THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-CP-42-03288

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

v.

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

INITIAL BRIEF OF APPELLANTS

November 13, 2017

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STATEMENT OF THE CASE

The Appellants filed a civil action in the Court of Common Pleas for Spartanburg County on September 1, 2016, alleging that Respondent City of Woodruff ("City") engaged in spot zoning of a single parcel of land for the benefit of Respondent The Terraces at Woodruff ("The Terraces"). Appellants sought a declaratory judgment voiding the zoning change and an injunction against development of the affected parcel in violation of the City's zoning ordinance. The City of Woodruff answered on October 4, 2016, and moved to dismiss the complaint on the grounds that the Appellants lacked standing to challenge the City's zoning decisions. The Terraces at Woodruff answered on October 6, 2016. The Appellants filed a motion for temporary injunctive relief on November 22, 2016, seeking to halt construction on the affected property *pendente lite*.

A hearing on the City of Woodruff's motion to dismiss and the Appellants' motion for injunctive relief was held on January 5, 2017. Prior to the hearing, the Appellants submitted

affidavits describing their exact proximity to the Property; however, the circuit court refused to consider these affidavits (Transcript of January 5 hearing, p. 3, line 17 – p. 4, line 5; p. 10, line 12 – line 25.) A Form 4 dismissal was filed on March 13, 2017, followed by a formal order of dismissal on May 24, 2017. On June 2, 2017, Appellants filed a motion to reconsider under Rule 59(e), S.C.R.C.P. A notice of appeal to the South Carolina Court of Appeals was filed on June 23, 2017. The City of Woodruff moved to dismiss the appeal pending disposition of the motion to reconsider. The Appellants' motion to reconsider was heard on September 25, 2017, and the trial court entered an order of dismissal on October 5, 2017.

A second Notice of Appeal was served on the Respondents on October 6, 2017.

FACTS

The Appellants, plaintiffs in the case below, own and occupy single-family homes in an established neighborhood located within the City of Woodruff, South Carolina. (Complaint, p. 1-2). Across Armory Drive from the Appellants' neighborhood is the 4.26-acre tract of land ("the Property") which is the subject of this litigation. The Property has not been subdivided and bears a single Spartanburg County Tax Map number: 4-25-16-117.00. It is bounded by named streets on three sides: Chamblin Street to the west, Armory Drive to the south, and North Pearson Street to the east. The public record reflects that immediately to the north of the Property is a tract of undeveloped land located in a floodplain and owned by an affiliate of Respondent The Terraces. (Transcript of September 25, 2017 hearing, p. 7, lines 9-12.)

In 2005, the City of Woodruff adopted a revised zoning ordinance (the "Woodruff Zoning Ordinance" or "WZO"). Appended to the 2005 WZO was a zoning map designating the Property and much of the surrounding area as R-1, a district designed for single-family dwellings. Several of the Plaintiffs purchased their homes partly in reliance on the protection

afforded by the R-1 zoning designation. (Complaint, p. 2-3.) Respondent The Terraces' project would be impermissible in an R-1 district.

On or about March 3, 2016, Respondent Terraces at Woodruff began clearing the Property. Several area property owners subsequently received letters from the City explaining that the Property was being developed in order to accommodate multi-family dwellings. On April 26, 2016, the City Manager presented Appellant Donna Pearson and non-party Tammy Farber a document alleged to be the City's official zoning map. According to this map, the Property (and the Appellants' property) was zoned R-2A, a classification which would allow construction of multi-family duplexes. R-2A zoning would not, however, accommodate a multi-family development such as The Terraces was implementing. Ms. Pearson and other city residents challenged the authenticity of the zoning map and requested documentation proving that the properties in question had been legally rezoned from R-1 to R-2A. On July 24, 2016, the City produced a package containing minutes from several 2005 city council meetings. The minutes did reflect that the WZO had been revised in 2005, but were silent was to the specific alterations made to the zoning map at that time. Appellants concluded that the City of Woodruff had failed to keep adequate records of zoning changes and failed to properly maintain the official zoning map as required in the WZO. (Complaint, p. 3-5, City of Woodruff Zoning Ordinance (2005), p. 51.)

After learning of community opposition to The Terraces' project, on July 6, 2016, the City posted a notice that the Planning Commission would meet the following day (July 7) to vote on a proposal to rezone the Property from the ostensible R-2A classification to R-3, a district in which multi-family developments are permissible. The proposed zoning change would apply

only to the Property and would allow the developer, Respondent The Terraces, to continue its development without interruption. (Complaint, p. 4-5.)

The newly-appointed Planning Commission convened the following day, July 7, 2016. After a meeting at which public input was not accepted, the commission recommended approval of the zoning change. Then, on August 2, 2016, the Woodruff City Council held a special meeting for the exclusive purpose of rezoning the Property to an R-3 district. City officials initially informed members of the community that no public comment would be permitted during the special meeting, and citizens were obliged retain legal counsel in order to secure permission to speak at the special meeting. At the meeting, the City voted to rezone the Property to R-3. (Complaint, p. 4-5.)

ARGUMENT

"In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint. . . . The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory." *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552,713 S.E.2d 604 (2011) (internal quotes omitted). The facts as alleged in the Complaint "should be construed liberally[,] and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Id.* (internal quotes omitted). See also *Russell v. City of Columbia*, 406 S.E. 2d 338, 305 S.C. 86 (1991) ("To ensure substantial justice to the parties, the pleadings must be liberally construed"). "Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Spence v. Spence*, 628 S.E.2d 869, 368 S.C. 106 (2006). In reviewing a lower court's dismissal of an action

pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the appellate court applies the same standard of review as the trial court. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

I. THE TRIAL COURT RELIED ON AN UNDULY RESTRICTIVE DEFINITION OF "OWNER OF ADJOINING LAND" AS USED IN S.C. CODE ANN § 6-29-760(C).

The circuit court determined that "S.C. Code section 6-29-760 controls this lawsuit." (May 24 Order, p. 5.) While Appellants respectfully suggest that this conclusion is overbroad, they do concur that Section 6-29-760 is the appropriate starting point for analyzing challenges to zoning decisions. South Carolina Code 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." Subsections (A) and (B) prescribe specific notice requirements a zoning authority must follow in approving a zoning change. The remaining two subsections address challenges to zoning decisions:

> (C) 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.
>
> (D) 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.

S.C. Code Ann. § 6-29-760 (2013).

The circuit court acknowledges that Appellants' brought suit within the sixty-day period required by Section 6-29-760(D), and that their challenge to the City's August 2016 zoning decision is timely. (May 24, 2017 Order, p. 10.) Thus, when the court finds that "section 6-29-760 controls this lawsuit," it refers primarily to the grant of statutory standing to challenge

zoning decisions extended to "owners of adjoining land" in Section 6-29-760(C). As will be shown, however, the court construes subsection (C) so narrowly that in many instances not a single person would be found to possess statutory standing to challenge a given zoning decision. Clearly this absurd result should be rejected. *See Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342-43, 713 S.E.2d 278, 283 (2011) ("Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.")

"The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible." *Mitchell v. City of Greenville*. 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). However, finding that the legislature did not define "adjoining land" in § 6-29-760(C), the circuit court follows Black's Law Dictionary in concluding that one cannot be an adjoining landowner unless one's property is actually "touching" and "sharing a common boundary" with the property whose zoning classification is being challenged. (May 24 Order, p. 7.) The court observes that in other instances the legislature opted to use less restrictive language in granting standing. Thus, for example, Section 6-29-820 allows anyone having "a substantial interest" to appeal board of zoning appeals decisions). (S.C. Code Ann. § 6-29-820 (2013).) While Appellants concede that the grant of standing in Section 6-29-760(C) is narrower than in Section 6-29-820, they dispute the court's apparent conclusion that a street may not constitute a "common boundary" for purposes of Section 6-29-760(C). (See May 24 Order, p. 8., "Streets are common and traditional boundaries of zoning districts.") Under the logic of the court's May 24 Order, the intervention of a street, or even an alley, no matter how narrow, is sufficient basis on which to deny statutory standing under Section 6-29-760(C). As already suggested, this construction of the statute produces the absurd result in which not a single neighbor possesses

statutory standing to challenge a zoning decision affecting properties, such as the one at issue, which are fortunate enough to abut multiple streets or alleys. The circuit court's interpretation appears tailored to permit precisely the type of parcel-by-parcel spot zoning complained of by the Appellants.

In further support of its narrow construction of Section 6-29-760(C)'s standing language, the court finds that *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008), the one case to have considered the standing requirements of S.C. Code Ann. § 6-29-760(C), "strictly construe[d] the requirement of ownership of 'adjoining land' as a requirement for standing to challenge a rezoning." (May 24 Order, p. 7.) The *ATC South* court, however, had no occasion to construe Section 6-29-760(C) because the plaintiff in that case (ATC) conceded that it did not meet the definition of an adjoining landowner. ATC did not even claim to own real estate that would be impacted by the zoning change—its closest property hosted a cell tower approximately a mile away from the rezoned parcel. Rather than "strictly construing" S.C. Code Ann. § 6-29-760(C), then, the Supreme Court merely acknowledged its existence, disposing of the issue in the space of a short paragraph. *ATC South,* 380 S.C. 19_, 669 S.E.2d, 339.

ATC South is the only appellate decision to address the grant of standing in Section 6-29-760 since the advent of comprehensive zoning. However, the circuit court's interpretation of South Carolina Code Section 6-29-760(C) is significantly narrower than the interpretation placed upon its predecessor. In *Bob Jones University, Inc. v. City of Greenville*, 133 S.E.2d 843, 243 S.C. 351 (1963), for example, the South Carolina Supreme Court reached the merits of a spot zoning case despite the fact that the parties' properties were separated by a 50-foot roadway. The subject property was located:

> on the southern side of Wade Hampton Boulevard . . . which is a four lane divided superhighway between Greenville and Spartanburg. Just east of the Wilson property

> and also fronting on Wade Hampton Boulevard is the property of the appellant. However, these two properties are separated by a street known as White Oak Drive, of a width of approximately fifty feet.

Bob Jones University, Inc. v. City of Greenville, 133 S.E.2d at 845, 243 S.C. at 356.

As already mentioned, *Bob Jones* was decided prior to enactment of the Comprehensive Planning Enabling Act of the 1994; however, absent clear intent on the part of the legislature to the contrary, S.C. Code Section 6-29-760(C) can easily be harmonized with *Bob Jones* to permit property owners to challenge rezoning that impact property directly across the street. Thus, as pertains to the right of owners such as the Plaintiffs in the current litigation, whose property is located immediately across a street or roadway from a rezoned parcel, the only extant precedent is favorable to granting the Plaintiffs standing.

II. THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE PLAINTIFFS LACK STANDING TO CHALLENGE THE CITY OF WOODRUFF'S DECISION TO REZONE A SINGLE PARCEL OF PROPERTY IN THEIR NEIGHBORHOOD.

A. THE CIRCUIT COURT IMPROPERLY REJECTED DIRECT EVIDENCE, THAT THE APPELLANTS MEET THE STANDING REQUIREMENTS OF S.C. CODE SECTION 6-29-760(C).

In the Complaint, Appellants do not expressly describe themselves as owners of "adjoining" land to the Property. However, each of the plaintiffs below "owns and occupies residential property located in the immediate vicinity of Armory Drive in the City of Woodruff," (Complaint, p. 1, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Bruce Pearson, January 3, 2017, p. 1, Affidavit of Margie Mills Kerns, January 3, 2017, p. 1, Affidavit of Henry Kerns, January 3, 2017, p. 1, Affidavit of Elizabeth Earley, January 3, 2017, p. 1, Affidavit of John Earley, January 3, 2017, p. 1, Affidavit of Lloyd Wilkins, January 3, 2017, p. 1.) Specifically, "[e]ach of the Plaintiffs owns and occupies a home

in the neighborhood located immediately across Armory Drive from the Property.' *Id.* This language is, of course, broad enough to include both plaintiffs who are "adjoining" landowners under a narrow construction of S.C. Code 6-29-760(C) (i.e., owners whose lots are separated from the Property only by Armory Drive) as well as those who live two or three houses down the street. Because the class of persons alleged in the Complaint is broad enough to include that class of persons which have standing under S.C. Code 6-29-760(C), any doubts about their actual proximity to the Property should be resolved in the Appellants' favor at this stage in the litigation. *See Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (S.C. App., 1999) ("every doubt should be resolved in the [non-moving party's] behalf").

Moreover, the circuit court declined to consider affidavits at the January 5, 2017 hearing, and again at the September 25, 2017 hearing, which offered to clarify that, in the case of several Appellants there is no intervening land between the Property and those Appellants' properties *other than* Armory Drive. (Transcript of January 3, 2017 hearing, pp. 3-4, Transcript of September 25, 2017 hearing, p. 9, lines 14-20, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Bruce Pearson, January 3, 2017, p. 1, Affidavit of Margie Mills Kerns, January 3, 2017, p. 1, Affidavit of Henry Kerns, January 3, 2017, p. 1.) Yet under *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (S.C. 1999), affidavits may be used to establish jurisdiction without converting a motion to dismiss into a motion for summary judgment. In *Baird*, the County's attorney introduced affidavits in support of his client's motion to dismiss to provide "background of what is at stake here" and to "deal with the jurisdictional issues in this case." *Baird,* 333. S.C. at 528. When the *Baird* plaintiff complained about the court's use of affidavits in the context of a motion to dismiss, the Court explained, "affidavits and other evidence outside the pleadings may, in certain circumstances, be

considered in support of a motion to dismiss based on lack of jurisdiction. For instance, when the allegations of the complaint are factually sufficient . . . but do not affirmatively show subject matter jurisdiction, the motion to dismiss may be supported by, and the court may consider, affidavits or other evidence proving lack of jurisdiction." *Baird,* 333 S.C. at 529. By implication, the *Baird* court also found that affidavits may also be used to establish jurisdiction in *opposition* to a motion to dismiss, as in the present case. The circuit court therefore erred in refusing to consider the Plaintiff's affidavits even for the limited purpose of establishing their geographic proximity to the Property.

B. THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE APPELLANTS LACK STANDING INDEPENDENT OF S.C. CODE SECTION 6-29-760(C).

Contrary to the circuit court's conclusion that "statutory standing is necessary for both of Plaintiffs' causes of action" (May 24, 2017 Order, p. 8), the South Carolina Supreme Court in *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) recognized three independent bases on which standing may be conferred on a party wishing to challenge a zoning decision: standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception. Appellants have addressed statutory standing in the previous Argument. Appellants next argue that even absent a statutory right, the possess constitutional standing or standing based on public importance.

1. CONSTITUTIONAL STANDING

Even if Appellants lacked statutory standing, they would nevertheless have constitutional standing, which requires a plaintiff to have (1) suffered an injury (2) caused by the action

complained of (3) which a favorable decision in court will likely redress. In the instant case, the Appellants have alleged that they live across the street from a development begun and continued without appropriate zoning authorization and, in fact, in contravention of the lawfully-enacted zoning ordinance. They have alleged that their property values will suffer from the City's action, and that their rights of citizens were repeatedly disregarded. (Complaint, p. 2-9.) Although the circuit court acknowledged that the "Plaintiffs in this case may have an interest (or even a 'substantial interest') in the rezoning of Terraces' property" (May 24, 2017 Order, p. 8), it nevertheless refused to recognize the acts complained of as a particularized injury sufficient to confer constitutional standing on the Appellants. (May 24, 2017 Order, p. 9.)

The Appellants have alleged that the Property was rezoned for the express benefit of Respondent The Terraces without regard for the character of the surrounding neighborhood and without regard for any comprehensive plan, to the detriment of Appellants' property values and quality of life. The Appellants have further alleged that such practices are part of a pattern of indifference to due process, not to mention procedural and recordkeeping requirements imposed by state statute and the City's own zoning ordinance. The Appellants deserve an opportunity to prove that the City's conduct was "so unreasonable as to impair or destroy [their] constitutional rights." *See Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (zoning decisions will not be interfered with unless plaintiffs can show a "plain violation of citizens' constitutional rights). Far from being "mere competitors" of The Terraces, the Appellants are individual homeowners whose lives have been directly impacted by the changes to the Property illegally authorized by the City. A favorable decision invalidating the zoning change to R-3 would limit or remove the offending land use, thereby restoring the Appellants' lawful right to the use and enjoyment of their homes.

2. PUBLIC IMPORTANCE STANDING

Even were this Court to find that the Appellants lack both statutory and constitutional standing, the Appellants should be permitted to bring their case under the "public importance" exception. The circuit court dismissed the Appellants' case as lacking "any earmarks of the 'public importance' exception to the general standing requirements." (May 24, 2017 Order, p. 9.) However, the court did not set forth the criteria it used to reach this conclusion, and the one case cited in support of the court's decision, *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008), expressly recognizes the need for flexibility in applying the doctrine of standing in order to achieve balance in the administration of justice. "Standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *ATC South*, 669 S.E.2d at 341 (internal quotes omitted). While not "every individual who has a grievance against a public official" should have the right to clog the legal system with frivolous cases, our Supreme Court recognized that "citizens must be afforded access to the judicial process to address alleged injustices." *ATC South*, 669 S.E.2d at 341. In the current litigation, seven citizens of the City of Woodruff, representing four separate households whose lives and property interests have been directly impacted by the City's abuse of the zoning power have petitioned this Court for protection of their rights as property owners and as citizens.

The public interest forms the backbone of the common law prohibition of spot zoning. Under South Carolina law, "spot zoning" occurs when a government "singl[es] out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of owners of such property and to detriment of other owners." *Knowles v. City of Aiken*, 407 S.E.2d 639, 641, 305 S.C. 219, 223 (1991). While courts "cannot become city planners," when a local

government "established a small area within the limits of a zone in which are permitted uses different from or inconsistent with those permitted within the larger, such 'spot zoning' is invalid where the [zoning change] does not form part of a comprehensive plan of zoning or is for mere private gain as distinguished from *the good of the common welfare*." *Id.* (quoting *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952)) (emphasis added). When a court encounters an instance of spot zoning the court should "closely scrutinize the following factors (1) the adherence of the zoning to the City's comprehensive plan; and (2) promotion of the good of *the common welfare*" to correct injustices where are clearly shown. *Knowles*, 497 S.E.2d at 642 (emphasis added).

Under *Sloan v. Sanford*, 593 S.E.2d 470, 357 S.C. 431 (2004), the public importance exception should be exercised when resolution is needed for future guidance and thereby "transcends a purely private matter." *ATC South*, 669 S.E.2d at 341. That the Appellants represent four completely distinct households should be compelling evidence that their matter is not "purely private." The Appellants have raised concerns about the value of their own homes, their quality of life, their property rights, and their due process rights as citizens of the City of Woodruff. The allegations of the Complaint about the City's failure to follow statutory procedures designed to provide citizens with reasonable notices of its actions, about the City's failure to maintain appropriate records of those actions, about the City's efforts to prevent its citizens from voicing their concerns at public meetings, and about the City's willingness to single out multistate developers such as The Terraces for special treatment by using spot zoning to eliminate inconvenient land use restrictions, all constitute matters of public importance as they impact anyone who owns land or lives in the City of Woodruff.

The Official Zoning Ordinance of City of Woodruff of 2005 (the "Zoning Ordinance") also recognizes that certain non-adjoining property owners have a special interest in proposed zoning changes. Specifically, in Article XIII, Section III, Paragraph 3, under "Notice of Hearing," the Zoning Ordinance provides that the City must, *in addition* to publishing notice of zoning hearings to the general public, post the property concerned or mail "notices to the owners of surrounding property." Additionally, Paragraph 5 in the same section of the Zoning Ordinance recognizes a special right of protest to owners whose lots are included in a proposed zoning change *and* to "those immediately adjacent to in the rear or on either side extending two hundred and fifty (250) feet from the street frontage of such opposite lots . . . ." Some of the Appellants received such letters, and all but one of their homes are located within the requisite 250 feet of the Property. (Complaint, pp. 1-2, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Bruce Pearson, January 3, 2017, p. 1, Affidavit of Margie Mills Kerns, January 3, 2017, p. 1, Affidavit of Henry Kerns, January 3, 2017, p. 1, Affidavit of Elizabeth Earley, January 3, 2017, p. 1, Affidavit of John Earley, January 3, 2017, p. 1, Affidavit of Lloyd Wilkins, January 3, 2017, p. 1.) The Woodruff Zoning Ordinance itself therefore clearly recognizes that Appellants have an enhanced interest in the zoning decisions impacting the Property.

III. THE CIRCUIT COURT ERRED IN DETERMINING THAT THE PLAINTIFFS LACK STANDING TO REQUEST A DECLARATORY JUDGMENT AS TO THE AUTHENTICITY OF THE "OFFICIAL" CITY OF WOODRUFF ZONING MAP.

In addition to challenging the City's decision to "spot zone" the Property, the Plaintiffs have sued the City for a declaratory judgment under South Carolina Code Section 15-53-10, *et seq.*, asking for a judicial determination that the zoning map presented to them in 2016 is not, in fact, the product of a legitimate legislative process, but instead an arbitrary and capricious *ultra*

vires scheme which has never received the imprimatur of the City's elected officials. This cause of action does not challenge to the 2005 Zoning Ordinance itself. Rather, it suggests that the City failed to maintain adequate records of the changes made to the Zoning Ordinance in 2005 and that the zoning map currently in use is not the map authorized by the City Council in 2005.

The circuit court, on Page 10 of its May 24, 2017 Order, finds that challenges to the City of Woodruff Zoning Ordinance relating to amendment predating the August 2, 2016 special meeting are time-barred by the provisions of South Carolina Code Section 6-29-760(D), which provides that no "challenge . . . 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 . . . ." However, the Plaintiffs have not asked the Court to invalidate the 2005 Zoning Ordinance, but to find that the map currently in use by the City is not the map adopted by City Council in 2005. The Plaintiffs contend that all of the properties in question were originally zoned R-1A and that the City of Woodruff, through failure to abide by basic procedural formalities, has never effectively changed the zoning designations of any of the impacted properties. As these allegations address the authenticity of the entire City of Woodruff Zoning Map and not merely the zoning of an individual parcel, the Appellants' standing arises from their status as homeowners in the City of Woodruff and not from their proximity to the Property. Although the "Declaratory Judgment Act does not, in itself, supply standing" (May 24, 2017 Order, p. 9), Appellants submit that the remedial purpose of the Act is defeated by the circuit court's decision. Section 15-53-130 expressly requires that the Act be construed liberally: "This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered." S.C. Code Ann. § 15-53-130.

CONCLUSION

For the reasons expressed herein, this Court should reverse the circuit court's dismissal of the complaint and remand the matter for trial.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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v.

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

CERTIFICATE OF SERVICE

The Initial Brief of Appellants in the above-referenced matter was served upon the following parties on November 13, 2017, via first class U.S. mail.

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Nathan A. Earle

Sworn to before me this 13 day of November, 2017,

Notary Public for South Carolina
My Commission Expires: 9-4-18

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November 13, 2017

South Carolina Court of Appeals
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RE: Earley, et al. v. City of Woodruff, et al.

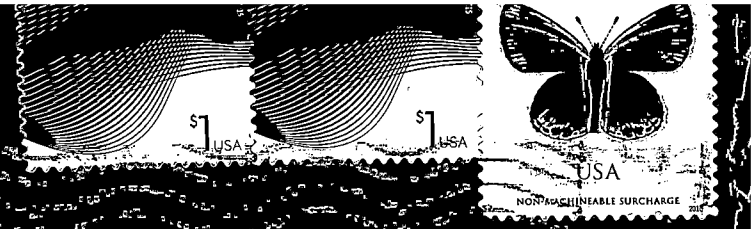
Dear Sir/Madam:

Please find enclosed the original and one copy of the Initial Brief of Appellants in the above-referenced matter, with certificate of service.

I can be reached at (864) 915-5228 with any questions about this filing.

Sincerely,

Nathan A. Earle



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