

Robert Deciero
 PLAINTIFF(S)

Horry County, State of South Carolina
 DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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.

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider Order of Dismissal is DENIED.
 (This motion is decided without oral arguments.)

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SC Court of Appeals

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)
N/A	N/A	\$ N/A

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.

Benjamin H. Culbertson
 Benjamin H. Culbertson, Circuit Court Judge

2148
 Judge Code

Sept. 16, 2016
 Date

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-26-8179

Robert Deciero, a resident of Long Bay)
Estates Subdivision, Myrtle Beach,)
South Carolina,)

Plaintiff,)
vs.)

Horry County, State of South Carolina,)
Defendant.)

Order of Dismissal
(Rule 12(b)(6). S.C.R.C.P.)

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SC Court of Appeals

MELANIE J. BARNARD
CLERK OF COURT
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HORRY COUNTY

HEARING DATE: June 1, 2016
PRESIDING JUDGE: Benjamin H. Culbertson
PLAINTIFF'S ATTORNEY: Thomas C. Brittain
DEFENDANT'S ATTORNEY: Elise F. Crosby
COURT REPORTER: Grace Hurley

This matter comes before the court upon motion of the defendant for dismissal of Plaintiff's Complaint under Rule 12(b)(6), South Carolina Rules of Civil Procedure.

In support of its motion, Defendant argues Plaintiff fails to allege facts sufficient to constitute a cause of action and lacks standing.

Findings of Fact and Conclusions of law

Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action. Under Rule 12(b)(6), SCRCPP, a Complaint will be dismissed if it fails "to state facts sufficient to constitute a cause of action." *Carnival Corp. v. Historic Ansonborough Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (S.C. 2014.) In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint. *Id.*, citing *Doe v. Marion*, 373 S.C. 390 (2007).

Under Rule 8(a), SCRCPP, a civil pleading stating a claim for relief "shall contain (1) a short

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and plain statement of the grounds including facts and statutes, upon which the court's jurisdiction depends,...(2) a short and plain statement of the facts showing the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled." The plaintiff alleges "every home in Long Bay Subdivision is currently zoned as a SF6 residential district and, as such, is to be comprised of single family and duplex family dwellings." He further cites Section 431 of the Horry County Zoning Ordinance: "Family: An individual, or two or more persons related by blood, marriage, or adoption, living together as a single household unit, or a group of not more than five persons not related by blood, marriage, or adoption, living together as a single household unit," and Section 1300, an enforcement provision. There is no short and plain statement of the grounds or the facts showing Plaintiff is entitled to relief. There are no causes of action. Finally, there is no prayer for relief. The Complaint's deficiencies under Rule 8(a) entitle the defendant to relief under Rule 12(b)(6).

Furthermore, I conclude as a matter of law the zoning ordinance upon which the plaintiff relies restricts construction in Long Bay Estates to single-family homes or duplex dwellings, neither of which restricts short-term rental or the number of occupants.

Lastly, if his Complaint were interpreted to seek relief from a public zoning authority for harm as alleged in his Complaint, Plaintiff lacks standing. For a plaintiff to possess standing he must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Carnival Corporation*, citing *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594 (2001). In order for an injury to be particularized, it must affect the plaintiff in a personal way. *Carnival* at 851, *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). "§6-29-950's requirement that a private party seeking to enjoin a zoning violation must be

specially damaged incorporates the particularized injury requirement of general standing doctrine as a requirement.” *Carnival* at 852. The Complaint alleges no injuries particular to the plaintiff. I find as a matter of law the plaintiff fails to allege a particularized injury and therefore fails to establish standing.

In light of the Court’s findings and conclusions, no matters outside the pleadings presented to the court were considered. Therefore, as a result of this ruling, the Defendant’s Motion for Summary Judgment is moot.

NOW, THEREFORE, it is hereby

ORDERED, that the plaintiff’s Complaint is DISMISSED under Rule 12(b)(6), SCRPC; it is further

ORDERED, that the defendant’s Motion for Summary Judgment is MOOT.

AND IT SO ORDERED.



Benjamin H. Culbertson
Presiding Judge

Conway, South Carolina
June 22, 2016