the undisputed evidence here confirms that the City of Calhoun's ban on cottage homes is particularly unjustified in its application to Tiny House Hand Up's King Corner property and does not advance any legitimate government interests.

16. It is undisputed that, but for the City of Calhoun's Minimum Floor Area Requirement, Tiny House Hand Up would be able to build its planned community of smaller, Southern-style cottages on its King Corner property.

17. The City of Calhoun's Minimum Floor Area Requirement is unconstitutional both as applied to Tiny House Hand Up and its Property at King Corner and on its face.

18. The continued deprivation of Tiny House Hand Up's right to use its private property to build homes, and the infringement of its constitutional rights under Georgia's Due Process Clause, constitutes irreparable harm.

19. Tiny House Hand Up is therefore entitled to a declaratory judgment that the Minimum Floor Area Requirement in Calhoun Zoning Code § 7.3.3 (as well as the summary of § 7.3.3 in § 8.1) is void and without effect, both facially and as applied, and the mayor and council should be enjoined from enforcing it.

Denial of Variance Application (Count II)

20. Judicial review of the denial of a variance application is for “errors of law and determination as to whether the judgment or ruling below was sustained by substantial evidence.” O.C.G.A. § 5-4-12(b) (2022).²

21. The complete absence of evidence cannot support the denial of a variance application. In other words, “Silence is not sufficient.” *Diagne v. City of S. Fulton*, No. 24-cv-10646, 2024 Ga. Super. LEXIS 5012, at *8 (Fulton Cnty. Super. Ct. Dec. 16, 2024).

22. In addition, impermissible bases for a zoning decision such as the denial of a variance application include “mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding.” *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985).

23. Under the Calhoun Zoning Code, the mayor and council may grant a variance from the terms of the Zoning Code if “one or more” of the following conditions exist: “1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; 2. The application of this ordinance to the particular piece of property would create an unnecessary hardship; 3. Such conditions are peculiar to the particular piece of property involved; 4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this ordinance, provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.” (Calhoun Zoning Code § 6.6.1, Record Ex. D at 13–14).

² The relevant statutory provisions were repealed as of July 1, 2023, but only as to petitions “filed in superior or state court on or after such date.” 2022 Ga. Laws Act 875 § 3-1 (H.B. 916).

24. The Zoning Advisory Board also holds a public hearing on the variance application and “shall present [its] findings and recommendations” to the City Council. (Calhoun Zoning Code §§ 13.2, 13.3.3, Record Ex. D at 71–72).

25. After the public hearing on the application, the mayor and council (or the Zoning Advisory Board) “will discuss in open meeting the zoning application request among themselves,” and then “[a]fter discussion and deliberation,” they may approve or deny the request. (Calhoun Zoning Code §§ 14.2.3.11 to -12, Record Ex. D at 74.)

26. In making their decision or recommendation, the mayor and council and the Zoning Advisory Board “shall use” the Zoning Code’s “Standards for considering zoning decisions” to “ensure that zoning matters are made on the basis of a record.” (Calhoun Zoning Code § 14.5, Record Ex. D at 75–76.)

27. On August 30, 2021, Tiny House Hand Up applied for a variance from the Minimum Floor Area Requirement for the Property, permitting homes between 540 to 600 square feet to be built at its King Corner property.

28. The undisputed evidence demonstrates that Tiny House Hand Up’s variance application showed that it met each of the four independent grounds for granting a variance.

29. Further, the relevant “Standards for considering zoning decisions” in Calhoun’s Zoning Code, also supported Tiny House Hand Up. (Zoning Code § 14.5, Record Ex. D at 75–76).

30. But on October 11, 2021, Defendants/Respondents held a quasi-judicial public hearing on Tiny House Hand Up’s variance application and denied the application.

31. However, neither the mayor and council nor the Zoning Advisory Board engaged in any “discussion or deliberation” about the application after the hearings closed. (Zoning

Advisory Board Minutes § 6.A.u-.v, Record Ex. B; City Council Meeting Minutes 13, Record Ex. C). Nor did they address even a single “[s]tandard[] for considering zoning decisions” to ensure that the decision would be “made on the basis of a record.” (Zoning Code § 14.5, Record Ex. D at 75–76).

32. It is undisputed that Defendants/Respondents did not make a single finding of fact regarding Tiny House Hand Up’s variance application.

33. Therefore, nothing in the record supports Defendants/Respondents’ denial of Tiny House Hand Up’s variance application because the record is wholly silent on the merits of the application.

34. Thus, it is undisputed that Defendants/Respondents’ denial of Tiny House Hand Up’s variance application was not supported by any evidence, let alone substantial evidence.

35. Apart from failing to address the factors set forth in Calhoun’s Zoning Code or make any findings of fact related to the variance application, the record indicates that Defendants/Respondents further erred when they denied Tiny House Hand Up’s variance application based on irrelevant and impermissible factors presented at public hearings on the application such as a desire to exclude people who can afford smaller homes and unsupported fears that such people would be predisposed toward crime.

36. Defendants/Respondents’ denial of Tiny House Hand Up’s variance application was contrary to law and was not supported by substantial evidence and thus the certiorari should be sustained reversing Defendants/Respondents’ denial of the variance and entering final judgment in favor of Tiny House Hand Up.

Dated: January 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, the foregoing *Plaintiff's Statement of Material Facts Not in Dispute and Statement of Theories of Recovery* was filed electronically via the Court's electronic filing system, and it was served by email on the following counsel of record:

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