

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	
)	Case No.: 2022CP0201498
DAVID W. BLAKE, ET AL.,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER ON MOTION TO ALTER OR AMEND
)	BY AIKEN DESIGN REVIEW BOARD
)	
CITY OF AIKEN, ET AL.,)	
)	
Defendants.)	
_____)	

Heard: May 9, 2024 via Webex Virtual Courtroom, by consent
 Attorneys for Plaintiffs: W. Andrew Gowder, Jr. and Michael T. Rose
 Attorney for City of Aiken: Daniel C. Plyler
 Attorneys for Aiken Design Review Bd.: Andrew F. Lindemann and James M. Holly
 Court Reporter: None – Webex Recording Procedure

The Aiken Design Review Board (DRB) moves to have the court reconsider and to alter or amend its order of June 1, 2023, which denied DRB’s motion to dismiss the case against it under Rules 12(b)(1) and 12(b)(6), SCRCF. The order granted DRB’s motion to make the complaint more definite and certain under Rule 12(e) as to plaintiffs’ Fourth Cause of Action.¹ Following the prior order, an Amended Complaint was filed and subsequent motions appear to have been heard by other judges. The new pleading and any subsequent rulings are not part of this reconsideration decision. The current motion raises issues under Rule 12(b)(1), and is granted in part and denied in part, so that the ruling is modified, as follows.

¹ Two days before the hearing, an amended complaint was filed, without judicial approval or written consent. After the hearing, DRB filed another motion on March 14, 2023, seeking the same relief, but raising the failure to have authorization to amend. The amended complaint removed DRB members named in their individual capacities, which is one of the requests in the motion. DRB’s counsel has withdrawn the objection to the filing of the amended complaint, and the August 2022 motion was argued as though it addresses the amended complaint.

- (1) The prior ruling is amended in that the court now finds that it lacks subject matter jurisdiction to review the decision by DRB to issue a conditional Certificate of Appropriateness (“COA”) because the plaintiffs failed to file a timely appeal under S.C. Code Ann. §6-29-900(A).² DRB is a quasi-judicial body, as the court previously found and which the plaintiffs admit in their pleading.³ The plaintiffs had actual knowledge of the decision to grant a conditional COA and failed to file their appeal within 30 days. The prior order is amended to delete the finding that the conditional nature of the decision meant that it was not a decision that was immediately appealable. The decision announced on March 1, 2022, was a decision under §6-29-900(A) and the triggering point for filing an appeal. The court disagrees with the assertion by the DRB that the court improperly raised an issue *sua sponte*. The complaint being reviewed raised the incomplete nature of the DRB’s action, and in order to evaluate whether there was compliance with the timeframe for filing an appeal, one would have to determine the triggering point.
- (2) The court agrees with the DRB that the bar against bringing the current action for declaratory and injunctive relief applies not just to the ultimate merits of the decision to grant the conditional COA, but also any to any jurisdictional, procedural, or evidentiary irregularities

² S.C. Code Ann. § 6-29-900(A) provides as follows:

A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from *any decision* of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

S.C. Code Ann. § 6-29-900(A). (Emphasis added).

³ The motion to alter or amend contains language that the court is asked to reconsider that the Aiken DRB is legally a quasi-judicial body. The court’s reading of the prior order is that it has been determined that it is a quasi-judicial body.

or issues that arise in the issuance of that decision, including the composition of the DRB at that time.

(3) Notwithstanding the lack of subject matter jurisdiction over DRB's decision to grant a conditional COA, there are issues that are not dismissed at the time of the issuance of the June 1, 2023 order.

- a. The plaintiffs allege violations of the Freedom of Information Act (FOIA)⁴ by the DRB. Since the prior order required the plaintiffs to amend their Complaint to make it more definite and certain regarding the specific FOIA violations alleged against the DRB, a ruling on dismissal in a Rule 59 motion would be inappropriate. The court is looking to the situation as it existed at the time of the hearing leading to the June 2023 order. However, this is not a ruling on whether or not the FOIA claims against the DRB can survive a Rule 12(b) motion.
- b. The plaintiffs seek declaratory relief regarding whether members of the DRB are ineligible based on residency outside the City Limits of Aiken, South Carolina. The motion to dismiss these claims under Rules 12(b)(1) is denied. This ruling is subject to the determination that this particular lawsuit cannot use the composition

⁴ **SECTION 30-4-100.** Injunctive relief; costs and attorney's fees.

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(B) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

of the DRB as a ground for overturning the conditional COA (if that is something that the plaintiffs are seeking). Nothing contained herein prevents the filing of requests for any writ that might be applicable in this context or any appropriate action or amendment to address alleged improprieties of the DRB, provided that they do not seek to overturn the conditional COA issued in this case. Further, this order does not prevent the DRB from seeking dismissal on another basis or at a later stage.

- (4) The prior order is amended to delete the wording that deciding the issue of subject matter jurisdiction was premature and that jurisdictional facts must be construed in a “light most favorable to the Plaintiffs” (Order, pp. 6-7). Using a Rule 12(b)(1) motion is an appropriate vehicle to raise subject matter jurisdiction. On reconsideration, the court finds that the material facts on this issue were sufficiently developed. “[T]he question of subject matter jurisdiction is a question of law for the court, not a jury question.” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993). Moreover, “[i]f the facts which give rise to a jurisdictional issue are in dispute, the court, not a jury, must find the facts.” *Id.* It is also the Plaintiff’s burden – not the DRB’s burden -- to present jurisdictional facts to demonstrate the existence of subject matter jurisdiction. *See, Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191, 197 (Ct. App. 1998).

THEREFORE, IT IS ORDERED that the order of June 1, 2023, is amended to rule that this court lacks subject matter jurisdiction over the issuance of the conditional COA, as discussed above, and the motion by the DRB under Rule 12(b)(1), SCRCF, is granted as it relates to the existing conditional COA and the matters that could have been addressed in an appeal from the decision to grant the conditional COA.

IT IS FURTHER ORDERED that the motion to alter or amend is denied, in part, in that the plaintiffs' requests for declaratory and injunctive relief survive as of the time of the ruling on June 1, 2023, as they relate to alleged FOIA violations and attendant attorney's fees and costs, as well as challenges to the composition of the DRB; provided, however, that no such claims can be based on conduct related to the issuance of the conditional COA or the composition of the DRB when considering or making the decision to grant the conditional COA.

IT IS FURTHER ORDERED that nothing contained herein prevents the plaintiffs from filing other actions or motions regarding the conduct and composition of the DRB that may properly fall within the realm of declaratory and injunctive relief.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: David W. Blake , plaintiff, et al VS City Of Aiken , defendant, et al

Case Number: 2022CP0201498

Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley