

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-1840

BP Amoco Chemical Company

RECEIVED of Charleston: Tract 7, LLC; Cainhoj Land & Timber, LLC; and Southern Timber, LLC

APR 06 2015

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

SC Court of Appeals

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This case came before the Court on October 20, 2014, on Defendants' Cainhoj Land & Timber, LLC, and Southern Timber, LLC, Motions to Dismiss Plaintiff's claims pursuant to SCRPC Rules 8(a) and 12(b) (6). The Court hereby GRANTS Defendants' Cainhoj Land & Timber, LLC, and Southern Timber, LLC's Motions to Dismiss.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Handwritten Signature]

11/13/14
Page 1

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of Nov, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Nov, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Nancy P. Brown
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-1840

BP AMOCO CHEMICAL COMPANY,)
)
Plaintiff,)

ORDER

vs.)

CITY OF CHARLESTON; TRACT 7,)
LLC; CAINHOY LAND & TIMBER,)
LLC; AND SOUTHERN TIMBER, LLC,)
)
Defendants.)

2014 NOV 14 PM 1:51
MARY P. BRADY
CLERK OF COURT
BERKELEY COUNTY, SC

[Handwritten signature]

THIS MATTER CAME BEFORE THE COURT on the Motions to Dismiss filed by Defendants Cainhoy Land & Timber, LLC, and Southern Timber, LLC, (hereinafter referred to as "these Defendants") pursuant to South Carolina Rules of Civil Procedure 8(a) and 12(b)(6).

This is an action challenging the enactment of ordinances re-zoning properties belonging to the three landowner Defendants, Tract 7, LLC, Cainhoy Land & Timber, LLC, and Southern Timber, LLC. These properties, totaling some nine thousand acres, comprise "Cainhoy Plantation," a Planned Unit Development (PUD) located within the City of Charleston. Two of the landowner Defendants, Cainhoy Land & Timber, LLC, and Southern Timber, LLC, move to dismiss the claims in the Complaint relating to them because their properties do not adjoin Plaintiff's property, and thus, these Defendants allege that Plaintiff BP does not have standing to challenge the re-zoning.

In addition, these Defendants assert that the action against them is untimely because this suit was filed more than sixty days after their re-zoning ordinances were enacted.

For the reasons set forth below, these Defendants' Motions to Dismiss are GRANTED.

FACTUAL BACKGROUND

On August 15, 2014, BP Amoco Chemical Company (hereinafter referred to as "Plaintiff BP") filed the instant action asserting the following four causes of action against the City of Charleston; Tract 7, LLC; Cainhoy Land & Timber, LLC; and Southern Timber, LLC (hereinafter collectively referred to as "Defendants"): (1) declaratory judgment that City Ordinances 2014-25, 2014-26, 2014-82 violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994; (2) declaratory judgment that City Ordinances 2014-25, 2014-26, and 2014-82 violate City Ordinance § 54-255; (3) declaratory judgment that City Ordinances 2014-25, 2014-26, and 2014-82 violate the Separation of Powers and Nondelegation Doctrines under the South Carolina Constitution; and (4) declaratory judgment that City Ordinances 2014-25, 2014-26, and 2014-82 violate City Ordinance § 54-254. Plaintiff BP is asserting additional causes of action against the City of Charleston and Tract 7, LLC. Plaintiff BP also is seeking injunctive relief against all Defendants.

Specifically, Plaintiff BP brings its claims pursuant to S.C. Code Ann. § 6-29-760(C), which provides that "[a]n owner of adjoining land or his representative has standing to bring an action contesting the [zoning] ordinance or amendment; however, this subsection does not create any new substantive right in any party."

Plaintiff BP alleges that in 2013 the Defendants, owners of Cainhoy Plantation, decided to develop the land as a mixed use development that could include over 18,000 residential dwelling units. According to the Complaint, the owners of Cainhoy Plantation recommended amendments to the PUD Ordinance that were considered by the City Planning Commission and later by City Council. On November 6, 2013, City Council enacted the amendments to the PUD

Ordinance. Tract 7, LLC, Cainhoy Land & Timber, LLC and Southern Timber, LLC submitted three separate Cainhoy PUD Master Plan applications to the City on January 24, 2014.¹ The Planning Commission recommended approval of the master plan on February 6, 2014, and held a public hearing on February 11, 2014. Plaintiff BP spoke with the owners of the proposed development of Cainhoy Plantation following that hearing, expressing the need for more time to study the size of a buffer area between the planned residential development and Plaintiff BP's property to ensure the safe and compatible co-existence of Plaintiff BP's plant and the residential development.

On February 25, 2014, a representative of Plaintiff BP addressed City Council and requested a deferral of all ordinances related to the Cainhoy PUD Master Plan and development of Cainhoy Plantation. After being asked to defer the ordinances, the owners of Cainhoy Plantation agreed to defer action only with respect to the Tract 7 Master Plan. The City of Charleston approved Ordinance 2014-25, which is the Cainhoy Land & Timber PUD Master Plan and Zoning Text, and Ordinance 2014-26, which is the Cainhoy-ST (Southern Timber) PUD Master Plan and Zoning Text.

After City Council deferred second and third reading of the Tract 7 ordinance, Plaintiff BP determined that a buffer area on Tract 7 alone would be sufficient. Plaintiff BP and Tract 7, LLC continued negotiating potential options for a buffer area on Tract 7. On June 10, 2014, they signed a Letter of Intent to negotiate an option agreement for purchase of land, but as of June 17, 2014, they had not reached agreement on the terms of the option. In reliance upon the Letter of Intent, Plaintiff BP did not request City Council to defer adoption of the Tract 7, LLC Master

¹ The Cainhoy 7 PUD Master Plan & Zoning Text, Cainhoy Land & Timber PUD Master Plan & Zoning Text, and the Cainhoy-ST Master Plan & Zoning Text are referred to collectively as the Cainhoy PUD Master Plan.

Plan and Zoning Text at the meeting on June 17, 2014, and the City Council adopted Ordinance 2014-82 relating to the Tract 7 Master Plan.

STANDARD OF REVIEW

In considering a motion to dismiss under Rule 12(b)(6), “the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E. 2d 188 (2007), citing *Stiles v. Onorato*, 318 S. C. 297, 300, 457 S.E. 2d 601, 602 (1995). “The question presented is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler*, 373 S.C. at 647, citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). If those facts and inferences would entitle the plaintiff to relief on any theory, then a dismissal for failure to state a claim is improper. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). A motion under Rule 12(b)(6) does not admit legal conclusions alleged in the Complaint, and it does not admit inferences that the plaintiff draws from the facts. *Charleston County School District v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425-26, 559 S.E.2d 362, 364-65 (S.C.App. 2001) (*cert. denied* 2002).

ANALYSIS

Defendants Cainhoy Land & Timber, LLC, and Southern Timber, LLC, move to dismiss Plaintiff’s Complaint on the ground that Plaintiff BP lacks standing to challenge their re-zoning ordinances.

A party may have standing through: (1) the “rubric of constitutional standing”; (2) by statute; or (3) under the “public importance” exception. *Freemantle v. Preston*, 398 S.C. 186, 192, 728, S.E.2d 40 (S.C. 2012) (citing *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 195,

669 S.E.2d 337, 339 (2008)). Plaintiff BP claims to have standing pursuant to S.C. Code § 6-29-760(C) and through the public importance standing doctrine.

To qualify for constitutional standing, a plaintiff must have first suffered an injury in fact which is “concrete and particularized, and actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed. 2d 351 (1992) (internal quotations and citations omitted); *Sea Pines Ass’n for Prof. of Wildlife, Inc. v. S.C. Dep’t of Natural Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001); *Davis v. Richland Cnty Council*, 372 S.C. 497, 642 S.E.2d 740 (2007). For an injury to be particularized, it must affect the plaintiff in a personal and individual way. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E.2d 846 (2014) (citations omitted). “[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not possess standing.” *Id.* at 75; quoting *Lujan*, 504 U.S. at 573-74, 112 S.Ct. 2130 (internal citations omitted). There must also be a causal connection between the injury complained of that is fairly traceable to the conduct of the defendant. *Lujan*, 504 U.S. at 560-61 (internal quotations and citations omitted). Finally, the third element requires that the plaintiff show that he is likely to receive a favorable decision from the courts as to the merits of his claim if he is deemed to have standing in this initial inquiry. *Id.*

Standing to challenge a zoning ordinance is governed by statute. Plaintiff BP asserts that it has statutory standing to pursue its claims in this matter pursuant to S.C. Code Ann. § 6-29-760(C), which provides that “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create

any new substantive right in any party.” Although the Complaint alleges that the Defendant Tract 7, LLC, owns property that is adjacent to and immediately south of the Plaintiff BP’s Property, the Complaint does not allege that the property owned by Defendants Cainhoy Land & Timber, LLC, or Southern Timber, LLC, is adjoining to the Plaintiff BP’s property. The Complaint alleges that the three Defendant landowners are “affiliated entities that share common ownership and management and are associated with the Guggenheim and Lawson-Johnson families and certain trusts established thereby” and that the Defendants “collectively own three (3) tracts ... which are commonly known as and referred to, collectively, as Cainhoy Plantation.” The Complaint alleges that Plaintiff BP’s property adjoins Cainhoy Plantation, but it is clear from that Plaintiff BP’s property does not adjoin the properties of the Defendants Cainhoy Land & Timber, LLC, or Southern Timber, LLC. The Complaint alleges that their properties are separate tracts, separately owned, and subject to separate zoning ordinances. These properties are separated from Plaintiff BP’s properties by the 1,573.5 acre Tract 7 property and Flagg Creek. Cainhoy Land & Timber, LLC, and Southern Timber, LLC, are not parties to the Letter of Intent between Plaintiff BP and Tract 7, and Plaintiff BP does not seek a buffer on their properties.

S.C. Code Ann. § 6-29-950 provides standing to sue for violations of zoning ordinances, confers standing on owners of “adjacent *or neighboring* property.” (emphasis added). S.C. Code Ann. § 6-29-760(C), under which Plaintiff BP claims standing, allows suit to be brought only by owners of adjoining property, not “neighboring” property. The difference in the plain language of the statute reflects legislative intent to narrowly limit standing to challenge zoning ordinances. The properties of Cainhoy Land & Timber, LLC, and Southern Timber, LLC, might be considered neighboring properties of Plaintiff BP because they are part of Cainhoy Plantation; however, they are not adjoining properties.

Plaintiff BP fails to allege that it owns property adjoining the properties of Defendants Cainhoy Land & Timber, LLC, and Southern Timber, LLC. Section 6-29-760(C) is inapplicable and does not provide Plaintiff with standing to assert its zoning claims. *See Carnival Corp., supra*, 407 S.C. at 79 (holding that because plaintiffs failed to allege that they were neighboring or adjacent property owners as set forth in the statutory requirement for standing, that statute was inapplicable and did not provide them with standing to assert their zoning claims).

Plaintiff BP also claims to have standing pursuant to the public importance standing doctrine. In South Carolina, "courts recognize an exception to the requirement that a plaintiff possess standing where 'an issue is of such public importance as to require its resolution for future guidance.'" *Carnival Corp.*, 407 S.C. at 853-54 (quoting *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). "In cases falling within the ambit of important public interest, standing is conferred 'without requiring the plaintiff to show he has an interest greater than other potential plaintiffs.'" *Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40 (S.C. 2012) (citing *Davis v. Richland Cnty Council*, 372 S.C. at 500, 642 S.E.2d at 741-42).

In determining whether the public importance exception to standing could apply to Plaintiff BP in this case, the Court must consider whether the issues in this case are of such public importance as to require resolution for future guidance. Fundamentally, the issues in this case are whether the zoning ordinances related to the property owned by Defendants Cainhoy Land & Timber, LLC and Southern Timber, LLC, Ordinance 2014-25 and Ordinance 2014-26, are invalid, null, and void, as violative of the South Carolina Local Government Comprehensive Planning Enabling Act; Article 1, Section 8 of the South Carolina Constitution; various City Ordinances; and the South Carolina Coastal Tidelands and Wetlands Act. These claims are generally limited to the facts of this case and the enactment of zoning specific to Cainhoy

Plantation. The resolution of these claims is undoubtedly important to the parties, but it is not of such precedential importance that public interest demands waiver of constitutional and statutory standing requirements. See *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, *supra*, 407 S.C. 67, 753 S.E.2d 846 (2014). Further, to the extent that such public importance might exist in the resolution of the issues presented in this case, these issues can be resolved in the claims asserted against the City of Charleston or Tract 7, LLC. No compelling reason exists to waive the standing requirements as to Plaintiff BP's claims against Cainhoy Land & Timber, LLC, and Southern Timber, LLC. The public importance exception to standing does not apply here.

Further, if this Court were to find that Plaintiff BP had standing to challenge the subject zoning ordinances, its claims are untimely as to Defendants Cainhoy Land & Timber, LLC, and Southern Timber, LLC. S.C. Code Ann. § 6-29-760(D) provides, "No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." Ordinances 2014-25 and 2014-26, which pertain to these Defendants, were enacted on February 25, 2014. This lawsuit was not filed until August 15, 2014, which is more than sixty days after the enactment of these ordinances. For this reason, this suit is untimely as to Defendants Cainhoy Land & Timber, LLC and Southern Timber, LLC.

Plaintiff BP alleges that the City failed to comply with the notice requirements set forth in S.C. Code. § 6-29-760. South Carolina law does not specifically define substantial compliance in regard to S.C. Code Ann. § 6-29-760(D); however, South Carolina courts have

held that substantial compliance is met if the purpose of a statute is achieved. *See, e.g., Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 164-65, 547 S.E.2d 862, 866 (2001) (looking to the clear language and express purpose of a federal act to determine whether substantial compliance occurred); *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) (looking to the purpose of a statute in determining whether substantial compliance occurred). Therefore, the language and purpose of the statute must be considered to determine whether there was substantial compliance. S.C. Code §§ 6-29-760(A) and (B) set forth the notice requirements for amendments to zoning regulations or maps. Section 6-29-760 enumerates the requirements for public hearings. The public hearings must be advertised and in cases involving rezoning, conspicuous notice must be posted on or adjacent to the property affected. *Id.*

The Complaint does not allege that Plaintiff BP was prejudiced by any alleged failure of substantial compliance with the notice requirements. In fact, the Complaint alleges that the City Planning Commission had a public hearing on February 6, 2014, wherein the Planning Commission recommended approval of the Cainhoy PUD Master Plan. Thereafter, on February 11, 2014, the City Council held a public hearing on the Cainhoy PUD Master Plan during which many individuals expressed opinions about the Cainhoy PUD Master Plan, including individuals associated with historical preservation organizations, members of the news media, and residents of the Cainhoy, Huger, and Wando Communities. The Complaint further alleges that following the February 11 hearing, a representative of Plaintiff BP spoke with owners of Cainhoy Plantation following the meeting. Plaintiff BP alleges that on February 25, 2014, a representative of Plaintiff BP addressed City Council and requested that they defer enacting the ordinances. Based on Plaintiff BP's and other interested parties' attendance at the public hearings, it is clear

that the notice served the objective of informing the public, including Plaintiff BP, of the pendency of the zoning amendments. The essential objectives contemplated by Sections 6-29-760(A) and (B) were thus satisfied.

The short time limit for challenging a zoning ordinance reflects the public policy in favor of certainty and stability of land use regulation. This policy would be disserved by nullification of the time limit because of a governmental entity's technical or insubstantial failure to comply with the notice requirements. The Court finds that Plaintiff BP had prior notice of the approval of the Cainhoy Plantation Master Plan. Plaintiff BP is not left without a remedy by the dismissal of its claims relating to Defendants Cainhoy Land & Timber, LLC, and Southern Timber, LLC.

CONCLUSION

For the foregoing reasons, the Court hereby GRANTS the Motions of Defendants Cainhoy Land & Timber, LLC, and Southern Timber, LLC's to Dismiss pursuant to Rule 12(b)(6) and dismisses the claims that pertain to Cainhoy Land & Timber, LLC, and Southern Timber, LLC, with prejudice.

IT IS SO ORDERED!

November 13, 2014


The Honorable Kristi L. Harrington

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014- CP-08 1840

BP Amoco Chemical Company

City of Charleston, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The above matter came before the Court on Plaintiff's Motion to Reconsider. The Court hereby DENIES Plaintiff's Motion to Reconsider.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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Justin Hargis
Circuit Court Judge

2151
Judge Code

3/2/15
Date

