STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Elizabeth Earley, John Earley, Lloyd Wilkins, Henry Kerns, Margie Mills Kerns, Donna Pearson, and Bruce Pearson,

Plaintiffs,

vs.

The City of Woodruff, SC, and the Terraces at Woodruff, a South Carolina Limited Liability Company,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-03288

ORDER DISMISSING THE COMPLAINT

This case came before the Court on January 5, 2017, for a hearing on the motion to dismiss the Complaint filed by the defendant City of Woodruff (the City). Plaintiffs in the case challenge the rezoning of certain properties within the City, including property rezoned in 2016 that is owned by the corporate defendant (the Terraces) and on which apartments are being constructed. As pertinent to this case, S. C. Code section 6-29-760 controls the procedure for notice of zoning and rezoning by a municipality, as well as the procedure for legal challenges to zoning and rezoning.

The motion to dismiss by the City was based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and was made on the general ground of failure of the Complaint to state a cause of action and on specific grounds, appearing on the face of the Complaint, related to compliance with the requirements of Section 6-29-760. The specific grounds, asserted to be established by the allegations of the Complaint, are (1) a lack of standing to challenge, (2) the time-bar of Section 6-29-760(D) as to challenges to rezoning of properties in 2005, and (3) the presence of substantial compliance by the Town with the notice requirements for rezoning. After

considering the pleadings, the memoranda submitted, and the argument of counsel at the hearing, the Court issued a Form 4C Order on February 24, 2017, granting the motion to dismiss. The Court now issues this more formal Order setting out the basis for the dismissal of the Complaint.

NATURE OF THE CASE ACCORDING TO THE COMPLAINT

The seven Plaintiffs complain of the rezoning of a 4.26 acre parcel of land "abutting Chamblin Street, Armory Drive, and North Pearson Street" in the City (Complaint, Paragraph 4), and the construction on the property of duplex apartments. The seven Plaintiffs are described in the Complaint as City residents who each "owns and occupies residential property located in the immediate vicinity of Armory Drive in the City of Woodruff" (Paragraph 1) and "in the neighborhood located immediately across Armory Drive from the Property" (Paragraph 6).

Following thirteen paragraphs of detailed factual allegations under the heading of "General Allegations and Factual Background" in Paragraphs 6-18 of the Complaint, the Plaintiffs assert two causes of action. The first cause of action seeks a declaratory judgment that the City's rezoning of the property in 2016 is void because, it is alleged, the City failed to follow the publication and posting provisions of S.C. Code § 6-29-760 and the City Zoning Ordinance. (Paragraphs 19-23). The second cause of action seeks an injunction prohibiting the City from implementing the zoning change because it is alleged by the Plaintiffs to be "illegal spot zoning." (Paragraphs 24-28).

Notably, the Complaint alleges violations of procedure and law by the City but does not allege any violations of procedure or law by the Terraces. The Plaintiffs' allegations are that the City improperly rezoned the property and, for that reason, the Court should declare the same and enjoin further development of the property. The Complaint seeks no relief specific to the

Terraces or its property that is based on alleged wrongs of the Terraces. Rather, the relief sought by the Complaint is based solely on alleged delicts of the City.

The Plaintiffs' detailed allegations in the Complaint's section entitled "General Allegations and Factual Background" include these:

- In March 2016, "residents of the area surrounding the Property noticed that the Property was beginning cleared." (Paragraph 8).
- In March 2016, some individuals and property owners received letters explaining that the Property was being developed for multi-family dwellings. (Paragraph 9).
- Plaintiff Donna Pearson attended a City Council meeting in April 2016 seeking information on the multi-family development and obtained information on the current zoning. (Paragraph 10).
- Plaintiff Henry Kerns discussed the zoning of the property with the City Manager and City Planner in "the spring of 2016." (Paragraph 11).
- Plaintiffs John Earley and Elizabeth Earley discussed the zoning of the property with the City Manager and the City Attorney in June 2016. (Paragraph 12).
- Plaintiffs Donna Pearson and Elizabeth Earley attended the Planning Commission meeting on July 7, 2016, at which the Planning Commission voted to recommend rezoning of the property to City Council. (Paragraph 16).
- Plaintiffs John Earley, Elizabeth Earley and Henry Kerns attended and spoke at the City Council meeting on July 26, 2016, concerning the proposed rezoning of the property. (Paragraph 17).
- On August 2, 2016, "several of the Plaintiffs" attended and spoke at the City Council meeting at which the rezoning was approved. (Paragraph 18).

Despite the obvious actual notice to the Plaintiffs revealed by these allegations of the Complaint, the Plaintiffs' first cause of action alleges that the City failed to advertise the public hearings "in a manner reasonably calculated to give notice to the community" and that the City's posted notice was "[i]nsufficient" because only one notice was posted on the property rather than three for each of the abutting thoroughfares. (Paragraph 21). The Complaint does not specify how "the City also failed to follow the notice procedures for amendments to the zoning ordinance contained within the WZO [Woodruff Zoning Ordinance] itself."

THE CITY'S MOTION TO DISMISS

In response to the Complaint, the City filed an Answer and a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The three grounds for the Motion are specified in the body of the Motion.

The first ground addresses Plaintiffs' failure to allege a factual basis for statutory standing under S.C. Code § 6-29-760(C) or any other status sufficient to confer standing and Plaintiffs' failure to allege any injury in fact. Section 6-29-760(C) provides that only an owner of adjoining land or his representative has standing to bring a challenge to rezoning. The Complaint fails to allege that any of the Plaintiffs are owners (or representatives of owners) of land adjoining the subject property. The Complaint merely alleges that the Plaintiffs own property "in the immediate vicinity of Armory Drive" (Paragraph 1) or "in the neighborhood located immediately across Armory Drive from the property" (Paragraph 6).

The second ground for the Motion to Dismiss is that any allegations in the Complaint as to the zoning or rezoning of properties in 2005 are time-barred pursuant to S.C. Code § 6-29-760(D). The third ground is that the Complaint fails to state facts sufficient to constitute a cause of action against the City for noncompliance with any notice requirements of S.C. Code section

6-29-760. The Complaint alleges (Paragraphs 16, 17, and 18) that, prior to the rezoning, at least four of the Plaintiffs (Henry Kerns, John Earley, Elizabeth Earley, and Donna Pearson) were present at or spoke at Planning Commission or City Council meetings concerning the rezoning. Two of these four (Henry Kerns and Donna Pearson) have spouses who are additional Plaintiffs (Margie Mills Kerns and Bruce Pearson).

STANDARD OF JUDICIAL REVIEW

Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its "failure to state facts sufficient to constitute a cause of action." 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. Carnival Corporation v. Historic Ansonborough Neighborhood Association, 407 S.C. 67, 74, 753 S.E.2d 846, 850 (2014).

The standard of review under Rule 12(b)(6), SCRCP, "requires the Court to construe the complaint in a light most favorable to the non-movant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012), citing Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

LAW/ANALYSIS

S.C. Code section 6-29-760 controls this lawsuit. Section 6-29-760 is entitled "Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners; time limit on challenges." This section is the specific section in Chapter 29 of Title 6 (The South Carolina Local Government Comprehensive Planning Enabling Act of 1994) dealing with the amendment of zoning ordinances or zoning maps, including rezonings.

Section 6-29-760(C) provides: "An 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." Subsection (D) sets a time limit (60 days) for any "challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it." (Emphasis added.)

Section 6-29-760 is drafted with intentionally narrow and specific limitations on standing and intentionally narrow limitations on the time for bringing any challenges to a zoning ordinance ("regulation") or amendment (including, as here, a rezoning ordinance). Section 6-29-760 is not limited to challenges based on procedural compliance but also, as described in subsection (D), includes any "challenge to the validity of a regulation or map, or amendment to it."

Lack of statutory standing

A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy. "No justiciable controversy is presented unless the plaintiff has standing to maintain the action." Lennon v. South Carolina Coastal Council, 330 S.C. 414, 415-416, 498 S.E.2d 906 (Ct. App. 1998), citing Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994). Standing to sue is a fundamental requirement in instituting an action. Connor Holdings, LLC v. Cousins, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007), citing Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999).

S.C. Code § 6-29-760(C) is the specific statute that addresses and controls actions contesting a rezoning ordinance or zoning amendment. Section 6-29-760(C) provides that only an owner of adjoining land or his representative has standing to bring such an action. The Complaint fails to allege that any of the Plaintiffs are owners (or representatives of owners) of

land adjoining the subject property. The Complaint merely alleges that the Plaintiffs own property "in the immediate vicinity of Armory Drive" (Paragraph 1) or "in the neighborhood located immediately across Armory Drive from the Property." (Paragraph 6).

General proximity is not sufficient to establish statutory standing under § 6-29-760(C). The requirement is ownership of "adjoining land." "Adjoining" is not defined in § 6-29-760(C) but its common meanings include "touching" and "sharing a common boundary." Black's Law Dictionary (10th Ed. 2014). The Complaint contains no allegations that any of the Plaintiffs own property touching the Terraces property.

South Carolina cases appear to strictly construe the requirement of ownership of "adjoining land" as a requirement for standing to challenge a rezoning. See, for example, ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) ("Because ATC is a non-adjoining landowner, it may not assert statutory standing.")

The significance of the "owner of adjoining land" restriction placed on standing by Section 6-29-760(C) is illustrated by a comparison to other standing statutes in the Comprehensive Planning Act. For example, S.C. Code Section 6-29-820 (relating to appeals to circuit court from decisions of the board of zoning appeals) provides, in its subsection (A), that "[a] person who may have a substantial interest in any decision of the board of appeals" may appeal. Section 6-29-900 (relating to appeals to the circuit court from boards of architectural review) uses identical language granting statutory standing to "a person who may have a substantial interest in any decision of the board of architectural review." These are broad statutory grants of standing for particular appeals; Section 6-29-760(C) is not a broad statutory grant of standing.

While Plaintiffs in this case may have an interest (or even a "substantial interest") in the rezoning of Terraces' property, they are not "adjoining" within the word's common and ordinary meanings of "touching" and "sharing a common boundary" as defined in Black's Law Dictionary (10th Ed. 2014). Streets are common and traditional boundaries of zoning districts. Plaintiffs' pleaded general proximity to Terraces' property is not sufficient to establish statutory standing under Section 6-29-760(C).

Statutory standing is necessary for both of Plaintiffs' causes of action. In the context of this lawsuit, Section 6-29-760 applies to Plaintiffs' challenge to the City's 2016 rezoning ordinance based on procedural compliance (the Complaint's first cause of action) and to Plaintiffs' challenge to the validity of the City's 2016 rezoning ordinance based on its alleged creation of "illegal spot zoning" (the Complaint's second cause of action). Plaintiffs' challenge to alleged "spot zoning" created by the 2016 rezoning ordinance is inseparable from a challenge to the validity of the rezoning ordinance. Section 6-29-760, including its subsections (C) and (D), necessarily applies to both causes of action. If there were no rezoning, there would be no alleged spot zoning. The "zoning" in the alleged "illegal spot zoning" is accomplished only by the 2016 amendment of the City's zoning ordinance and map and by the rezoning of the Terraces' property. Allegations of "illegal spot zoning" do not obviate the requirement of standing specified by Section 6-29-760(C).

Lack of any other status sufficient to confer standing

Additionally, the Plaintiffs failed to allege in the Complaint any special damage or injury in fact as a result of the rezoning of the property that would establish "constitutional standing." Although Paragraph 17 refers to statements to City Council by three Plaintiffs concerning negative impact on property values and increased traffic on Armory Drive as a result of the

project, these indirect and general allegations fail to show "an injury-in-fact which is concrete, particularized, and an actual or imminent invasion of a legally protected interest." Carnival Corporation v. Historic Ansonborough Neighborhood Association, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). "In order for an injury to be particularized, it must affect the plaintiff in a personal and individual way." Id. As also analyzed in Carnival, the enforcement for zoning violations language of S.C. Code § 6-29-950 requires "special damage" to an adjacent or neighboring property owner to establish standing.

The Declaratory Judgment Act does not, in itself, supply standing. For example, ATC South, Inc. (cited above), in which the Court found no standing, represented a challenge to rezoning by the filing of a declaratory judgment action.

This case also lacks any earmarks of the "public importance" exception to the general standing requirements. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." ATC South, Inc., 380 S.C. at 199, 669 S.E.2d at 341. Contrary to Plaintiffs' assertion in their Memorandum, ATC South, Inc. does not establish constitutional standing or "public importance" standing for Plaintiffs. Rather, ATC South, Inc. confirms the necessity of statutory standing in rezoning cases: "Because ATC is a non-adjoining landowner, it may not assert statutory standing." ATC South, Inc., 380 S.C. at 195, 669 S.E.2d at 339.

The intended implication of Plaintiffs' argument is to depict the Terraces property as part of Plaintiffs' "neighborhood" or "community." Although artfully pleaded to imply that Plaintiffs' neighborhood surrounds the subject property, the direct allegation of the last sentence of Paragraph 6 of the Complaint is that Plaintiffs' neighborhood is located across Armory Drive from the subject property. Armory Drive (per Paragraph 4 of the Complaint) is only one of the

three streets Terraces abuts. Prior to the construction of duplex housing complained of in the Complaint, the subject property was a vacant tract of at least 4.26 acres. (Paragraph 8). The Terraces property was not a small parcel tucked into Plaintiffs' neighborhood. Streets are common and traditional boundaries of zoning districts.

Unless they meet the standing requirement of S.C. Code Section 6-29-760, Plaintiffs have no legally protected interests in the rezoning of non-adjoining property or in a particular amount of vehicular traffic on a public road. Plaintiff's bald assertions in their Complaint and Memorandum of missing maps and records, and of a vast governmental conspiracy, do not establish violations of legally protected interests or of constitutional rights. At least four of the seven Plaintiffs attended public meetings concerning the rezoning and, when public comment at public hearings was on the agenda of such meetings, at least three of the seven Plaintiffs spoke directly to the Council. It is clear from the allegations of the Complaint that Plaintiffs had notice and opportunity to present their points of view and positions to City representatives in private meetings and public meetings; however, these positions ultimately were not adopted by City Council in its legislative action of rezoning.

The time-bar of S.C. Code § 6-29-760(D)

The Complaint's two causes of action relate solely to the rezoning of the Terraces property in 2016. However, the "General Allegations and Factual Background" section of the Complaint contains certain allegations that the City's 2005 revised zoning ordinance was illegal. To the extent the Complaint may seek relief for zoning amendments enacted in 2005 (or prior to 2016), those claims are time-barred by the requirement of S.C. Code § 6-29-760(D) that any such challenge be brought within 60 days of the amendment.

Plaintiffs' actual notice of the rezoning and the City's substantial compliance with any statutory notice requirements

In their first cause of action (Paragraphs 19-23), Plaintiffs allege that the City failed (1) to advertise "the required public hearings" in a manner "reasonably calculated to give notice to the community," (2) to give sufficient notice in advance of meetings and of their right to speak, (3) to post adequate notices on the property, and (4) to follow the notice procedures of the WZO (presumably, newspaper notice 15 days prior to the public hearing, and notice by posters on the property or by mailing notices). Nevertheless, as the Complaint further alleges (Paragraphs 16, 17, and 18), four of the seven Plaintiffs (Henry Kerns, John Earley, Elizabeth Earley, and Donna Pearson) had actual notice of the rezoning process, attended the Planning Commission meeting, and attended and spoke at the City Council meetings and public hearing. Two of these four (Henry Kerns and Donna Pearson) have spouses who are additional Plaintiffs (Margie Mills Kerns and Bruce Pearson). Other allegations of the Complaint establish that some of the residents in the area observed the clearing of the subject property (Paragraph 8) and received letters concerning development of the subject property (Paragraph 9). Additionally, four of the Plaintiffs had direct discussions with City officials about the rezoning prior to the rezoning. (Paragraphs 10, 11, and 12).

In Glover v. County of Charleston, 361 S.C. 634, 639, 606 S.E.2d 772, 776 (2004), overruled on unrelated grounds, by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005), the Plaintiffs' actual notice of the public hearing was determined to be "sufficient" to defeat any claim of alleged lack of notice. ("Further, it is patent that each of the plaintiffs had actual notice of the proposed UDO, as evidenced by the fact that they brought suit in November

2000, they attended public hearings on the matter, and at least one appellant, Glover, received one of the 40,000 mailed notices concerning the UDO.").

In its unpublished decision in Responsible Economic Development v. Florence Consolidated Municipal Planning Commission, 2005 WL 7084861, Op No. 2005-UP-584 (S.C. Ct. App. filed Nov. 16, 2005), the State Court of Appeals discussed the general national law that the requirements of a procedural statute are met when the municipality substantially complies with the statute's procedural mandates, and that substantial compliance is met if the purpose of the statute (in that case, S.C. Code § 6-29-760(D)) is achieved.

Clearly, based on the allegations of the Complaint, the notice purpose of § 6-29-760 was met and achieved with the attendance of at least four of the seven plaintiffs at the City Council meetings and public hearing. The allegations of the Complaint, as discussed above, establish substantial compliance by the City with any statutory notice requirements.

DECISION AND ORDER

For the reasons asserted by the City, and for the reasons set out above, the Complaint fails to state a cause of action or causes of action against the City. Further, it is plain and apparent, from the face of the Complaint, that dismissal of the City removes the factual and legal basis for any asserted cause of action against the Terraces.

Accordingly, **IT IS ORDERED** that the motion of the City to dismiss the Complaint is **GRANTED** as to both defendants.

AND IT IS SO ORDERED.

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J. Derham Cole, Circuit Court Judge

March _____, 2017

Spartanburg Common Pleas

Case Caption:	Elizabeth Earley , plaintiff, et al VS The City Of Woodruff Sc , defendant, et al
Case Number:	2016CP4203288
Type:	Order/Dismissal

IT IS SO ORDERED !

s/ J. Derham Cole