

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. 2017-002095

RECEIVED
MAR 19 2018
SC Court of Appeals

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

Appellant,

v.

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

Respondent.

RECORD ON APPEAL

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INDEX

Index	1
Orders	
Form 4C Order of Dismissal, dated February 24, 2017, pp.1-2	2
Order of Dismissal, Entered May 24, 2017	4
Form 4 Order Denying Motion to Reconsider, Entered October 5, 2017	17
Pleadings	
Complaint, filed September 1, 2016	19
Answer of The City of Woodruff, filed October 4, 2016	28
Answer of The Terraces at Woodruff, LLC, filed October 6, 2016	35
Transcripts	
Transcript of Hearing, January 5, 2017	39
Transcript of Hearing, September 25, 2017	62
Other Materials	
City of Woodruff Zoning Ordinance: cover page, unsigned minutes adopting ordinance, table of contents, pp. 14-15, 34, 51-54,107-108, Use Table #1 (p. 3, "dwelling")	78
Affidavit of Donna Pearson, dated January 3, 2017	91
Affidavit of Bruce Pearson, dated January 3, 2017	97
Affidavit of Margie Mills Kerns, dated January 3, 2017	101
Affidavit of Elizabeth Earley, dated January 3, 2017	104
Affidavit of John Earley, dated January 3, 2017	122
Affidavit of Lloyd Wilkins, dated January 3, 2017	128
Motions	
City of Woodruff's Motion to Dismiss, filed October 4, 2016	130
Plaintiffs' Motion to Reconsider dated June 2, 2017	133
The Terraces at Woodruff's Return to Motion dated June 9, 2017	146
City of Woodruff's Return to Motion dated June 13, 2017	151
Certification	155

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-42-03288

Elizabeth Earley,

The City of Woodruff, SC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the Court

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

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

The **Defendant** City of Woodruff's motion to dismiss is **granted**.

IT IS SO ORDERED.

J. Derham Cole
Circuit Court Judge

2053
Judge Code

02/24/2017
Date

Page 2

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.

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

Electronically signed on 2017-05-24 11:23:00 page 13 of 13

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-42-03288

Elizabeth EARLEY, John EARLEY, et. al.,

The City of WOODRUFF, SC, and The TERRACES at
WOODRUFF, a South Carolina Limited Liability
Company,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the Court

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 matter is before this Court on motion of the plaintiff pursuant to Rule 59(e), SCRPC, seeking this Court to reconsider, alter, and amend the Court's decision to dismiss the plaintiff's Complaint. After hearing argument from counsel in support and opposition, this Court finds that the plaintiff's **MOTION** should be and is therefore **DENIED**.

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.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

J. Derham Cole

2053

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Hope M. Blackley CLERK OF COURT

Court Reporter: Moffitt

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN) C.A. # 2016-CP-42-
EARLEY, LLOYD WILKINS,)
HENRY KERNS, MARGIE MILLS)
KERNS, DONNA PEARSON, and)
BRUCE PEARSON,)

Plaintiffs,) COMPLAINT
-versus-) (Jury Trial Demanded)

THE CITY OF WOODRUFF, SC,)
and THE TERRACES AT)
WOODRUFF, a South Carolina)
Limited Liability Company,)
Defendant.)

THE PLAINTIFFS, Elizabeth Earley, John Earley, Lloyd Wilkins, Henry Kerns, Margie Mills Kerns, Donna Pearson, and Bruce Pearson (collectively referred to herein as the "Plaintiffs"), complaining of the Defendants, would herein show unto the Court as follows:

Parties and Jurisdiction

1. The Plaintiffs are all residents of the City of Woodruff, South Carolina. Each Plaintiff owns and occupies residential property located in the immediate vicinity of Armory Drive in the City of Woodruff.
2. The City of Woodruff ("the City") is an incorporated municipality organized and existing under the laws of the State of South Carolina.
3. The Terraces at Woodruff, LLC, a/k/a The Terraces @ Woodruff, LLC, is a limited liability company organized and existing under the laws of the State of South

Carolina. The Terraces at Woodruff, LLC, is named as a party herein as it is currently engaged in a building project on the Property (described below) which, when completed, will violate the Property's lawfully-enacted zoning classification.

4. This is an action for declaratory judgment and other relief arising out of the City's decision to rezone a single parcel of land located within the boundaries of the City of Woodruff, and abutting Chamblin Street, Armory Drive, and North Pearson Street, bearing Spartanburg County Tax Map Number 4-25-16-117.00 (the "Property"), and being more fully described as:

All that certain piece, parcel, or lot of land, located in the City of Woodruff, containing 4.26 acres, more or less, as shown on a plat by Phillip B. Culbreth, P.L.S. , entitled "Subdivision Plat prepared for The Terraces at Woodruff, LLC," recorded in the Office of the Spartanburg County Register of Deeds on February 24, 2016, in Plat Book 170 at Page 846.

5. As the Property is located in Spartanburg County, most or all of the relevant acts and/or omissions complained of occurred in Spartanburg County, and the relief sought involves application of South Carolina law, venue and subject matter jurisdiction are proper in this Court.

General Allegations and Factual Background

6. The neighborhood surrounding the Property is a quiet, well-established community. Most lots in the community are improved with single-family dwellings, and most of these dwellings are owner-occupied. Each of the Plaintiffs owns and occupies a home in the neighborhood located immediately across Armory Drive from the Property.

7. In 2005, the City of Woodruff adopted a revised zoning ordinance (the "Woodruff Zoning Ordinance" or "WZO"). That ordinance incorporated by reference a

zoning map which, at that time, designated the Property and much of the surrounding area as R-1. The WZO defined the R-1 district as appropriate for low density uses, and specifically for single-family dwelling units. Several individuals, including some of the Plaintiffs, purchased homes in the community in anticipation that their homes and property values would be protected by the R-1 zoning designation.

8. On or about March 3, 2016, residents of the area surrounding the Property noticed that the Property was beginning cleared.

9. About two days later, on or about March 5, 2016, a small number of individuals (about 3 property owners) received letters explaining that the Property was being developed in order to accommodate multi-family dwellings.

10. On April 26, 2016, Plaintiff Donna Pearson and non-party Tammy Farber attended the Woodruff City Council meeting in order to seek information from the city regarding the permissibility of placing a multi-family development on the Property, as the community understanding was that the neighborhood was still zoned as an R-1 district, in which multi-family housing is not permissible. At that time, Woodruff City Manager Lee Bailey presented Ms. Pearson with a copy of what he represented as "the zoning map", showing that the Property (along with the Plaintiffs' property) had at some point been rezoned to R-2A and that multi-family duplexes would therefore be permissible under existing zoning.

11. Later in the spring of 2016, Plaintiff Henry Kerns contacted the City Manager and the Woodruff City Planner in an effort to obtain answers as to when the Property (and his own property) was rezoned to R-2A. Mr. Kerns at that time insisted that the proposed development on the Property would be incompatible with existing uses.

12. In late June of 2016, Plaintiffs John and Elizabeth Earley scheduled an appointment for June 27, 2016, to meet with the City Manager and the City Planner about the proposed development. When the Earleys showed up at city hall, the City Attorney, Terry Clark, met them instead of the City Planner. Like Mr. Kerns and others, the Earleys demanded to know when the Property was rezoned to R-2A. The City Manager (Mr. Bailey) suggested that the developer intended to build "1 or 2 duplexes there," but Mr. Clark then explained for the first time the Property was actually slated for a total of ten duplex buildings and a community building that will house a business office. These units were to be rental units, not owner-occupied properties. On information and belief, the business office will service not only the duplexes located on the Property, but other rental properties as well. The Earleys again requested some type of documentation showing that the Property (and their property) had ever been legally rezoned to R-2A. Mr. Bailey promised the Earleys that they would receive the requested documentation "in about a week".

13. The requested documentation was not actually produced until July 24, 2016, nearly a full month after the meeting with city officials, the Earleys received a package containing minutes from several Woodruff City Council Meetings in 2005, reflecting that the Woodruff Zoning Ordinance had been revised that year. The minutes did not, however, give any indication of the substantive changes made to the WZO. On information and belief, the City of Woodruff has failed to keep adequate records of its zoning changes and has failed to properly maintain the official zoning map. Moreover, on information and belief the City, after learning of the Plaintiffs' objections to its conduct,

has been engaged in retroactively creating "a paper trail" to legitimize zoning changes which were never properly carried out.

14. On June 28, 2016, the Woodruff City Council appointed five people to the Planning Commission and 4 people to the Zoning Board of Appeals.

15. On July 6, 2016, a notice was first posted that the Planning Commission would meet the following day to vote on a proposal to rezone the Property from R-2A (alleged to be the existing zoning) to the higher-density R-3 designation. This change would only apply to the Property.

16. On July 7, 2016, the newly-appointed Planning Commission met to discuss rezoning the Property. Lee Bailey, Terry Clark, and the City Planner were also present at the meeting. Plaintiffs Donna Pearson and Elizabeth Earley both attended this meeting, and both requested permission to speak, but were not permitted to do so. The Planning Commission proceeded to recommend the proposed rezoning to Woodruff City Council. The development of the Property continued throughout the rezoning process, and the City of Woodruff made no attempt to halt the project while the zoning change was being considered.

17. On July 26, 2016, Plaintiffs John Earley, Elizabeth Earley, and Henry Kerns all spoke at the Woodruff City Council meeting to question whether the city followed lawful procedures for amending the WZO from R-1 to R-2A in the first place and whether it had followed lawful procedures in the current effort to rezone the Property to R-3. The three Plaintiffs also explained that the proposed project will negatively impact their property values and will dramatically increase the traffic on Armory Drive as various people access the business office to pay rent and for other purposes.

18. On August 2, 2016, the Woodruff City Council held a special meeting specifically for the purpose of rezoning the Property to an R-3 district. Prior to the meeting, several of the Plaintiffs were told that they would not be allowed to speak at the meeting. The City only relented after receiving a phone call from Plaintiffs' legal counsel. At the meeting, the City voted to rezone the Property to R-3.

**FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT
(S.C. Code Annotated Section 15-53-20, et seq.)**

19. The foregoing allegations are incorporated by reference as if fully set forth in this cause of action.

20. In enacting the WZO and amendments thereto, the City of Woodruff is bound to comply with the provisions of Section 6-29-720, et seq., of the South Carolina Code of Laws, together with all other applicable state and federal laws regulating local zoning practices.

21. The City of Woodruff failed to comply with the provisions of Section 6-29-760 of the South Carolina Code of Laws when it rezoned the Property on August 2, 2016. Specifically, the required public hearings were not advertised in a manner reasonably calculated to give notice to the community. Insufficient notice was given in advance of meetings and members of the community were told that they were not permitted to speak at meetings. Moreover, Section 6-29-760 expressly provides:

In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with *at least one such notice being visible from each public thoroughfare that abuts the property.*

Despite the fact that the Property abuts no fewer than three public thoroughfares, only one notice was posted in clear violation of the statute. The City also failed to follow the notice procedures for amendments to the zoning ordinance contained within the WZO itself. Moreover, proper procedures were not followed in appointing the five members of the Planning Commission and, on information and belief, the seats were never publicly advertised.

22. Because of the City of Woodruff's manifold failures to follow established legal procedures for enacting and amending its zoning ordinance, the Plaintiffs are informed and believe that, pursuant to S.C. Code annotated Section 15-53-20, et seq., they are entitled to a judgment declaring that the August 2 amendment to the WZO rezoning the Property to an R-3 district is illegal and therefore void and of no effect.

The Plaintiffs are further informed and believe that further development of the Property should be enjoined until such time as this Court determines the proper zoning for the parcel in question.

23. The Plaintiffs are further informed and believe that they are entitled to recover from the Defendant their costs incurred in bringing this action, including a reasonable attorney's fee.

**FOR A SECOND CAUSE OF ACTION
PETITION FOR INJUNCTIVE RELIEF AGAINST SPOT ZONING**

24. The foregoing allegations are incorporated by reference as if fully set forth in this cause of action.

25. The Property is a small parcel of land which the City of Woodruff, after collecting sizeable fees from the developer of the Property (Defendant Terraces at Woodruff, LLC), has singled out for a use classification totally different from that of the surrounding area, for the benefit of the owners of that Property and to the detriment of other owners in the community.

26. There is no property adjoining the Property that falls within the R-3 classification.

27. The City of Woodruff without any explanation failed to follow its own comprehensive plan in enacting the zoning change on August 2, 2016 and the change to R-3 is out of line with the expectations of many neighboring property owners, many of whom were told by real estate professionals at the time they purchased their homes that their property was zoned R-1.

28. On information and belief, the City of Woodruff, in rezoning one single piece of property to a designation totally out of keeping with the character of the surrounding community has engaged in illegal spot zoning, and the Plaintiffs are entitled to temporary and permanent injunctive relief prohibiting the City from implementing the zoning change in question.

WHEREFORE, having complained of the Defendant, the Plaintiffs request that the Court inquire into the matters herein alleged and:

A. Determine whether the Property and the lots immediately surrounding the Property were properly zoned R-1 or R-2A .

B. Declare the purported rezoning of the Property to an R-3 district to be null and void and enjoin development of the Property in any manner inconsistent with lawfully-enacted zoning.

C. Enjoin the further development of the Property until such time as the issues raised in this Complaint have been fully and finally adjudicated.

D. Order the City of Woodruff to train its officials and employees in the procedures required by law for (1) the conduct of public meetings, including lawful notice procedures, (2) the amending the official zoning map, (3) the maintenance of public records, (4) advertising vacancies to the planning commission and other public bodies, (5) providing the public with accurate information concerning dates and times of upcoming meetings and the procedures to be followed in those meetings, and (6) the rights of citizens, protected by the South Carolina and Federal Constitutions, to petition their government for the redress of grievances.

E. Charge the Plaintiffs' costs and attorney's fees against the Defendants; and

F. Grant such other and further relief as the Court shall deem just or proper.

s/Nathan A Earle

Nathan A. Earle (SC Bar # 73814)

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September 1, 2016.

ATTORNEY FOR THE PLAINTIFFS

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

**ANSWER OF THE CITY
OF WOODRUFF TO
THE COMPLAINT**

The Defendant City of Woodruff (hereinafter sometimes referred to as "the City"), not waiving but expressly reserving its rights under its Motion to Dismiss filed prior to or with this Answer, answers the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. Except as is hereinafter specifically admitted, the City denies each and every allegation of the Complaint.

2. Answering paragraph 1 of the Complaint, the City admits, upon information and belief, that the Plaintiffs are residents of the City. The City is currently without information sufficient to admit or deny the remaining allegations as to any ownership or occupancy by Plaintiffs of any certain properties as described.

3. The allegation of paragraph 2 is admitted.

4. The allegation of paragraph 3 as to the legal form of The Terraces at Woodruff (hereinafter sometimes referred to as "Terraces") is admitted upon information. The City denies any allegations as to why the Plaintiffs sued Terraces. The City also denies any allegations that

the building project complained of by the Plaintiffs violates or will violate any applicable zoning classifications.

5. Answering paragraph 4, the City admits only that, by lawful ordinance, it rezoned certain property owned by the Defendant Terraces.

6. Answering paragraph 5, the City admits that venue of this action is properly in Spartanburg County.

7. The allegations of the first two sentences of paragraph 6 are denied, inasmuch as the allegations as to "neighborhood" and "community" are vague or argumentative and not susceptible of admission or denial. As to the third sentence of paragraph 6, the City is currently without information sufficient to admit or deny the allegations thereof concerning the Plaintiffs' ownership or occupancy of particular properties or concerning the existence or boundaries of the "neighborhood" alleged.

8. Answering paragraph 7, the City admits only that the City revised its zoning ordinance in 2005 and at other times.

9. Answering paragraphs 8 and 9, the City is currently without information as to the vague and indefinite allegations therein concerning observations or actions of unidentified persons on or about the dates alleged, and, therefore, denies the allegations of paragraphs 8 and 9 as pleaded. The City asserts that the clearing of the property was open and obvious and that the letters were mailed to a number of persons.

10. The allegations of paragraph 10 are denied or are denied for lack of information sufficient to admit or deny.

11. The allegations of paragraph 11 are denied.

12. Answering paragraph 12, the City admits only that Plaintiffs John and Elizabeth Farley met with the City Manager and the City Attorney on or about the date alleged. The remaining allegations of paragraph 12 are denied.

13. Answering paragraph 13, the City admits only that it provided certain documents to the Plaintiffs Earley. The remaining allegations of paragraph 13 are denied.

14. The allegations of paragraph 14 are admitted.

15. Answering paragraph 15, the City admits only that a public notice was posted in July 2016 concerning the Planning Commission meeting on the rezoning request for the property at issue.

16. Answering paragraph 16, the City admits that the Planning Commission met on July 7, 2016, and that the Planning Commission voted to recommend to City Council that the requested rezoning be granted. The City further admits that it did not attempt to halt the project during the rezoning process.

17. Answering paragraph 17, the City admits only that a City Council meeting was held on July 26, 2016, and that the three Plaintiffs named in paragraph 17, as well as other persons, spoke to Council concerning the rezoning.

18. Answering paragraph 18, the City admits only that a City Council meeting was held on August 2, 2016, at which Plaintiff Donna Pearson spoke to the Council concerning the rezoning and at which the Council adopted the ordinance rezoning the subject property.

19. Answering paragraph 19, the City reiterates and realleges paragraphs 1 through 18 of this Answer as fully and to the same extent as if here repeated word for word.

20. Answering paragraph 20, the City asserts that it complied or substantially complied with all applicable law.

21. The allegations of paragraphs 21, 22, and 23 are denied. The City craves reference to any cited or referenced statutes or ordinances for a correct statement of their contents. The City also asserts that S.C.Code section 6-29-760 is the specific and controlling State statute for legal challenges concerning rezoning of property by municipal governments.

22. Answering paragraph 24, the City reiterates and realleges paragraphs 1 through 21 of this Answer as fully and to the same extent as if here repeated word for word.

23. The allegations of paragraphs 25, 27, and 28 are denied. The allegation of paragraph 26 is admitted; however, the City asserts that the allegation is without legal significance.

24. The allegations of the prayer for relief in the Complaint, and the Plaintiffs' entitlement to any relief requested therein (including the relief of attorney's fees and costs), are denied.

FOR A SECOND DEFENSE

25. The City asserts that the Complaint fails to state a cause of action sufficient to challenge the rezoning of the subject property of the Defendant Terraces, inasmuch as any such challenge is subject to and controlled by the requirements of S.C. Code section 6-29-760, and the Complaint fails to allege a factual basis for statutory standing under S.C. Code section 6-29-760(C) based on ownership of adjoining land. The Complaint further fails to allege any other status sufficient to confer standing and fails to allege any injury in fact. The City further asserts that the Plaintiffs, under any facts properly pleaded or to be proven, lack standing to challenge the rezoning of the property of the Defendant Terraces at issue.

FOR A THIRD DEFENSE

26. The City asserts that the Complaint fails to state facts sufficient to constitute a cause of action contesting the rezoning ordinance or amendment concerning the property of the Defendant Terraces on the basis of noncompliance with any notice requirements of S.C. Code section 6-29-760, inasmuch as the Complaint alleges (in paragraphs 16, 17, and 18) that at least four of the Plaintiffs were present at or spoke at Planning Commission or City Council meetings concerning the rezoning and prior to the rezoning. These allegations establish that at least four of the Plaintiffs had actual notice of the rezoning process for the subject property and these allegations establish substantial compliance by the City with any statutory notice requirements. The City further asserts that, under any facts properly pleaded or to be proven, the City complied or substantially complied with any notice or procedural requirements for rezoning of the property of the Defendant Terraces at issue.

FOR A FOURTH DEFENSE

27. The City asserts that any challenge by the Plaintiffs in the Complaint to the current zoning designations of properties other than the property of the Defendant Terraces also is subject to and controlled by the requirements of S.C. Code section 6-29-760, and that, so much of the Complaint as also challenges the validity of current City zoning designations for properties other than the property of the Defendant Terraces, fails to state facts sufficient to constitute a cause of action, inasmuch as any such challenge is time-barred by the provisions of State law, including S.C. Code section 6-29-760(D). The City further asserts that the Plaintiffs, under any facts properly pleaded or to be proven, are time-barred, by reason of the time requirements of S.C. Code section 6-29-760(D) from any challenge to the rezoning of any other properties referenced in the Complaint.

FOR A FIFTH DEFENSE

28. The City asserts that its rezoning of the property of the Defendant Terraces (and any other rezoning in the City) was lawful, was within the power and authority and discretion of the City as a municipal government, was done in good faith and in the public interest, and was done under a reasonable interpretation of the law and complied or substantially complied with all requirements of the law.

FOR A SIXTH DEFENSE

29. The City asserts that it complied or substantially complied with all applicable requirements of the law concerning the procedure for rezoning of the subject property, and that the Plaintiffs had actual knowledge or actual notice of the proposed rezoning prior to adoption of the City ordinance accomplishing the rezoning. The City further asserts that any alleged or actual technical deficiencies in the rezoning procedure were insubstantial and are without legal significance in light of the actual knowledge or actual notice of the Plaintiffs.

FOR A SEVENTH DEFENSE

30. The City asserts that attorney's fees are not recoverable against the City under any State law applicable to this case, but that, if determined to be recoverable, attorney's fees should not be awarded, inasmuch as any such award of attorney's fees would be discretionary with the Court, the positions of the defendant City are substantially justified and the other circumstances of this case would make any award of attorney's fees unjust.

FOR AN EIGHTH DEFENSE

31. The City asserts that any preliminary or temporary injunction that may be sought by

the Plaintiffs concerning the property of and the project by the Defendant Terrace will result in significant costs and damages for the Defendant Terraces. The City further asserts that the issuance of any such injunction, pursuant to State law (including Rule 65 (c) of the South Carolina Rules of Civil Procedure), will require that the Plaintiffs post security or a bond, in a sum determined by the Court to be proper, for the payment of such costs and damages.

WHEREFORE, having answered the Complaint, the Defendant City of Woodruff prays that the relief requested by the Plaintiffs be denied, that the Court provide such relief in favor of the Defendant City of Woodruff as is proper, and that this case be dismissed.

s/Danny C. Crowe

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s/Terry F. Clark

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ATTORNEYS FOR DEFENDANT
CITY OF WOODRUFF

October 3, 2016

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

**ANSWER OF DEFENDANT
TERRACES AT WOODRUFF**

The Defendant Terraces at Woodruff (hereinafter sometimes referred to as "the Terraces"), answers the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The allegations of any paragraph not hereinafter admitted, explained or modified are hereby denied.

2. Upon information and belief, the Terraces admits so much of the allegations contained in Paragraph 1 of Plaintiffs' Complaint alleging that the Plaintiffs are residents of the City of Woodruff, South Carolina. The Terraces is without sufficient knowledge to admit or deny the remainder of the allegations of Paragraph 1 of Plaintiffs' Complaint. To the extent that a response is required the remainder of allegations contained therein are denied.

3. The Terraces admits the allegations of Paragraph 2 of Plaintiffs' Complaint.

4. The Terraces admits only so much of the allegations of Paragraph 3 alleging the Terraces is a limited liability company organized and existing under the laws of the

State of South Carolina. The Terraces specifically denies any allegations that the Terraces is currently engaged in a building project which, when completed, will violate the Property's lawfully-enacted zoning classification.

5. The Terraces is without sufficient knowledge to admit or deny the allegations of Paragraph 4 of Plaintiffs' Complaint. To the extent that a response is required the allegations contained therein are denied.

6. The Terraces admits so much of the allegations of Paragraph 5 of Plaintiffs' Complaint that alleges that venue of this action is properly in Spartanburg County. The remainder of allegations contained therein are denied.

7. The Terraces is without sufficient knowledge to admit or deny the allegations of Paragraph 6 of Plaintiffs' Complaint. To the extent that a response is required the allegations contained therein are denied.

8. The Terraces is without sufficient knowledge to admit or deny the allegations of Paragraph 7 of Plaintiffs' Complaint. To the extent that a response is required the allegations contained therein are denied.

9. Answering the allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Plaintiffs' Complaint, the Terraces is without sufficient knowledge to admit or deny the allegations of contained therein. To the extent that a response is required the allegations contained therein are denied.

10. Answering the allegations of Paragraph 19 of Plaintiffs' Complaint, the Terraces reiterates and realleges the answers of Paragraphs 1 through 9 above as if repeated herein verbatim.

20. Upon information and belief, the Terraces admits the allegations of Paragraph 20 of Plaintiffs' Complaint.

21. The Terraces denies the allegations of Paragraphs 21, 22, and 23 of Plaintiffs' Complaint.

22. Answering the allegations of Paragraph 24 of Plaintiffs' Complaint, the Terraces reiterates and realleges the answers of Paragraphs 1 through 21 above as if repeated herein verbatim.

23. The Terraces denies the allegations of Paragraphs 25 of Plaintiffs' Complaint.

24. The Terraces is without sufficient knowledge to admit or deny the allegations of Paragraph 26 of Plaintiffs' Complaint. To the extent that a response is required the allegations contained therein are denied.

25. The Terraces denies the allegations of Paragraphs 27 and 28 of Plaintiffs' Complaint.

26. The allegations of the prayer for relief in the Complaint, and the Plaintiffs' entitlement to any relief requested therein (including the relief of attorney's fees and costs), are denied.

FOR A FIRST DEFENSE

30. The Terraces asserts that attorney's fees are not recoverable against the Terraces under any State law applicable to this case, but that, if determined to be recoverable, attorney's fees should not be awarded, inasmuch as any such award of attorney's fees would be discretionary with the Court, the positions of the Terraces are

substantially justified and the other circumstances of this case would make any award of attorney's fees unjust.

FOR A SECOND DEFENSE

31. The Terraces asserts that any preliminary or temporary injunction that may be sought by the Plaintiffs concerning the property of and the project by the Terraces will result in significant costs and damages for the Terraces. The Terraces further asserts that the issuance of any such injunction, pursuant to State law (including Rule 65 (c) of the South Carolina Rules of Civil Procedure), will require that the Plaintiffs post security or a bond, in a sum determined by the Court to be proper, for the payment of such costs and damages.

WHEREFORE, having answered the Complaint, the Defendant The Terraces at Woodruff, LLC prays that the relief requested by the Plaintiffs be denied, that the Court provide such relief in favor of the Defendant Terraces at Woodruff, LLC as is proper, and that this case be dismissed.

s/ Michael A. Graham

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ATTORNEY FOR DEFENDANT
THE TERRACES AT WOODRUFF, LLC

October 6, 2016

1	STATE OF SOUTH CAROLINA	}	IN THE COMMON PLEAS COURT
2	COUNTY OF SPARTANBURG		
3	Elizabeth Earley, et al,	}	TRANSCRIPT OF RECORD 2016-CP-42-3288
4	Plaintiffs,		
5	-vs-		
6	The City of Woodruff, et al,	}	January 5, 2017 Spartanburg, South Carolina
7	Defendants.		

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE

14 A P P E A R A N C E S:

15 NATHAN A. EARLE, ESQUIRE
16 Attorney for the Plaintiff

17 DANNY CALVERT CROWE, ESQUIRE
18 TERRY F. CLARK, ESQUIRE
Attorneys for Defendant City of Woodruff

19 MICHAEL ANDREW GRAHAM, ESQUIRE
20 Attorney for Defendant Terraces at Woodruff, LLC

22
23 Linda D. Moffitt
24 Circuit Court Reporter

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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Earley vs. the City of Woodruff. Whose
2 motion -- city?

3 MR. CROWE: Your Honor, I'm Danny Crowe, along with
4 Terry Clark, representing the city. I have a motion to
5 dismiss before Your Honor.

6 THE COURT: Okay.

7 MR. EARLE: Judge, I'm Nathan Earle. I'm the attorney
8 for the plaintiffs, I believe all of whom are in the room
9 today. And in the event that the motion to dismiss is
10 denied, then we would need to consider our motion for
11 temporary injunction.

12 THE COURT: Okay. Mr. Crowe.

13 MR. CROWE: Thank you, Your Honor.

14 Your Honor, e-filed this morning -- and I've a hard
15 copy for your clerk and Your Honor -- is our memorandum in
16 support of our motion to dismiss.

17 Initially, as a procedural matter, we note that on
18 Tuesday plaintiff filed a number of affidavits which were
19 captioned as affidavits in support of plaintiffs' motion
20 for temporary relief and in opposition to defendants'
21 motion to dismiss. These are affidavits of lay witnesses.

22 We would object to those for purposes of our motion to
23 dismiss, which, as we understand it, should be ruled on
24 based on the allegations of the complaint and the Court's
25 considerations of affidavits.

1 Outside materials would then convert this into a
2 summary judgment motion, in which case we would ask for
3 additional time to submit counter affidavits so that we
4 could fully argue on a motion for summary judgment. So at
5 the outset we would object to those affidavits.

6 THE COURT: I will not consider them so far as the
7 motion to dismiss is concerned.

8 MR. CROWE: Thank you, Your Honor.

9 If you'll bear with me just for a brief outline of the
10 facts here -- and this is contained in our memorandum which
11 might provide a good reference point -- there are seven
12 plaintiffs in this case who complain of the rezoning by the
13 city of 4.26 acres of land that abutted three streets --
14 the allegations -- and the construction on that property of
15 low income affordable housing. The construction, as you
16 may hear, is under way and nearly complete.

17 The seven plaintiffs are described in the complaint as
18 city residents who each own and occupy residential property
19 located in the immediate vicinity -- is the word used -- of
20 one of those streets -- Armory Drive -- and in the
21 neighborhood, as it's alleged, located immediately across
22 Armory Drive from the property.

23 This description of the plaintiffs' relation to the
24 property is the basis for our first ground to dismiss,
25 which is a lack of standing.

1 Your Honor, in the city's view compliance with the
2 statutory-standing requirement of Section 6-29-760(C) is
3 required. That subsection requires or provides that an
4 owner of adjoining land, or his representative, has
5 standing to bring an action contesting the ordinance or
6 amendment.

7 So here we have a specific statute that deals with
8 rezoning or amendment of zoning ordinances, and that
9 statute, which is part of the Comprehensive Planning and
10 Zoning Act, sets out the requirement that for standing the
11 person challenging the action must be the owner of
12 adjoining land.

13 Now, this section does not define adjoining, but
14 Black's Law Dictionary defines -- includes in its common
15 meanings for the words the words touching and sharing a
16 common boundary.

17 There are no allegations in the complaint that the
18 properties of the plaintiffs touch or share a common
19 boundary with the subject property, the property of
20 Terraces, that's being developed here.

21 We would further urge that South Carolina case law
22 appears to strictly construe that requirement of the
23 adjoining land, for example, in the ATC South vs.
24 Charleston County, a 2008 case, which we cite in our memo
25 on pages four and five. The Court held that because ATC

1 was a non-adjoining landowner it may not assert statutory
2 standing.

3 what's left if the plaintiffs cannot establish
4 statutory standing is to establish what's called
5 constitutional standing, that is that there's been some
6 injury, in fact, which is concrete, particularized and an
7 actual or immanent invasion of a legally protected
8 interest.

9 This category of standing is described in the Carnival
10 Corporation vs. Ansonborough case in -- 2014 case that we
11 cite in our memo at page five.

12 There are no such allegations of concrete,
13 particularized injury in this complaint, nor are there any
14 allegations that would rise to the level of special damages
15 to invoke any other sections of the Comprehensive Planning
16 Act.

17 The D.J. Act itself, as Your Honor knows, does not
18 provide standing. The ATC South case that I mentioned in
19 which the Court found no standing was a declaratory
20 judgment action.

21 And, finally, the additional basis on which standing
22 can be maintained is public importance. But our case
23 law -- again, the ATC South case -- is a good example of
24 this -- provide that in order to be a matter of public
25 importance so as to give rise to standing it must be a

1 matter that is inextricably connected to the public need
2 for court resolution for future guidance.

3 So in our view the entire action should be dismissed
4 for lack of standing -- statutory, constitutional or public
5 importance.

6 The second ground for our motion was that the
7 allegations of the complaint that relate to zoning prior to
8 2016 -- there are allegations, for example, that the city
9 has somehow mislabeled the zoning of the surrounding
10 property.

11 Those allegations, we submit, are -- to the extent to
12 which they seek to be any basis for relief are -- barred by
13 the time provisions of Section 6-29-760(D), also the
14 Comprehensive Planning Action -- Act that requires that any
15 such challenge be brought within 60 days. So it's too late
16 for the plaintiffs to complain as they do in their
17 complaint about zoning that may have occurred prior to or
18 after 2005 or prior to 2016.

19 Finally, we have an interesting situation here where
20 the complaint itself in much detail, which I've summarized
21 in the memorandum on pages one and two, sets out the
22 circumstances of the plaintiffs' own knowledge of the
23 rezoning process underway.

24 They're not -- their knowledge of letters received by
25 property owners concerning the rezoning, their knowledge of

1 posting, their attendance at planning commission, city
2 council meetings and the city council public hearing on the
3 rezoning.

4 Despite those allegations the plaintiffs contend as
5 one of their causes of action that there were procedural
6 deficiencies in the publication and posting requirements of
7 6-29-760, which they allege should void this 2016 rezoning.

8 Our position distinctly stated is that these very
9 allegations in the complaint that we outline show that the
10 plaintiffs had actual knowledge, actual notice, of the
11 rezoning process underway and participated in that process
12 and the legislative process that led to that. And we cite
13 the Glover vs. County of Charleston case on page six for
14 the proposition that this actual notice is sufficient to
15 defeat any claims of lack of statutory procedural notice.

16 And we would further argue, Your Honor, as supported
17 by a case that we cite on page seven of your memorandum,
18 that this -- this -- the fact that the plaintiffs had
19 notice shows that there was substantial compliance by the
20 city with the requirements of the state statute on rezoning
21 and that for that reason the notice requirements were met
22 and the plaintiff should have no viable cause of action.

23 So that -- and I've tried to talk quickly and
24 distinctly. I would urge Your Honor to take a look at the
25 memorandum. But in our view it is clear that the

1 plaintiffs lack standing; that the plaintiffs, based on
2 their own allegations, had actual notice of this rezoning
3 and participated in it and for that reason cannot now
4 complain as they do in their first cause of action that
5 there was some procedural deficiencies in notice by the
6 city. Thank you, Your Honor.

7 THE COURT: Mr. Earle.

8 MR. EARLE: Thank you, Judge.

9 Let me start by suggesting that the Rules of civil
10 Procedure ask or place the burden on the plaintiff to
11 present a short, plain statement of the facts that give
12 rise to their injury.

13 I would submit to the Court that that was done in the
14 complaint. The language that the city complains of -- the
15 immediate vicinity of the neighbors -- the reason for using
16 that language is because there are some neighbors that are
17 directly across the street. Some of the plaintiffs are
18 further on.

19 If the city -- well, let me back up. The purpose of
20 the complaint is to put the defendant on notice of the
21 types of claims on the basis for which the defendant is
22 being hauled into court.

23 And I believe the defendant has been adequately
24 apprized of the nature of the plaintiffs and of the nature
25 of their cause of action. And so I believe the appropriate

1 remedy -- if the defendant is not clear about who the
2 plaintiffs are, there is a procedure known as a motion for
3 more definite statement which the defendants had access to
4 and they could have filed. And that to me would be the
5 appropriate remedy as opposed to dismissing the complaint
6 outright.

7 I would also note that the language in the immediate
8 vicinity is broad enough to accompany -- excuse me --
9 encompass adjoining landowners. And my clients deserve
10 their day in court. That's the whole purpose of a trial,
11 was to establish -- is to establish the facts.

12 I would also notice -- I understand that the Court has
13 already indicated that it won't consider the affidavits,
14 the multiple affidavits, that were filed by each of the
15 plaintiffs prior to this motion being heard. Each one of
16 those affidavits speaks specifically to the location of
17 each of the plaintiffs.

18 I would indicate that, you know, adjoining -- two of
19 the plaintiffs are as close as they could possibly be.
20 Their houses are immediately across Armory Drive. And
21 depending on the way -- you know, sometimes in some
22 instances the road actually separates the properties, and
23 sometimes in some instances the property line goes to the
24 center of the road. So they're about as close as they
25 could possibly be to this property.

1 Let me address the standing question that Mr. Crowe
2 has -- has presented. The ATC case that the city relies
3 primarily upon is a case that was brought by a competitor.
4 It was a competitor, a competing cell phone company. The
5 competitor is S.C.N.G.

6 They didn't live in that neighborhood. They didn't
7 have any connection with the land that they were trying
8 to -- they were essentially attempting to interfere with
9 the competitor's business.

10 Actually, like the language in this ATC case, it does
11 indicate that there are three separate possible grounds for
12 standing.

13 Standing can either be conferred by statute. As
14 Mr. Crowe pointed out, there is a specific provision in
15 Section 7 -- 6-29-760 that confers standing on adjoining
16 landowners. And, again, as he acknowledged and he
17 admitted, there is no case law in South Carolina defining
18 the outer limits of what constitutes an adjoining
19 landowner. All of my clients live within 315 feet of this
20 property, so they are extremely close to this property.

21 So there's the statutory-standing basis. There is
22 also the potential of injury, in fact, which, again, the
23 affidavits that were submitted, I believe, more than
24 adequately address the specific types of injury that my
25 clients have sustained throughout this process.

1 And actually the appraisal, the Vann appraisal, that
2 is included, I believe, in Mr. Aldridge's affidavit also
3 specifically acknowledges the monetary harm to -- to
4 homeowners in neighborhoods where a project like this comes
5 in if the median income is below -- excuse me -- is above
6 \$26,000.

7 And this affidavit and this appraisal itself
8 acknowledges that the median income for this neighborhood
9 is higher than that. So that is an acknowledgment in the
10 defendant's own materials of an actual likely monetary harm
11 to the people between -- in a 1-mile radius. And clearly
12 we're talking about a 1-mile radius or less here. So, you
13 know, there are a number of allegations of concrete injury.

14 Also, the plaintiff -- the defendants seem to overlook
15 that my clients also as citizens have constitutional
16 rights, that we have multiple allegations in the complaint
17 that those rights were run roughshod over.

18 They did obtain notice of certain aspects of the
19 processes that was going along, but much of that
20 information was obtained by Ms. Pearson here. And she went
21 out of her way to probe employees of the city, to track
22 down council members to find out what was going on.

23 A lot of times the information that they received was
24 received late to the point where they were not -- they
25 didn't have an opportunity to speak at meetings because the

1 city imposes a sign-up requirement. At times they were
2 told that they would not be permitted to speak at meetings
3 related to this particular rezoning matter.

4 There was one instance this summer where I actually
5 had to call the city to ask them why my clients had been
6 told that before the city refers to a position.

7 So there are just a whole number of concrete
8 constitutional injuries to my clients' civil rights that
9 have been continuing throughout this entire process.

10 So I believe that we qualify for standing on that
11 basis. And this, again, is just in-reference to section --
12 to our first cause of action under the -- under the
13 statute.

14 And then, finally, there is the public-interest
15 exception.

16 I used to share an office with Jim Carpenter who
17 represents Mr. Sloan, and so I'm very familiar with the
18 Sloan exception -- the Sloan standing exception here.

19 But, you know, the idea is that the ATC court says the
20 key to the public importance analysis is whether a
21 resolution is needed for future guidance. It is this
22 concept of future guidance that gives meaning to an issue
23 which transcends a purely private matter and rises to the
24 level of public importance.

25 And, again, to distinguish the ATC plaintiff from the

1 situation that we have here the Court specifically -- this
2 is at the end of the opinion.

3 Here a local government followed proper procedure.
4 We're arguing that the City of Woodruff failed to follow
5 its own proper procedures -- and I'll get to that in just a
6 minute. Rezoned a single piece of property for a narrow
7 purpose and the only complaint comes from a non-adjoning
8 landowner which just happens to be a competitor.

9 Okay. So this is a very different situation. We've
10 got not just one complaint. We've got a number of
11 plaintiffs here.

12 This is the public. And if this is not a matter of
13 public importance, I'm not sure what is.

14 So I would also mention that we have filed two causes
15 of action here.

16 The first cause of action relates to -- relates to the
17 notice procedures in Section 6-29-760 that Mr. Crowe has
18 talked in detail about. But we have also asserted a
19 common-law cause of action against the city for spot
20 zoning, which is singling out a specific piece of property
21 for special treatment.

22 The complaint outlines the manner in which that -- the
23 manner in which that took place. But, essentially, what
24 happened was in -- I think it was -- May of last year my
25 clients continued to confront the city about the project as

1 it was ongoing.

2 The city was trying to convince my clients that the
3 project was permissible under the existing zoning, under
4 the R-2-A zoning. According to the city that was the
5 proper, appropriate zoning at the time.

6 My clients pointed out that according to the zoning
7 ordinance the planned duplexes would be permitted in an
8 R-2-A zone but not the planned office building --
9 office-community-center building. That part of the project
10 would require an R-3 designation.

11 And it was only after that conversation that the city
12 then went into high gear in order to rezone this property
13 for that specific developer for that specific purpose.

14 And so, again, I would argue that our claims that this
15 is spot zoning and that it is impermissible in that the
16 city failed to follow the appropriate procedures, that they
17 ran roughshod over my clients' civil rights, deserves a day
18 in court, deserves an opportunity to be investigated.

19 I would also add that the section, 760(D), that the
20 city referred to in his motion to dismiss is actually --
21 it's a safe harbor provision that protects the city if the
22 city can establish substantial compliance with the notice
23 procedures.

24 Okay. That's very different than saying that we've
25 got 60 days to drop dead, you know. And -- and I believe

1 that what we're going to find if we're allowed to proceed
2 with discovery is that the city has been incredibly sloppy
3 with the way it handles zoning matters to the point where
4 they don't even have the mandatory official copy of the
5 zoning -- zoning ordinance or the zoning map. And I'm
6 going to talk again about that in just a second here.

7 But 760(D) specifically says that if there has been
8 substantial compliance with the notice requirements of this
9 section then -- then there's this 60-day cutoff.

10 Okay. But the way I read this statute is that the
11 burden is on the city to establish that it followed the
12 proper procedures, that it -- it engaged in substantial
13 compliance. And only then does the burden shift back to us
14 to -- to show that we filed within the 60 days.

15 Now, the city is correct that we're -- we're attacking
16 the zoning on two -- two different levels. Okay. We don't
17 believe that the property was ever properly rezoned in 2004
18 or 2005 from R-1, which all of my clients have lived in
19 this neighborhood a long time. They all believed that the
20 zoning on their property was R-1, and it was only when all
21 of this began coming out the beginning of last year that
22 there was any inkling that their property might have been
23 rezoned to R-2-A at some time in 2004-2005.

24 Why is this important? Well, as I have been
25 promising, I would like to refer to -- this is page 51 of

1 the City of woodruff zoning ordinance.

2 I've got a copy here. I thought I had a third copy.

3 If I may approach, the Court can see what we're
4 looking at here. This is what I'm talking about when I say
5 that the city has just been sloppy.

6 Section two under -- I'm not sure which section this
7 is under. But it's page 51 of the zoning ordinance
8 entitled "Zoning Map".

9 It says that, "The boundaries of the above zoning
10 districts are hereby established as shown on the official
11 zoning map, which is hereby adopted and declared to be a
12 part of this ordinance."

13 Now, the official zoning map shall be identified by
14 the signature of the mayor, attested by the city clerk and
15 bear the seal of the city under the following works: This
16 is to certify that this is the official zoning map referred
17 to in Article Four of the Zoning Ordinance adopted by the
18 City of woodruff, South Carolina, 2005.

19 We have never seen that piece of paper. We do not
20 believe that it exists. My clients have been asking to see
21 that piece of paper for over a year. And so as far as
22 we're concerned, there is no official City of woodruff
23 zoning map, at least not that dates from 2005.

24 There may be an older official City of woodruff zoning
25 map, but if that's the case, then that would be the map

1 that controlled and that is the zoning that would control.

2 Also, the -- further down in that same paragraph it
3 requires a reproducible copy of the official zoning map to
4 be kept in the office of the city clerk.

5 Now, they've got a map. Judge, they have a map, but
6 is it the official map? We don't know. We're -- you know,
7 and so we're asking the Court to give us the right to
8 conduct some discovery so that we can find out what went
9 on.

10 We have talked to council members that -- and, then,
11 again, I'm referring to an affidavit that was filed on
12 Tuesday that Ms. Pearson talked to one of the city council
13 members where he acknowledged --

14 MR. CROWE: Your Honor, I hate to object, but these
15 clearly are factual matters that are beyond the allegations
16 of the complaint. And I don't understand how they run to
17 the sufficiency of the complaint to survive the motion to
18 dismiss.

19 THE COURT: They don't.

20 MR. CROWE: Thank you, Your Honor.

21 MR. EARLE: Well, Judge, in that event I will -- I
22 will -- I will not go beyond any of that other than to --
23 other than to, you know, again, just to reiterate that, you
24 know, we have two separate causes of action.

25 I believe that the defendants' motion to dismiss only

1 ever dealt with the provisions of 760. But even just, you
2 know, a plain reading of that provision, I don't think it
3 accomplishes as much as what the defendants would like it
4 to accomplish.

5 So, Judge, for that reason I would ask that the --
6 that the defendants be compelled to submit an answer and to
7 proceed with discovery.

8 THE COURT: Mr. Crowe.

9 MR. CROWE: Your Honor, we have answered. We did file
10 an answer at the same time we filed the motion to dismiss.

11 ~~As Your Honor knows, standing is a fundamental~~
12 prerequisite for instituting a legal action.

13 Our standing argument runs to both causes of action.
14 They're complaining of a rezoning which they allege was
15 illegal spot zoning. So the same requirements of 6-29-760
16 apply, and particularly the standing requirements.

17 General proximity to the area rezoned is not
18 sufficient to establish statutory standing under
19 6-29-760(C). That language is very specific, and it says
20 that owner of adjoining land has standing.

21 While there may not be any definition of adjoining in
22 that section, or particularly spelled out as applicable to
23 this case, in a reported case the common meanings are
24 touching and sharing a common boundary.

25 I would also observe that even after the defendant

1 city filed its motion to dismiss alleging a lack of
2 standing the plaintiffs made no effort to amend the
3 complaint to allege that they touched or shared a common
4 boundary with the -- with the zoned property.

5 Additionally, as I mentioned -- just to make sure I
6 covered this -- the same requirement for standing applies
7 to the allegation of spot zoning.

8 As to constitutional rights, I would say what
9 constitutional rights. The parties attended hearings,
10 participated in hearings, addressed council. They -- it's
11 admitted that they obtained notice of the rezoning as it
12 went along -- I think were the words.

13 It ill behooves the plaintiffs, I think, to claim that
14 this is a matter of public-importance standing citing those
15 cases that have dealt with public importance, because those
16 cases, as Your Honor knows, deal with matters of statewide
17 import. That's the way the Court has addressed those. And
18 I think there are only about 12 of those where matters of
19 statewide import have been recognized.

20 Plainly, the plaintiffs dislike the legislative
21 decision by the city council of Woodruff to rezone this
22 property. Plainly, they dislike what's being built there.
23 But they don't have standing to challenge it merely because
24 they dislike it or merely because it's being built near
25 their neighborhood. That's not what the law provides.

1 And we would submit that this is not a situation where
2 the plaintiffs' feelings or beliefs about the zoning
3 override the requirements of the state statute. Thank you,
4 Your Honor.

5 THE COURT: All right. I'm going to have to do a
6 little bit of research, and then I'll issue an order. So
7 we'll hold the matter of the plaintiffs' motion for
8 injunction in abeyance until I decide the motion to
9 dismiss.

10 MR. EARLE: Judge, if I may, I just received these two
11 memoranda in support of their motion to dismiss this
12 morning.

13 Would it be permissible for me to submit a memorandum
14 of my own?

15 THE COURT: Sure. How much time do you need?

16 MR. EARLE: Well, if I can have until tomorrow
17 afternoon that'd be nice.

18 THE COURT: That will be fine.

19 MR. EARLE: Okay. I appreciate it.

20 THE COURT: All right. Anything else?

21 MR. GRAHAM: Your Honor, if I may, I'm Michael Graham.
22 I represent the Terraces of Woodruff, also a defendant. I
23 just wanted to state that for the Court.

24 And we're here in opposition to any motion for
25 injunction by the plaintiff. I just wanted to make the

1 Court aware that we were here.

2 THE COURT: Okay. Thank you.

3 MR. GRAHAM: Thank you, Your Honor.

4 END OF REQUESTED TRANSCRIPT OF RECORD

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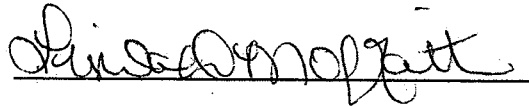
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 5th day of January 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 14, 2017

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

} IN THE COMMON PLEAS COURT

3 Elizabeth Earley, et al,
4 Plaintiffs,

} TRANSCRIPT OF RECORD
2016-CP-42-3288

5 -vs-

6 The City of Woodruff, et al,
7 Defendants.

} September 25, 2017
Spartanburg, South Carolina

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10
11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13

14
15 A P P E A R A N C E S:

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17 DANNY CALVERT CROWE, ESQUIRE
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19 MICHAEL ANDREW GRAHAM, ESQUIRE
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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Earley vs. the City of Woodruff and
2 others.

3 All right. This is plaintiff's motion?

4 MR. EARLE: Yes, Judge. Thank you, Your Honor.

5 Nathan Earle for the plaintiffs. I'm here on a motion
6 to reconsider an order dismissing the complaint which was
7 filed by this Court on May the 24th of this year following
8 a hearing in January.

9 We are -- we're here to ask the Court to reconsider
10 its ruling on a number of separate grounds.

11 To refresh the Court's recollection, my clients are
12 residents of a neighborhood across the street, across
13 Armory Drive, from a new subsidized housing development
14 known as the Terraces at Woodruff. Mr. Graham here is here
15 on behalf of the Terraces.

16 And my clients essentially -- there are two causes of
17 action. One is a request for declaratory judgment arising
18 primarily out of actions that the City of Woodruff took at
19 its August 2nd of 2016 hearing where the city changed the
20 zoning from whatever existing zoning was at the time to
21 change the Terraces' property into an R-3 designation which
22 would allow multifamily development to go in on that parcel
23 without having to subdivide it as would have been the case
24 had the existing zoning been enforced. So that was -- that
25 was one aspect of the complaint.

1 Now, in the prayer for relief we did go a little
2 further and we asked the Court also to declare the state of
3 the zoning of all of those parcels prior to that
4 August 2nd hearing.

5 The purpose for making that request is because our
6 position is that City of Woodruff has been claiming fast
7 and loose with its records, and we believe that on digging
8 we're going to find that there is actually not a very good
9 paper trail as to what the existing zoning is.

10 Okay. But so there are basically two different
11 aspects of that declaratory judgment cause of action. One
12 deals specifically with the rezoning to R-3 on August the
13 2nd of 2016. The other deals with the state of the zoning
14 ordinance more broadly.

15 The complaint was filed on September the 1st. So that
16 was within 30 days after that rezoning hearing.

17 The second cause of action has to do with spot zoning.
18 My clients were specifically seeking to enjoin the Terraces
19 from erecting the structure on the theory that the City of
20 Woodruff had engaged in illegal spot zoning, that is
21 singling this particular developer and this particular
22 parcel out for special treatment. And so those are the two
23 causes of action.

24 Again, that cause of action relates to the
25 August 2nd hearing. So August 2nd of 2013 -- 2016. And so

1 our complaint was filed within 30 days of the activity that
2 we are -- that we are complaining of, although there is
3 this other sort of broader declaratory-judgment request
4 mentioned as well.

5 Now, this Court's order dismissing the lawsuit in full
6 gives essentially three grounds for the dismissal.

7 One is the 60-day statute of limitations found in
8 South Carolina Code 6-29-760.

9 As I have just stated, however, the bulk of the causes
10 of action that are raised in the complaint relate to that
11 August 2nd hearing, and so the case was brought within 30
12 days after that event.

13 So we're asking the Court to take another look, to the
14 extent that the order rests on that statute of limitations
15 in 6-29-760, we're asking the Court to reconsider that.

16 There is also -- and I'm going to address this out of
17 order. There's also towards the end of the order -- the
18 Court finds that even if there were no other concerns that
19 the City of Woodruff essentially substantially complied
20 with the notice requirements of the zoning ordinance and
21 the state law in publicizing the rezoning hearing that my
22 clients, in effect, had adequate notice of the hearing,
23 although signs weren't posted. All of that the Court found
24 not to matter in -- in that the city did comply.

25 However, we're asking the Court to not just look at

1 the procedural aspect of the compliance but also to do
2 with -- it's sort of the functional equivalent of a
3 substantive due process versus procedural due process
4 argument.

5 Here the city may have substantially complied with the
6 notice requirements but that doesn't -- that doesn't make
7 spot zoning any less illegal if that's, in fact, what the
8 city did as the plaintiffs have alleged.

9 Okay. However, I believe the main gist of the Court's
10 decision or the main substance of the order of dismissal
11 relates to the defendant's standing arguments, which
12 essentially, if I understand the Court's order correctly, I
13 understand that the Court found that no one can assert
14 standing who is not -- to challenge a zoning decision who
15 is not an adjoining landowner.

16 Now, in South Carolina Code 6-29-760(C) and (D) the
17 state -- the state statute does require -- well, it does --
18 it does create -- it does allow someone who is an adjoining
19 landowner to -- to bring a cause of action. So if you fall
20 into that category, you have the right to bring your
21 lawsuit.

22 However, I wanted to bring to the Court's attention
23 that that -- that narrow construction of the term adjoining
24 landowner is so narrow that it would in many instances
25 actually preclude anyone from qualifying as an adjoining

1 Tandowner.

2 And the parcel that we have at issue in this case is
3 actually a very good example of that. It -- it has roads
4 on three sides. Okay. So if we take -- if we take
5 adjoining to mean what I understand the Court to have
6 intended in its order -- in fact, it talks about at one
7 point roads being natural zoning boundaries. And I
8 understand that.

9 But so in this -- in this case this parcel has roads
10 on three sides. The fourth side, the north side of the
11 parcel is, if I'm not mistaken, owned by the same -- by the
12 same group, and it's in a floodplain.

13 So parcels of this nature would essentially be
14 insulated from any zoning challenge. And I just wanted to
15 submit to the Court that I do not believe the legislature
16 had such a constricting intent in mind in enacting Section
17 6-29-760.

18 Now, I also brought to the Court's attention two cases
19 that were decided prior to the enactment of comprehensive
20 zoning. And as Mr. Crowe points out, the comprehensive
21 zoning -- zoning act did seem to narrow somewhat the right
22 of just anybody to come in and challenge a zoning decision.

23 However, I did want to point out that in -- in the Bob
24 Jones case from back in the 60s the plaintiff was
25 immediately across the road. He was immediately across the

1 street. No one batted an eyelash or thought to challenge
2 standing in that case. The more recent case, again,
3 decided right before the Comprehensive Zoning Act, Knowles
4 vs. the City of Aiken.

5 Here we have a tract of land near the landowner's
6 residence, is all of the information that we get from the
7 Court as to the physical relationship of the plaintiff to
8 the parcel whose rezoning is being questioned.

9 So, but we do have precedent. We do have precedent
10 for -- for allowing people situated in the place of -- in a
11 similar situation as my clients being -- being allowed to
12 challenge zoning decisions.

13 I further wanted to bring to the Court's attention the
14 language of the City of Woodruff's own zoning ordinance.
15 I've got an excerpt from it here, an excerpt from the
16 official Woodruff zoning ordinance with amendments through
17 January 25, 2010. This was attached as an exhibit to our
18 motion to reconsider.

19 But I was just going to ask the Court to consider the
20 justice of reading the state statute 6-29-760, which
21 requires you to be an adjoining landowner in conjunction
22 with the City of Woodruff's own zoning ordinance, which in
23 two separate places recognizes that people who are not --
24 whose properties aren't immediately abutting the property
25 in question may have a legitimate interest to challenge a

1 zoning decision or at least have a right to know what's
2 going on.

3 And so on page 107 of the zoning ordinance under
4 Section Three, Subparagraph Three, notice of hearing,
5 the -- the city is required to mail notices to the owners
6 of the surrounding property.

7 Okay. Now, what does surrounding property mean? I
8 don't know. I do know that one -- I think two of my
9 clients received such notices in connection with this
10 project.

11 Now, demonstrating that such notices were received was
12 one of the points of attaching the affidavits to this
13 motion.

14 I understand that the Court did not want to consider
15 the substance of affidavits, but I am asking the Court to
16 consider those affidavits for the limited purpose of
17 establishing the physical -- the -- the physical proximity
18 of my clients to -- to this property and also showing that
19 as far as the City of Woodruff was concerned they are
20 owners of surrounding property.

21 Then paragraph five below that on page 108 under the
22 heading of protests, there is a procedure whereby the
23 owners of 20 percent or more of lots included in the
24 proposed change or of those -- there's the language --
25 immediately adjacent to, in the rear or on either side

1 extending 250 feet or those directly opposite extending
2 250 feet from the street frontage of such opposite lots, et
3 cetera, et cetera, et criteria.

4 So this is -- this is the criteria -- this is the
5 class of individuals who in the City of Woodruff's own
6 ordinance have a recognized, sort of a heightened, interest
7 in what is going on in this property that is so close to
8 them.

9 So I am also asking the Court to consider those
10 affidavits for the -- for the limited purpose of
11 establishing that some of my clients do, in fact, live
12 within this 250-feet -- 250-foot range from the property.

13 The Court finally -- the Court also places a lot of
14 stock in the ATC case, the ATC vs. Charleston case -- in
15 finding that -- that you have to be an adjoining landowner,
16 meaning that your property actually has to touch the
17 property in question in order to have standing. But I
18 would just like to suggest that the ATC court actually
19 merely established sort of an outer limit.

20 The plaintiff in that case owned a cell tower lot that
21 was a mile away from the property they were complaining
22 about.

23 The Court also was concerned that that particular
24 plaintiff was a commercial competitor. And one other just
25 side note on the ATC case, the ATC court considered the

1 statutory standing, constitutional standing. And -- and
2 public importance exception standing all is separate
3 categories, separate bases for establishing standing.

4 So, again, I would just like to suggest that I don't
5 think the legislature intended to create a situation where
6 literally no neighbors to a rezoned piece of property would
7 have standing to challenge a wrong -- a wrongful zoning
8 decision.

9 One other point, and then I will be finished,
10 concerning the affidavits, because I know that Mr. --
11 Mr. Crowe is upset about that.

12 I have a case, and actually somehow I came away with
13 only two copies of this. I'm going to hand this to
14 opposing counsel first.

15 This is Baird vs. Charleston County, 1999 Supreme
16 Court decision. And the reason I am bringing this to the
17 Court's attention is the language on the top of page 529 in
18 the South Carolina Reporter. The Court is addressing this
19 question of the propriety of considering affidavits at a
20 12(b)(6) hearing.

21 And, you know, obviously, one of the parties in this
22 case was complaining that the Court considered affidavits,
23 converted the 12(b)(6) motion hearing to a summary judgment
24 hearing without adequate notice to the opposing party.

25 But I wanted to -- I wanted to suggest that -- that it

1 is not inappropriate for the Court -- and may, in fact, be
2 the fair and proper thing for the Court to do -- to
3 consider affidavits for the limited purpose of dealing with
4 these sort of quasi jurisdictional questions such as
5 standing.

6 So I just wanted to read a little bit from the top of
7 page 529. Again, the South Carolina Reporter in Baird vs.
8 Charleston County.

9 "Nevertheless, affidavits and other evidence outside
10 the pleadings may, in certain circumstances, be considered
11 in support of a motion to dismiss based on lack of
12 jurisdiction."

13 And I'm skipping a few lines here.

14 "The Court may consider affidavits or other evidence
15 proving lack of jurisdiction."

16 And of course I believe the flip side of that
17 statement would also be true that the Court could also
18 consider affidavits establishing jurisdiction.

19 "However, the presentation of such evidence does not
20 convert the motion to dismiss into one for summary
21 judgment."

22 And so I would just -- I would just like to suggest
23 that it especially in a context, the way this standing
24 issue was raised, it was raised in a motion to dismiss.
25 And so I believe that in fairness to my clients they should

1 be permitted to establish their physical proximity to this
2 project so that the standing question can be fully and
3 fairly evaluated by the Court.

4 So for those reasons we would ask the Court to
5 reconsider its order dismissing the complaint, to
6 reinstitute the -- both causes of action and allow us to
7 proceed with discovery. Thank you, Judge.

8 THE COURT: Mr. Crowe.

9 MR. CROWE: Your Honor, Danny Crowe for the City of
10 Woodruff. With me is Terry Clark, also representing the
11 City of Woodruff, and Michael Graham representing the
12 corporate defendant Terraces at Woodruff, the apartment
13 complex.

14 Your Honor, both sets of defendants filed written
15 returns to plaintiff's motion to reconsider, which we would
16 urge that the Court consider. And we would each reiterate
17 our grounds in those.

18 Your Honor, the plaintiff's motion to reconsider
19 reveals no errors in the Court's order filed on May 24 and
20 reveals no basis for alteration or amendment of the order.

21 The Court in its order appropriately addressed the
22 matters that were appropriately argued and raised at the
23 hearing and in the memoranda of the parties.

24 Additionally, the plaintiffs by this motion attempt to
25 introduce new matter that was not before the Court at the

1 earlier hearing, first in the form of affidavits that the
2 Court, this Court, ruled would not be considered, and,
3 second, excerpts from an ordinance, a city ordinance, that
4 are not involved in this case.

5 The sections of that ordinance that were read to the
6 Court involve voting requirements if a particular number of
7 citizens present a written protest to the city council
8 prior to the city council's vote.

9 The other provision has to do with notice. So it's
10 not involved in the standing issue in circuit court that's
11 raised in this case. That has -- those sections only have
12 to do with the positive majority.

13 Your Honor, the two cases cited in the motion, Bob
14 Jones and Knowles vs. Aiken did not involve standing
15 issues. And the standing law at the time of those cases
16 before the Comprehensive Planning and Zoning Act of 1994
17 was different and does not read as Section 6-29-760(C) now
18 reads with regard to zoning.

19 The pertinent case is ATC South vs. Charleston County,
20 which Your Honor cited and relied upon in its order. And
21 ATC South is clear. That was a 2008 decision of our state
22 Supreme Court. It was the sole authority. It remains the
23 good authority on -- and controlling authority on the issue
24 of standing for zoning challenges. And it provides that
25 nonadjoining landowners do not have standing to challenge

1 zoning changes by municipalities.

2 Those are the principal bases for our opposition to
3 the motion for reconsideration. I'll be glad to respond to
4 any questions that the Court may have. Or these lawyers
5 may wish to add other points. Thank you, Your Honor.

6 THE COURT: Mr. Clark. Do you have anything?

7 MR. CLARK: No, sir.

8 THE COURT: Mr. Graham.

9 MR. GRAHAM: No, sir. Thank you.

10 THE COURT: All right. Anything else, Mr. Earle?

11 MR. EARLE: Just very briefly, Judge.

12 I would just like to suggest that ATC, with all due
13 respect to Mr. Crowe's theory here, is not dispositive.

14 The ATC court does not anywhere in that opinion define
15 what it means when it says nonadjoining other than to say
16 that this particular plaintiff whose competing cell tower
17 is a mile away from the property they're trying to
18 interfere with is nonadjoining. And I think everyone in
19 the room can agree that that certainly would qualify as a
20 nonadjoining landowner. That's all. Thank you, Judge.

21 THE COURT: All right. I'll issue an order.

22 END OF REQUESTED TRANSCRIPT OF RECORD
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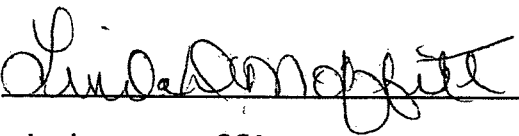
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 25th day of September 2017.

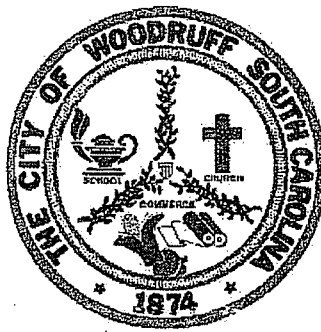
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 11, 2017



Linda D. Moffitt
Circuit Court Reporter

CITY OF WOODRUFF, SOUTH CAROLINA
OFFICIAL ZONING ORDINANCE



With amendments through January 25, 2010

Prepared by

The Planning Commission of the City of Woodruff
and
The Appalachian Council of Governments

April 25, 2005

Ordinance Number: _____

State of South Carolina
County of Spartanburg
City of Woodruff

An Ordinance to Adopt
The Official Zoning Ordinance

Whereas, the City of Woodruff Zoning Ordinance requires refinements be made as necessary to maintain its effectiveness and efficiency, and

Whereas, the City of Woodruff Planning Commission has recommended that several refinements be made as a result of review by that body;

Then, **Let it Therefore Be Resolved**, by the City Council of the City of Woodruff, South Carolina, that upon review of the *City of Woodruff Zoning Ordinance*, and upon consideration of public input, the recommendation of the Planning Commission to adopt the Zoning Ordinance Update is hereby accepted, and is adopted in full force and effect within the municipal limits of the City of Woodruff.

RESOLVED, This 25th Day of April 2005.

Mayor, City of Woodruff

Clerk, City of Woodruff

First Reading: January 31, 2005

Public Hearing: February 28, 2005

Second Reading: April 25, 2005

Table of Contents

I.	Purpose, Authority, Enactment	01
	Purpose.....	01
	Authority and Enactment Clause	01
II.	Short Title	01
III.	Definition of Terms.....	01
	Interpretation of Terms and Words	01
	Definitions	02
	Definitions Relative to Sexually Oriented Businesses	45
IV.	Establishments of Districts and Official Zoning Map	50
	Establishment of Districts.....	50
	Zoning Map.....	51
	Interpretation of District Boundaries	51
V.	Zoning Use Regulations.....	52
	R-1 and R-2 Single Family Residential	52
	R-1A Single Family Residential	53
	R-2A Single Family Residential	53
	R-3 Multi-Family Residential.....	53
	R-3A Mobile Homes and Mobile Home Parks.....	54
	Existing Mobile Home Parks	
	C-1 Transitional Commercial	57
	C-2 Planned Neighborhood Commercial.....	57
	C-3 Central Business District.....	58
	I-1 Light Industrial	58
	I-2 Heavy Industrial	59
	Double Wide Mobile Homes	62
	FH-1 Flood Hazard Zone.....	64
VI.	Dimensional Requirements.....	65
(VII)	Sign Regulations	65
	Signs for Which a Permit is not Necessary.....	65
	General Regulations.....	66
	Prohibited Signs	69
	Signs in Zoning Districts	69
	Encroachment Permits and Regulations.....	
VIII.	Communication Towers and Antennae as a Conditional Use.....	74
	General Requirements.....	74
	Location	75
	Height Limitations	75
	Application Requirements	76
	Conditions.....	77
	Appeal to Board	78
IX	Bufferyards	79
	General Provisions.....	79
(X)	General Provisions.....	90
	Non-Conforming Uses	90
	Off-Street Automobile Parking and Storage.....	90
	Off-Street Loading and Docking Space	91
	Vision Clearance at Intersections.....	92

	Accessory Buildings	92
	Principal Buildings.....	92
	Street Access.....	92
	Lot Requirements.....	92
	Group Housing Development	93
	Yard Sales	93
	Uses Not Permitted.....	94
	Zoning of Annexed Properties	94
	Historic Preservation Ordinance and Board	94
XI.	Zoning Administration.....	101
	Inspection – Duties Specified	101
	Zoning Permit	102
	Application for Zoning Permit.....	102
	Expiration of Zoning Permit	102
	Certificate of Occupancy	102
	Conditions for Approval	103
	Records	103
	Violations.....	103
	Right of Appeal.....	103
	Penalties for Violation	103
	Remedies.....	103
	Complaints Regarding Violations.....	103
XII.	Board of Zoning Appeals.....	104
	Establishment of Board of Zoning Appeals.....	104
	Membership	104
	Proceedings.....	104
	Appeals and Hearings	104
	Powers and Duties.....	104
	Decisions.....	106
	Appeals	106
	Fee.....	106
	Duties of Administrative Officials, Board of Zoning Appeals, City Council, And Courts on Matters of Appeal	107
XIII.	Amendments	107
	Action of the Applicant.....	107
	Action by the Planning Commission	107
	Action by the City Council	107
XIV..	Provision of Ordinance Declared to be Minimum Requirements	108
XV.	Complaints Regarding Violations.....	108
XVI.	Separability	108
XVII.	Effective Date	108

nurse/midwife, licensed physical therapist, licensed respiratory therapist or optometrist.

Drive Thru or Drive Up Window Establishment

A window or other opening in the wall of a principal or accessory building through which goods or services are provided directly to customers in motor vehicles by means that eliminate the need for such customers to exit their motor vehicles.

Drugstore

See "Pharmacy".

Dry Cleaning and Laundry Plant

A commercial facility at which clothes are brought to be dry cleaned and/or laundered from individual dry cleaning services. Such a facility may be free-standing or combined with a dry cleaning service facility.

Dry Cleaning Services Outlet

An establishment engaged in providing laundry, dry cleaning, and other related services on a pick up and drop off basis to individual customers. The actual laundering and/or dry cleaning of clothes may only take place at a "dry cleaning and laundry plant".

Duplex

Two dwelling units, including modular homes, attached along and sharing one or more common walls and located on a single lot. This shall also include the term "two-family dwelling".

Dwelling, Attached

A single-family dwelling attached to two or more one-family dwellings by common vertical walls.

Dwelling, Detached

A dwelling unit that is developed with open yards on all sides. This shall include modular homes but shall not include manufactured homes.

Dwelling, Patio Home

A one-family dwelling unit on a separate lot with open space setbacks on three sides and with a court. Patio homes may be attached to similar units on adjacent lots and still meet this definition, and are therefore known as zero lot line homes.

Dwelling, Single-Family

A detached building designed for or occupied exclusively by one (1) family, but not to include manufactured homes as defined by this Ordinance. Modular housing as defined elsewhere is included in this definition.

Dwelling, Triplex

A building containing three dwelling units, each of which has direct access to the outside or to a common

wall.

Dwelling, Townhouse

A one-family dwelling in a row of at least three such units in which each unit has its own front door and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical fire-resistant walls.

Dwelling, Two-Family

A building arranged or designed to be occupied by two (2) families living independently of each other, sharing one or more common walls and located on a single lot. Also known as a duplex.

Dwelling, Multi-Family

A building, or portion thereof, used or designed as a residence for three (3) or more families living independently of each other, including apartment houses, apartment hotels and group housing projects, triplex, quadruplexes, and townhouses.

Dwelling, Quadruplex

Four attached dwellings in one building in which each unit has two open space exposures and shares one or two walls, with adjoining unit or units.

Dwelling Unit

A building, or portion thereof, providing complete and permanent living facilities for one (1) family. The term "dwelling" shall not be deemed to include a motel, hotel, bed and breakfast inn, manufactured home or other structure designed for transient residence. Included in this definition are "stick-built" and/or modular construction. Manufactured housing is defined elsewhere in this Section.

Essential Services

Publicly or privately owned facilities or systems for the distribution of gas, electricity, steam, or water; the collection and disposal of sewage or refuse; the transmission of communications; or similar functions necessary for the provision of public services. Radio transmission facilities for use by ham radio operators or two-way radio facilities for business or governmental communications shall be deemed accessory uses and not essential services, provided no transmitter or antenna tower exceeds one hundred (100) feet in height. Essential Services are divided into the following three classes:

Class 1

Transmission lines (whether, subterranean or overhead) including electrical, natural gas, and water distribution lines; sewer gravity lines and pressure mains; underground septic tanks and drain fields, cable television and telephone transmission lines; or similar utility lines; pumping stations; lift stations; telephone switching facilities (up to 100 square feet gross floor area).

Class 2

Elevated water storage tanks; booster stations, package treatment plants, telephone switching facilities (over 100 square feet gross floor area), substations, or other similarly required facilities in connection with telephone, electric, steam, water, sewer, or other similar utilities and minor offices associated with such facilities.

Section 2 Zoning Map

The boundaries of the above zoning districts are hereby established as shown on the Official Zoning Map of Woodruff, South Carolina, which is hereby adopted and declared to be a part of this Ordinance. The Official Zoning map shall be identified by the signature of the Mayor attested by the City Clerk and bear the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Article IV of the Zoning Ordinance adopted by the City Council of Woodruff, South Carolina, 2005." No changes of any nature shall be made in the Official Zoning Map except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind, by any person or persons shall be considered a violation of this Ordinance and punishable as provided by law. A reproducible copy of the Official Zoning Map shall be kept on file in the Office of the City Clerk and copies shall be available at all times for inspection by the public.

Section 3 Interpretation of Zoning District Boundaries.

Where uncertainty exists as to the boundaries of any district shown on the Official Zoning Map, the Zoning Administrator shall employ the following rules of interpretation.

- (1) Centerline: Where a boundary line lies within and follows a street or alley right-of-way, a railroad right-of-way, or utility easement, the boundary shall be construed to be in the center of such street or alley right-of-way, railroad right-of-way, or utility easement forming the boundary between two separate zoning districts is abandoned or removed from dedication, the district boundaries shall be construed as following the centerline of the abandoned or vacated road bed or utility easement.
- (2) Edge Line: Where a boundary line follows the edge of a street or alley right-of-way, a railroad right-of-way, or utility easement, the boundary shall be construed to be on the edge of such street or alley right-of-way, railroad right-of-way, or utility easement. If such a street or alley right-of-way, railroad right-of-way, or utility easement forming the boundary between two separate zoning districts is abandoned or removed from dedication, the district boundaries shall be construed as following the edge of the abandoned or vacated road bed or utility easement.
- (3) Lot Line: Boundaries indicated as approximately following lot lines shall be construed as following such lot lines. In the event that a district boundary line divides a lot or tract, each part of the lot or tract so divided shall be used in conformity with the regulations established by this Ordinance for the district in which said part is located.
- (4) City Limits: Boundaries indicated as approximately following town limits or extraterritorial boundary lines shall be construed as following the town limits or extraterritorial boundary lines.
- (5) Watercourses: Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines.

- (6) Extensions: Boundaries indicated as parallel to or extensions of street or alley rights-of-way, utility easements, lot lines, city limits, county lines, or extraterritorial boundaries shall be so construed.
- (7) Scaling: In a case where a district boundary does not coincide with any boundary lines as above and no distances are described by specific ordinance; the boundary shall be determined by the use of the scale appearing on the map.
- (8) Where the Zoning Administrator determines that (i) physical features existing on the ground, or (ii) actual property lines or other man-made boundary lines used to depict zoning district boundaries, are at variance with those shown on the Official Zoning Map, the Board of Appeals shall have the authority to interpret Zoning district boundaries in accordance with **Article 12**.

Section 4. Woodruff Zoning Use Table :

The Woodruff Zoning Use Table describes the uses permitted in each Commercial, Office, Institutional/Public and Quasi-Public, Residential, and Industrial categories. In any case where a use is not specifically referred to by the table, its status under this Section shall be determined by the Zoning Administrator, by reference to the most clearly analogous use or uses has been so determined by the Zoning Administrator, such determination shall thereafter have general application to all uses of the same type. Accessory uses customarily incidental to uses in the table are permitted in connection with such uses. Such accessory uses may include residences of caretakers and other such persons who must live in the area for the convenience of business and industry, and their dependents. A single family dwelling may be permitted as an accessory use to a principal commercial use provided the single family dwelling is located within the same building as the principal commercial use. (see amendments by city council dated 6/22/09)

ARTICLE V ZONING USE REGULATIONS

Section I R-1 & R-2 Single Family Residential

The purpose of single family zoning is to provide a homogenous and aesthetically harmonious development of single family dwelling units in a low density configuration.

Permitted Uses

1. Agriculture and related buildings and structures
 2. Single family dwellings, other than mobile homes
 3. Churches, synagogues and other places of worship including convents, seminaries, parish houses and Sunday School structures. However, conversion of a residential structure into a church, synagogue or place of worship is not permitted.
 4. Community recreation facilities including, but not limited to golf courses, parks, playgrounds, country clubs, wild life reservations, but including commercial amusement park facilities.
 5. Public and private schools, including kindergartens, day care centers and institutions of higher learning and usual accessory buildings.
 6. Cemeteries including mausoleums provided that new locations conform to the following standards:
-

- a. the site shall be no less than five (5) acres
 - b. a buffer strip of one hundred (100) feet from the center line of the right-of-way of bordering streets and from abutting residential property lines containing shrubbery
 - c. includes no crematorium or dwelling unit other than for a caretaker
7. Medical facilities to include hospitals and public health facilities. Additionally, sites must be located on major thoroughfares to facilitate traffic flow and may not be located on residential streets or collectors. Sites devoted to these uses shall include suitable landscaping to screen the structures from bordering streets and residential property and shall provide a buffer strip of at least twenty-five (25) feet from all surrounding residential lots.
 8. Libraries and other buildings used by federal, state and local county governments, provided that the functions therein are compatible with residential development.

Prohibited Uses

Sexually Oriented Businesses
Manufactured Homes

Section II R-1A Single Family Residential

The purpose of a high density residential district is to concentrate establishment of higher density single family in areas that are land sensitive and allow for more efficient provision of infrastructure.

Permitted Uses

1. All uses permitted in R-1, except agriculture and related buildings and structures, and cemeteries

Prohibited Uses

Sexually Oriented Businesses
Manufactured Homes

Section III R-2A Single Family Duplex – Residential

The purpose of a medium density residential district is to discourage encroachment of non-conforming uses while retaining stable land value and a pleasant environment.

Permitted Uses

2. All uses permitted in R-1 & R-2
3. Agriculture including greenhouses and usual associated buildings
4. Two (2) family structures
5. Nursery schools, day care centers and kindergartens provided all the requirements of the State Health Department pertaining to nursery schools and kindergartens are met

Prohibited Uses

Sexually Oriented Businesses
Manufactured Homes

Section IV R-3 Multi-Family Residential

The purpose of a residential development is to provide the mixing of duplex and multi-family units into a compatible, high-density neighborhood. A limited number of single family units shall be permitted to assist in eliminating any unnecessary congestion of population and buildings. Traffic movement, as in the other residential districts, should discourage regional usage.

Permitted Uses

1. All uses permitted in R-1, R-2 & R-2A
2. Multi-family dwelling units
3. Rooming and boarding houses provided not more than thirty (30) percent of the total dwelling floor area be devoted to such use, including hotels and motels

Prohibited Uses

Sexually Oriented Businesses
Manufactured Homes

Section V R-3A Mobile Homes and Mobile Home Parks

The purpose to incorporate mobile homes into the fabric of the community and to provide these units with all the amenities that will give these areas a pleasant residential atmosphere.

Permitted Uses

1. Development plans must be approved by the Planning Commission.
2. Minimum area for a mobile home park shall be five (5) acres.
3. Maximum number of mobile homes shall not exceed eight (8) per acre.
4. All mobile home sites shall be served by an all-weather surfaced drive of not less than twenty (20) feet.
5. A buffer strip of not less than fifteen (15) feet to screen the mobile home park from neighboring residentially zoned areas. No mobile home shall be located within the buffer strip.
6. The entire area shall be adequately serviced by water and sewer and approved by the building inspector.
7. Parking shall be provided within the development at the ratio of one (1) space per mobile home.
8. **Existing Mobile Home Parks (See amendment by city council dated January 25, 2010)**

8.1 Application.

No mobile home/ manufactured home park shall be established, continued, erected, placed or located on any lot, site, parcel, or in any subdivision or park in the city of Woodruff without first meeting the minimum requirements of this article. The application of this article shall be limited to the regulation of mobile homes for residential purposes. Mobile home sales, mobile home offices and other nonresidential uses are not subject to regulation under the terms of this article.

8.2 Conflict with other regulations.

The standards and provisions of this article shall be interpreted as being the minimum requirements necessary to uphold the purpose of this article and for the protection of the health, safety, economy, good order, appearance, convenience, and welfare of the general public. Whenever this article imposes a higher standard than required by other resolutions, ordinances, rules, or regulations, the provisions of this article shall govern. When the provisions of any other statute impose higher standards, unless so specified in this article, the provisions of such statute shall govern.

City of Woodruff Zoning Ordinance

Section IX Duties of Administrative Officials, Board of Zoning Appeals, City Council, and Courts on Matters of Appeal

It is the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this Ordinance. Under this Ordinance, the City Council shall have only the duty of considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law.

ARTICLE XIII AMENDMENTS

The regulations, restrictions, and boundaries set forth in this Ordinance may, from time to time, be amended, supplemented, changed, or repealed by the City Council, after study by the Planning Commission, and in accordance with the following procedures.

Section I Action by the Applicant

The following action shall be taken by the applicant for an amendment to this Ordinance.

1. Initiation of Amendment: Proposed changes or amendments may be initiated by the City Council, Planning Commission, and in accordance with the following procedures.
2. Application: An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be changed, and the names and addresses of the owner or owners of the property. Such application shall be filed with the City Clerk not later than thirty (30) days prior to the Planning Commission meeting at which the application is to be considered.
3. Fee: When a proposed amendment is initiated by an individual or parties other than the City Council, Planning Commission, or Board of Zoning Appeals, a fee of thirty-five (\$35) dollars shall be paid to the City Clerk for each application for administrative expenses involved.

Section II Action by the Planning Commission

The Planning Commission shall consider and make written recommendations to the City Council concerning each proposed zoning amendment. The Planning Commission may hold separate Public hearings or may sit concurrently with the public hearing held by the City Council.

Section III Action by the City Council

1. City Council Consideration: The City Council shall consider changes and amendments to this Ordinance not more than six (6) times a year at one (1) meeting during the months of January, March, May, July, September and November. The City Council may waive this part of the Ordinance if it finds that an emergency exists by a favorable vote of three-fourths (3/4) of all the members, including the mayor.
2. Public Hearing: No amendment shall be adopted by the City Council until after public notice and hearing.
3. Notice of Hearing: Notice of a public hearing shall be published in a newspaper of general circulation, at least fifteen (15) days prior to the hearing. The notice shall be blocked in, carry an appropriate descriptive title, and shall state the time, dates, and place of the hearing. When a proposed amendment affects the district classification of property, notice shall also be made by posters the property concerned or by mailing notices to the owners of the

- surrounding property. The City Council, at the close of the public hearing, may defer taking lawful action on the proposed amendment until it has sufficient time to consider any new evidence or suggestions presented at the public hearing.
4. Action by City Council: Before taking such lawful action as it may deem advisable, the City Council shall consider the recommendation of the Planning Commission on each proposed zoning amendment. If no recommendation is received from the Planning Commission within thirty (30) days from the date of the public hearing, it shall be deemed to have approved the proposed amendment. If the Planning Commission fails to recommend approval of a request for an amendment, the City Council may reject the recommendation of the Planning Commission by a favorable vote of three fourths (3/4) of all the members of the Council, including the Mayor,
 5. Protests: In case of a protest against any proposed zoning change signed by the owners of twenty (20) percent or more of the lots included in the proposed change, or of those immediately adjacent to in the rear or on either side extending two hundred and fifty (250) feet, or of those directly opposite extending two hundred and fifty (250) feet from the street frontage of such opposite lots, any amendment shall not become effective except by favorable vote of a majority of all the members of the City Council, including the Mayor. No protest petition shall be valid unless it is (1) written, (2) bear the actual signature of the requisite number of property owners and states that they protest the proposed amendment, and (3) is received by the Building Inspector in time to allow at least two (2) normal working days (excluding weekends and legal holidays) prior to the public hearing on the amendment, as to allow time for municipal personnel to check the accuracy and sufficiency of the petition.
 6. Reconsideration of Request for Amendment: When the City Council shall have denied a request for an amendment, it shall not consider another request for an amendment affecting the same property until one (1) year from the date of the previous denial.

ARTICLE XIV PROVISION OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS

The provisions of this Ordinance shall be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive, or that imposing the higher standards, shall govern.

ARTICLE XV COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis of the alleged violations shall be filed with the Building Inspector. He shall record properly the complaints, immediately investigate, and take action as provided by this Ordinance,

ARTICLE XIV SEPARABILITY

If for any reason one or more sections, sentences, clauses, or parts of this Ordinance are held unconstitutional or invalid, such decision shall not affect, impair, or invalidate the remaining provisions of this Ordinance.

ARTICLE XV EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its passage and adoption.

WOODRUFF USE TABLE #1

USE	R-1	R-1A	R-2	R-2A	R-3	R-3A	C-1	C-2	C-3	I-1	I-2	DWMH	FH-1
Drug Store (See "Pharmacy")								X	X	X	X		
Dry Cleaning and/or Laundry Plant									X	X	X		
Dry Cleaning Service Outlet									X	X	X		
Duplex (See Dwelling, Two-family)				X	X		X	X	X	X	X	X	
Dwelling, Modular Home	X	X	X	X	X								
Dwelling, Multi-Family, Multi-family Development					X		X	X	X	X	X		
Dwelling, Single-Family	X	X	X	X	X		X	X	X	X	X	X	
Dwelling, Triplex					X		X	X	X	X	X		
Dwelling, Two-Family (Duplex)				X	X		X	X	X	X	X		
Dwelling, Patio Homes					X		X	X	X	X	X		
Dwelling, Planned Residential	X	X	X	X	X		X	X	X	X	X	X	
Dwelling, Townhouses, Condominiums					X		X	X	X	X	X		
Electric, Heating, Air Conditioning, Ventilating, Plumbing Supplies and Equipment Sales									X	X	X		
Employment Agency								X	X	X	X		
Essential Utility Services, Class 1 and Class 2								X	X	X	X		
Essential Utility Services, Class 3							X	X	X	X	X		
Essential Service Operation Center							X	X	X	X	X		
Exterminators Office									X	X	X		
Fabric and/or Notions Store							X	X	X	X	X		
Fairgrounds										X	X		
Family Care Home	X	X	X	X	X		X	X	X	X	X		
Farm Equipment Sales and Service									X	X	X		
Farm Supply Store									X	X	X		
Farmers' Market							X	X	X	X	X		
Finance Companies							X	X	X	X	X		
Financial Institution							X	X	X	X	X		
Fitness Center (See Health Club)								X	X	X	X		
Flea Market										X	X		
Floor Covering Store									X	X	X		
Floral and Christmas Items Store	X	X	X	X	X		X	X	X	X	X	X	
Florist, Retail	X	X	X	X	X		X	X	X	X	X	X	
Florist, Wholesale							X	X	X	X	X		
Flour and Feed Mills (See Manufactured Goods Class 2)										X	X		
Food Catering Facility							X	X	X	X	X		
Food Store								X	X	X	X		
Formal Wear and Rental Store								X	X	X	X		
Fortune Teller									X	X	X		
Fraternal and Service Organization Meeting Facilities (e.g., Union Hall, Boy Scout Hut, VFW, Elks, Lodge, American Legion Hut, Masonic Lodge) Non-Profit and Not-for-Profit									X	X	X		
Funeral Homes and Mortuaries							X	X	X	X	X		

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN)

C.A. # 2016-CP-42-3288

EARLEY, et al.,)

Plaintiffs,)

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RELIEF
and IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

-versus-)

THE CITY OF WOODRUFF, SC,)

and THE TERRACES AT)

WOODRUFF, a South Carolina)

Limited Liability Company,)

Defendants.)

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Donna Pearson. I am over 18 years of age. I live at 460 Stone Ave., Woodruff, SC 29388. This is the home I grew up in. I inherited this property in 2013 and have resided at this address continuously since that time. My home is a single-family dwelling. Ours is a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are occupied by their owners.
2. My home is located directly across Armory Drive from what is projected to become the entrance to the business office of the Terraces at Woodruff Community, which is the subject of the above-referenced lawsuit.
3. To the best of my knowledge and belief, my property has been zoned R-1 for several decades. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3. I recall that one other effort was made to rezone the Property in about 2000 or

2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

4. On the last Wednesday of February, 2016, I noticed that the land now known as The Terraces, was being cleared of all the timber. Two days later I walked over to ask what was going on. I spoke with a gentleman named Avery Lanier, the project manager, who showed me the plans for a multifamily housing project with a n office and other common grounds. I spoke with Avery concerning this project, letting him know that the land was not zoned for this type of housing project. I then proceeded to state that the land was currently zoned as R-1. Avery then stated that the City of Woodruff gave them the go-ahead to build. I then proceeded to the City Hall to speak with Alyson Leslie about the project. I voiced my opinion about the zoning, stating that this housing project couldn't be built under the current R-1 zoning. Alyson handed me a copy of what she referred to as the current zoning map. She stated that the land in question wasn't zoned R-1, but R-2A. She pointed me to a website where I could read the City Zoning Ordinance.
5. Alyson stated that under the R-2A designation the project was permissible. I inquired about the timing of the rezoning of the Property (and of my property) from R-1 to R-2A. She told me that the rezoning occurred sometime in 2005. I proceeded to ask for proof about the supposed 2005 rezoning but she was unable to provide the requested information.
6. In the first week of March 2016 we received a letter from the City informing us of the multifamily housing project that was to be built in our quiet, older neighborhood. This was the first time my neighbors learned of the proposed development. A copy of this letter is attached as Exhibit A.

7. The City approved this project in January 2016 without a planning commission or public input. The day I received the letter I went to City Hall to speak with Alyson and Lee Bailey about the rezoning of the land in question (the Property) and my own land. Mr. Bailey told me that the City rezoned several properties in 2005, but I continued to ask for proof. About 1 week later Alyson mailed me the Woodruff Zoning Ordinance along with Council meeting minutes from three meetings in early 2005 (January, February, and April). The minutes do reflect changes to the zoning ordinance, but only deal with signage and the location of flea markets. No proposed zoning map is appended to the minutes of these council meetings.
8. On April 26, 2016, my neighbor Tammy Farber and I spoke at a City Council meeting asking when the Property on Armory Drive had been rezoned to allow for multi-family development. At that time Lee Bailey, the city manager, offered me an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation for the Property.
9. In May of 2016, several of my neighbors and I attended a City Council meeting to voice our concerns about a high-density housing project being built in our low-density neighborhood in violation of established zoning. We will see increased traffic along Armory Drive and Stone Avenue not only from this project but also from a separate Terraces project across town which does not have its own office or meeting facilities. All of our homes are zoned R-1 according to the Spartanburg County tax map.
10. My neighbor Henry Kerns and I met separately with Alyson Leslie, at which time she showed me a "Use Table" which purportedly proved that the proposed project would be permissible under the "current" R-2A zoning. As indicated above, our entire neighborhood was and is convinced that our homes are actually still zoned R-1.

11. I made several attempts to let the city know that this housing project violates its own zoning ordinance.
12. In June of 2016, my neighbors and I attended a subsequent meeting of City Council. At this time, the Council announced five new members of a planning commission that had been dormant up to that time.
13. On July 5, 2016, I spoke with Allen Durham, Woodruff City Council Member, at Bronco's Restaurant about the Terraces project. I asked him how this particular piece of property was zoned. He responded that the property in question was zoned R-1 and that I knew it and so did the City. He also gave me information about the upcoming planning commission meeting that the City was planning to rezone the Property from an "R-2A" to an R-3 designation.
14. I attended the planning commission meeting with Elizabeth Early. We were not allowed to speak at this meeting even though it was a public meeting. The brand new planning commission voted on July 27, 2016, to recommend the rezoning to City Council. Before the Planning Commission meeting that evening, the City had already placed an ad in the Spartanburg Herald-Journal that appeared in the paper *before* the Planning Commission met.
15. The City allowed construction to continue during the rezoning process despite a requirement in the zoning ordinance that construction cease while a rezoning is being considered.
16. On August 2, 2016, the City Council held a special meeting to approve the zoning change to R-3. Mr. Kerns, John Earley and I were originally told that we would not be allowed to speak at the meeting. Not until our attorney called the City of Woodruff to

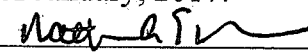
inquire about the reasons we would not be permitted to speak was this decision reversed.

17. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.

18. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.


Donna Pearson

SWORN to before me this 3rd day
of January, 2017.


Notary Public for South Carolina
My commission expires: June 10, 2025



"Time Well Spent"

The City of Woodruff



ELECTRONICALLY FILED - 2017 Jan 03 8:01 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203288

Residents,

A private developer has purchased land in your area to develop the "Terraces at Woodruff", a 20-unit duplex housing development. The developer has met all zoning and setback requirements for the City of Woodruff. Site and building plans were submitted to and approved by Spartanburg County as well.

The developer utilizes federal low income housing tax credits to subsidize the cost of construction by selling those tax credits at a reduced cost to large corporations.

This is not a housing authority project. The Terraces at Woodruff will be managed by a property management company with several requirements for their residents including the completion of a criminal background check, credit check, income verification, and proof of sufficient rental history. Additionally, residents must have an annual income of no more than \$36,000. No pets will be allowed, with the exception of service animals. All residents will be required to pay monthly rent to the management company. The developer of the property is required to set aside maintenance and repair funds to cover the next 20 years of upkeep expenses for the property. This will aide in repairs and visual upkeep of the property.

We have provided a link www.CityofWoodruff.com/NewDevelopment to find further information on the project including renderings, brochures, and location maps.

We expect this development to be a positive addition to the Woodruff community and wanted to make you aware of the project that will be upcoming in your neighborhood. Please contact us if you have any questions.

Sincerely,

City of Woodruff

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN)
EARLEY, et al.,)

C.A. # 2016-CP-42-3288

Plaintiffs,)

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RELIEF
and IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

-versus-

THE CITY OF WOODRUFF, SC,
and THE TERRACES AT
WOODRUFF, a South Carolina
Limited Liability Company,

Defendants.

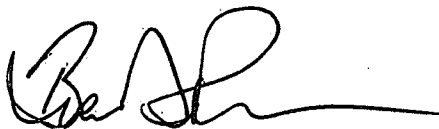
The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Bruce Pearson. I am over 18 years of age. I live at 460 Stone Ave., Woodruff, SC 29388. I moved in to this home with my wife when she inherited it in 2013. We have resided at this address continuously since that time. Our home is a single-family dwelling. Ours is a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are occupied by their owners.
2. Our home is located directly across Armory Drive from what is projected to become the entrance to the business office of the Terraces at Woodruff Community, which is the subject of the above-referenced lawsuit.
3. To the best of my knowledge and belief, our property has been zoned R-1 for several decades. To my knowledge there has been no effort to rezone our property or any other surrounding property to any other zoning classification other than the attempt that was made in summer of 2016 to rezone the Armory Drive Property which is the subject of

this litigation to R-3. I am informed that one other effort was made to rezone the Property in about 2000 or 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

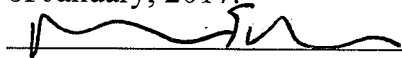
4. In the first week of March 2016 we received a letter from the City informing us of the multifamily housing project that was to be built in our quiet, older neighborhood. A copy of this letter is attached as Exhibit A.
5. On April 26, 2016, my wife and a neighbor, Tammy Farber, spoke at a City Council meeting to ask about when the Property on Armory Drive had been rezoned to allow for multifamily development. She was shown an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation for the Property.
6. In May of 2016, my wife and several of our neighbors attended a City Council meeting to voice concerns about a high-density housing project being built in our low-density neighborhood in violation of established zoning. We will see increased traffic along Armory Drive and Stone Avenue not only from this project but also from a separate Terraces project across town which does not have its own office or meeting facilities. All of our homes are zoned R-1 according to the Spartanburg County tax map.
7. My wife attended a planning commission meeting in July of 2016 but was not permitted to speak at this meeting even though it was a public meeting.
8. My wife was also originally told that she would not be allowed to speak at the special meeting on August 2, 2016 to consider rezoning the Property to R-3. Not until our attorney called the City of Woodruff to inquire about the reasons for this decision did the City decide to allow public input at that meeting.

9. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
10. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.



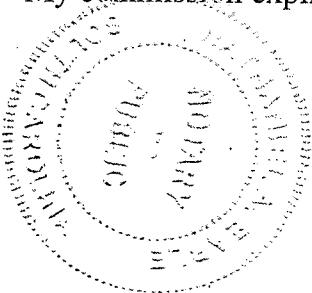
Bruce Pearson

SWORN to before me this 3rd day
of January, 2017.



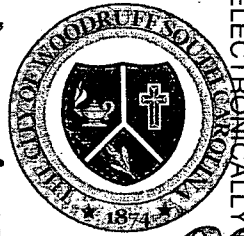
Notary Public for South Carolina

My commission expires: June 10, 2025



"Time Well Spent"

The City of Woodruff



ELECTRONICALLY FILED - 2017 Jan 03 8:01 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203288

Residents,

A private developer has purchased land in your area to develop the "Terraces at Woodruff", a 20-unit duplex housing development. The developer has met all zoning and setback requirements for the City of Woodruff. Site and building plans were submitted to and approved by Spartanburg County as well.

The developer utilizes federal low income housing tax credits to subsidize the cost of construction by selling those tax credits at a reduced cost to large corporations.

This is not a housing authority project. The Terraces at Woodruff will be managed by a property management company with several requirements for their residents including the completion of a criminal background check, credit check, income verification, and proof of sufficient rental history. Additionally, residents must have an annual income of no more than \$36,000. No pets will be allowed, with the exception of service animals. All residents will be required to pay monthly rent to the management company. The developer of the property is required to set aside maintenance and repair funds to cover the next 20 years of upkeep expenses for the property. This will aide in repairs and visual upkeep of the property.

We have provided a link www.CityofWoodruff.com/NewDevelopment to find further information on the project including renderings, brochures, and location maps.

We expect this development to be a positive addition to the Woodruff community and wanted to make you aware of the project that will be upcoming in your neighborhood. Please contact us if you have any questions.

Sincerely,

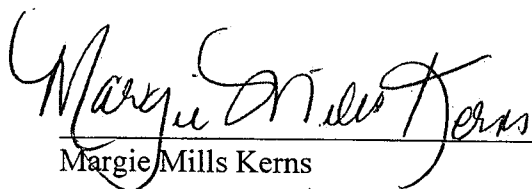
City of Woodruff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
ELIZABETH EARLEY, JOHN	)	C.A. # 2016-CP-42-3288
EARLEY, et al.,	)	
	)	
Plaintiffs,	)	AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
	)	MOTION FOR TEMPORARY RELIEF
	)	and IN OPPOSITION TO DEFENDANTS'
-versus-	)	MOTION TO DISMISS
	)	
THE CITY OF WOODRUFF, SC,	)	
and THE TERRACES AT	)	
WOODRUFF, a South Carolina	)	
Limited Liability Company,	)	
	)	
<u>Defendants.</u>	)	

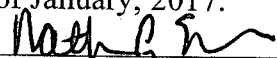
The undersigned, being duly sworn, swears or affirms as follows:

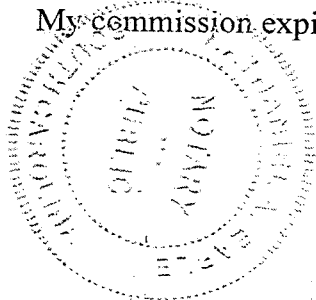
1. My name is Margie Mills Kerns. I am over 18 years of age. I live at 325 Chamblin Street, Woodruff, SC 29388. I have resided at this address for over 30 years.
2. My home is located directly across Armory Drive from the Property which is the subject of the above-referenced lawsuit.
3. Our neighborhood is (or was until the Defendants began construction) a safe, quiet, peaceful, established community of hardworking homeowners. Most or all of the homes in the immediate vicinity are owner-occupied.
4. To the best of my knowledge and belief, my home was zoned R-1 at the time I moved in. During the entire time I have resided at 325 Chamblin Street to my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification, except for the effort in the summer of 2016 to rezone the Property which is the subject of this lawsuit to an R-3 designation. I am informed that one other effort was made to rezone the subject Property in 2000 or 2001 to accommodate a

- mobile home on a foundation as a single-family dwelling (consistent with the R-1 designation).
5. In early 2016, I became aware that the Property was being developed, and my husband and I began making inquiries about the project.
 6. In March of 2016, we received a letter from the City of Woodruff (Attached as Exhibit A) indicating that a private developer had purchased the Property and planned to install a 20-unit duplex housing development. The letter further (and inaccurately) indicated that plans submitted by the developer met all city and county zoning and setback requirements. No mention was made in the letter about an office or community center being part of the proposed development.
 7. My husband expressed concerns about the project to Mayor Kenneth Gist, others on City Council, and the City Manager. In May of 2016, our neighbor Donna Pearson and my husband met with the Woodruff City Manager.
 8. My husband and I started attending City Council meetings and also helped to pay for a title search of the Property from a local attorney. Despite our best efforts were never able to obtain accurate information about the project during the summer of 2016.
 9. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
 10. Throughout the entire process the City of Woodruff has given us and our neighbors the runaround, refusing to answer questions, shifting responsibility, and promising to provide zoning documentation that was never delivered.


Margie Mills Kerns

SWORN to before me this 3rd day
of January, 2017.


Notary Public for South Carolina
My commission expires: June 10, 2025



STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

ELIZABETH EARLEY, JOHN)
EARLEY, et al.,)

Plaintiffs,)

-versus-

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

C.A. # 2016-CP-42-3288

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RELIEF
and IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Elizabeth Earley. I am over 18 years of age. I live at 425 Stone Ave., Woodruff, SC 29388. My husband and I built a house on this property in February of 1998. I have resided at this address continuously since that time. My home is a single-family dwelling. Ours is a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are occupied by their owners.
2. Stone Avenue abuts Armory Drive at the point where what is projected to become the entrance to the business office of the Terraces at Woodruff Community which is the subject of the above-referenced lawsuit is located. My property is located approximately 312 feet from that Property.
3. To the best of my knowledge and belief, my property was zoned R-1 at the time my husband and I built our home and has remained R-1 during the entire time I have resided at 425 Stone Avenue. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the

attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3. I recall that one other effort was made to rezone the Property in about 2000 or 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

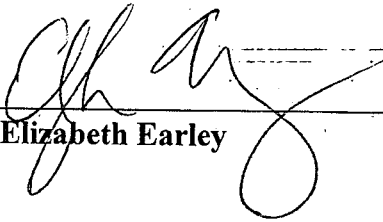
4. On about March 3, 2016, I observed that the Property was being cleared, and then on March 5, 2016, three of my neighbors who live closest to the Property received letters purporting to "explain" the proposed development of the Property. This explanation, however, failed to mention that the development would include a business office or community center or that the site would serve as the administrative center for other housing projects in the Woodruff area, of which I am informed there are now three underway.
5. On April 26, 2016, my neighbors Donna Pearson and Tammy Farber spoke at a City Council meeting asking when the Property on Armory Drive had been rezoned to allow for multi-family development. At that time Lee Bailey, the city manager, offered Ms. Pearson an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation.
6. I am informed that in or around May of 2016 my neighbor Henry Kerns spoke with the city manager Lee Bailey and Alyson Leslie, the city planner, upset about the project and wanting answers as to when the property was supposedly rezoned to R-2A and protesting the proposed development.
7. On June 24, 2016, my husband John and I scheduled an appointment for Monday, June 27, to speak with Lee Bailey and City of Woodruff employee Alyson Leslie. When John and I arrived on June 27, we were told that Alyson was unavailable. We met with

Mr. Bailey and the city attorney, Terry Clark, instead. We asked them to provide us with information showing when the Property on Armory was rezoned to R-2A. In an apparent attempt to mislead us, Mr. Bailey originally said, "I think they are wanting to build 1 or 2 duplexes there," but Mr. Clark informed us that in fact 10 duplexes (20 units) were being planned. At that meeting, I communicated that even under an R-2A zoning (which was never properly enacted) the City of Woodruff still could not allow the proposed development. Mr. Clark responded that the land could be subdivided to accommodate the proposed use, but a plain reading of the Woodruff Zoning Ordinance shows that the office/community center component of the project would still be impermissible under an R-2A designation.

8. During the same meeting, my husband John asked for some type of paperwork showing when the Property was rezoned to R-2A from R-1. The city manager Lee Bailey said that it would take about one week to put something together for us. It took nearly a month to receive a package (attached as Exhibit A) purporting to document the alleged zoning changes.
9. Apparently as a direct result of my meeting with Mr. Clark and Mr. Bailey, near the very end of June of 2016, the Woodruff City Council, without any prior notice of which I am aware, appointed five people to the dormant Planning Commission and four people to the Board of Zoning Appeals.
10. On July 6, 2016, my neighbor Donna Pearson learned that the Planning Commission planned to hold a meeting the following day for to vote on a proposal to rezone the Property from "R-2A" to R3.
11. The Planning Commission met on July 7, 2016. Donna Pearson and I attended this meeting together. I specifically asked Lee Bailey that we be allowed to speak at the

meeting and was informed we would not be permitted to speak. Alyson Leslie and the city attorney, Terry Clark, were also present at this meeting. The planning commission voted to recommend the zoning change to the City Council.

12. On July 26, 2016, my husband John, my neighbor Henry Kerns, and I all spoke at the City Council meeting to explain the negative impact the proposed development will have on our impact the community and to complain about the many irregularities in the way the City had handled the project. Contrary to the baseless predictions of the Defendants' civil engineer, we anticipate an enormous increase in the amount of traffic along Stone Avenue. As already indicated, our street ends at the intersection across from the entrance to the Terraces office complex which is slated to serve not only the 20 duplexes on Armory Drive but also 24 dwelling on the other side of town and apparently about 25-additional acres worth of additional development. Our quiet street will be transformed into a busy cut-through road.
13. On August 2, 2016, the City Council held a special meeting to approve the zoning change to R-3. Donna Pearson, Mr. Kerns, my husband John Earley and I were originally told that we would not be allowed to speak at the meeting. Not until our attorney called the City of Woodruff to inquire about the reasons we would not be permitted to speak was this decision reversed.
14. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
15. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.


Elizabeth Earley

SWORN to before me this 3rd day
of January, 2017.


Notary Public for South Carolina
My commission expires: June 10, 2025

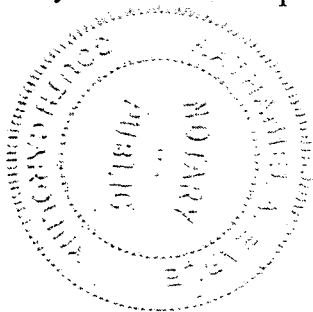


EXHIBIT A

Woodruff City Council Meeting
 Monday, January 31, 2005
 7:00 p.m.

The agenda for the Woodruff City Council meeting was posted on the bulletin board at Woodruff City Hall the week prior to the meeting and faxed to the local media. Members of Council present were: Mayor Paul Bell; Mayor Pro-tem Kenneth Gist and Council members: Audrey Bettis, Tony Kennedy, Marty Smith and Buddy Arnold. Council member Mattie Norman was absent and out of town. Also present were: City Attorney Terry Clark, City Manager Scott Slatton; Codes Enforcement officer Jeannie Huey; Director of Public Works Buddy Bailey, Police Chief Jeff Wood and Fire Chief Ronnie Godfrey. Street Superintendent Jessie Goggins was not present.

The meeting was called to order at 7:00 p.m. by Mayor Bell.

Rev James T. Sloan of Cavins Baptist Church led in a brief devotional.

Minutes of the November 29, 2004 meeting were discussed. In the third paragraph on page 1, William Norman needed to be changed to William Arnold; Toney Kennedy needed to be change to Tony; 3rd paragraph from the bottom needed to be Mayor Pro-tem Norman making the motion, not Kenneth Gist; and Mayor Bell's granddaughter's name is spelled Leah instead of Leigh. On page two, second paragraph, the person owning the property for the sludge was Ms. Gilliland instead of Ms. Gilliam. These changes will be made in the council minutes. The minutes of the November 29, 2004 meeting were passed with noted changes on a motion by Council member Gist and second by Council member Bettis. The vote to approve the minutes with noted changes was unanimous.

A motion was made by Council member Smith to accept the December 13, 2004 minutes as written with a second being made by Council member Kennedy. The vote to accept the minutes as written was unanimous.

A progress report on the petitions to open the BJ Workman Hospital was then presented by Mrs. Barbara Hairfield who stated that they did not have the petitions in the churches yet, but planned to do so immediately.

Short and Long Term Goals that had been discussed at the Council members retreat were then discussed. City Manager Slatton has a copy of these goals, which are available to the public, at city hall. Some goals include: police protection, welcome signs at entrance to city limits, side walk repair, speed limits, rental property inspection program just to name a few. Council member Arnold made the motion to accept these goals; a second was made by Council member Kennedy. The vote to accept the goals was unanimous.

Comment period for Council members was then opened for discussion. Mayor Bell stated that he felt good about the city at this time but believes we need to support our police department by providing officers information when they ask for it to solve crimes. The city needs to clean up lots, obey traffic laws, not speed and no "U" turns, support the petition group efforts for the hospital and get the budget ready for 2005/2006.

Page 2
January 31, 2005

Council member Bettis stated the city needed to stay within its budget, continue its commitment to clean up and get started right away on the auditorium and work on getting donations and grants to help out.

Council member Arnold stated that he felt he was in a learning process right now but believed the city was traveling in the right direction. It's going to take all of the citizens and council working together to get things accomplished.

New Business was next on the agenda. A request for the city to purchase property on the east side of Irby Street was made by Jim Gibert on behalf of the Irwin Reimer Estate. A city sewer line runs directly through the middle of the lot and with the right-of-way, nothing can be placed on the lot. Mr. Gibert asked if the city is interested in purchasing this property for \$6,500 which is the county appraisal value. Mayor Bell read a letter from Council member Kennedy that requested Mr. Kennedy recuse himself from discussion of this property since he had made an offer on the land at one time. Mayor Bell thanked Mr. Gibert for the information and suggested this matter be discussed in Executive Session.

First reading of an ordinance accepting the Revised Comprehensive Plan was then discussed. A motion was made to accept this ordinance on first reading by Council member Smith and second by Mayor Pro-tem Gist. The vote to accept on first reading was unanimous.

Next was the first reading of an ordinance to accept the revised Zoning Ordinance on first reading. A motion to accept on first reading with chance to change the ordinance before second reading was made by Council member Smith and second by Mayor Pro-tem Gist. The vote to accept on first reading was unanimous. Council members had several questions and changes need to be made before the public hearing is held.

Discussion of changing the billing dates for sewer bills was then discussed. Mr. Slatton reported that the water district had agreed to the city billing 2 weeks later than the water district and cutting off 2 weeks later. A motion to accept this was made by Council member Arnold and second by Council member Bettis. The vote to accept the billing change was unanimous.

Adoption of an ADA Plan to keep the city in compliance in order to get the one half million dollar grant to repair sewer lines was next on the agenda. Making a motion to comply with CDBG requirements was made by Mayor Pro-tem Gist and second by council member Kennedy. The vote to accept the ADA Plan was unanimous.

A motion was made by Council member Smith and second by Council member Bettis to set up a CDBG Bank Account to administer funding for the CDBG Grant. The vote in favor was unanimous.

Council members were informed that Council member Norman was not in attendance tonight because she and her family were in Kansas to see her son-in-law leave for Iraq.

Page 3
January 31, 2005

The manager's report was next on the agenda. Council members reviewed a copy of the Financial report. Mr. Slatton stated that the city had received a large property tax check and expected to get another large check in seven to ten days. The departments are all at 42% expenditures except for the street department due to under-budgeting. Hearing no questions about the financial report, the department heads spoke next.

Fire Chief Ronnie Godfrey passed to council a hand out which showed charted the calls run by the department in 2004. There were 410 calls. Mayor Bell asked if utility costs were under control at the Crescent station. Chief Godfrey stated that they were and that he had addressed some personnel issues earlier that led to higher heating bills. Mr. Godfrey was asked how often the department inspected downtown businesses. He stated they have been inspected once per year in the past, but that they are usually inspected on a request basis.

Mr. Slatton reported that the public hearing for the Zoning changes is scheduled for February 28, 2005.

Director of Public Works Buddy Bailey reported to council that someone had gotten into the fence at the sewer plant and stole some tools, metal detector, etc. The police department took fingerprints but had not caught anyone. They had not had trouble at the plant in the past. The city sewer plant exceeded the BOD limit due to the increase in sludge at the ponds. The ponds should be cleaned every five years. They have been cleaned one time in 20 years. Lee Bailey took his class C exam and now he is certified to run the plant. An engineering company was picked to do the engineering work for the CDBG grant.

Police Chief Wood's report was included in the packet. Two vehicles in the report that had been stolen were recovered outside the city limits. The vehicles were recovered, but no arrests have been made. Mayor Pro-tem Gist asked how it was going with repeat offenders and their cases at the county. Chief Wood stated Mr. Gowdy is getting them fast-tracked.

Mr. Slatton informed council that the street department van caught on fire with the inmates last Friday. The city rented a van and it broke down. The city got another van and it is working okay. Mayor Bell asked if the city could use the inmates to clean the sides of the roads. Mayor Bell was told by Mr. Slatton that he saw no problem with that and that he would assign them to do so.

Council was reminded that February 15 was Legislative Action Day in Columbia beginning at 9:00 a.m.

A discussion to send a letter to the editor of the local newspapers regarding BJW Hospital was next. People may contact Mrs. Hairfield at 476-8703 who is spearheading the petition drive. Also a letter is to be sent to the papers with that total. A motion to take this action was made by Council member Kennedy and second by Council member Smith. The vote to send the letters was unanimous.

Page 4
January 31, 2005

A motion to go into Executive Session in accordance with SC Code Section 30-4-70 (a)(1): "Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee. . ." Annual performance evaluation of city manager, and SC Code Section 30-4-70 (a)(2): "Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property. . ." Discuss contract for the sale of city-owned property on Cavins Road, was made by Council member Smith and second by Council member Bettis. The vote to go into executive session was unanimous.

Executive Session.

A motion to come out Executive Session was made by Mayor Pro-tem Gist and a second made by Council member Kennedy. The vote to leave executive session was unanimous.

A motion to increase the city manager's pay by \$5,000 per year was made by Mayor Pro-tem Gist and second by Council member Kennedy to be effective immediately. Voting yes: Mayor Bell, Mayor Pro-tem Gist, Council members Bettis, Kennedy and Arnold. Voting no: Council member Smith. Motion was passed 5-1.

A motion was made to instruct City Manager Slatton to counter with an offer to Coldwell Banker for appraised value of \$9,000 for the property owned by the city located on Cavins Road was made by Council member Kennedy and a second made by Council member Arnold. The vote in favor of the motion was unanimous.

A motion was made by Council member Smith to adjourn and a second was made by Council member Bettis. The vote to adjourn was unanimous.

The meeting was adjourned at 9:15 p.m.

City Of Woodruff Council Meeting

~~February 29, 2005~~

6:30 p.m.

The regular meeting of the Woodruff City Council was held on Monday, February 28, 2005 with a public hearing beginning at 6:30. A notice of the meeting was posted on the bulletin board the week prior to the meeting and was faxed to the media.

Members of council present were: Mayor Paul Bell; Council members Audrey Bettis, Tony Kennedy, Marty Smith, Mattie Norman and Buddy Arnold. Also present were: Billing Clerk Kay Lawson; Street Superintendent Jesse Goggins; Fire Chief Ronnie Godfrey and Police Chief Jeff Wood. Mayor Pro-tem Kenneth Gist was absent due to his having surgery and City Manager Slatton was out of town. Director of Public Works Buddy Bailey was also absent.

The Public Hearing to receive public comments on the proposed Comprehensive Plan and new Zoning Ordinance was then called to order by Mayor Bell.

Council member Arnold led in a brief prayer.

Mayor Bell welcomed Thomas Robinson from Scout Troop 21 to the meeting.

Since attorney Clark was not present at this time, Council member Smith made a motion to amend the agenda to begin the public hearing after the council minutes were discussed. Council member Norman made a second to the motion. The vote in favor of the motion was unanimous.

Minutes of the January 31, 2005 meeting were passed as written on a motion by Council member Smith and second by Council member Bettis. The vote in favor of the motion was unanimous.

Council member Kennedy made the motion to amend the agenda to have the council members' comments next. Council member Bettis made a second to the motion and the vote in favor of the motion was unanimous.

Council member Bettis reported that the new blinds for the auditorium are in. An inmate is in the process of getting the walls ready to paint in the hall.

Council member Norman said that she had several complaints about what the Police Department is doing concerning the drug problems in Woodruff. On Sharpe Street people are afraid to get out of their houses. Chief Wood reported that they are working on the situation. They are dependent on outside help and much depends upon their schedule if they can work this area. Chief Wood could stated he could not divulge the department's schedule, but assured council officers are working on the problem. Council member asked Norman to discuss it further with the chief after the meeting.

Council member Smith reported that Liz Marcellino had been elected president of the WADA and Lisa White had been elected Vice President; Melinda Kennedy Secretary

Treasurer and Mark Fullerton was elected Member at Large. Mayor Bell said that he had also attended the meeting and WADA had a great guest speaker. Mayor Bell had agreed to pay for ads for new membership to the organization.

Curfews were discussed next. Mayor Bell and council felt that a lot of the trash and vandalism were a result of children being out after hours without supervision. Council requested that Mr. Slatton gather information from other cities about their curfews, times, ordinances etc. for the next meeting.

Mayor Bell also stated that starting up the Neighborhood Watch was a project that he would like to see developed again. The information he had was that Officer Dawkins was very influential in the development of this project. Mayor Bell also asked that citizens call into city hall to report streets with excess litter and abandoned vehicles. Mayor Bell also asked Mrs. Bettis about her progress in getting the City Hall building listed on the registrar of Historic Places. Council member Bettis said that a letter had already been sent.

City Attorney Clark arrived at 6:45

Mayor Bell reminded council members that they needed to be thinking about changes for the 2005-2006 budget. Budget Workshops will be scheduled for March with first reading in May and according to state law, in place by July 1.

Rev. Ray Mims of Bellview Baptist Church arrived and led the group in a brief devotional.

Council member Smith said that she requested that Scott work the budget figures without the garbage fee to give people some relief.

Mayor Bell called the Public Hearing to order at 6:55 p.m. Mayor Bell asked if anyone had any comments. Mrs. Montgomery reported that Simpson Avenue did not have a fire hydrant and she felt that it was desperately needed in that area. Mrs. Montgomery was told that the city did not install fire hydrants; the Woodruff Roebuck Water District handled those. Chief Godfrey told Mrs. Montgomery that he would help her however he could. Mrs. Montgomery also said that Duke Power had cut limbs off a tree hanging over a trailer on Simpson Ave. but the tree is still leaning over the trailer. She was told to see Mr. Slatton when he returned to town Tuesday week.

Council member Smith said that on page 64 of the new ordinance concerning signs specifically #4 concerning fabric signs. Councilman Smith said that merchants on Main Street rely on cloth banners, flags and directional and antique signs to for their businesses. Also the square signs were critical to businesses downtown. Mayor Bell reported that other omissions had been found. Council needed to meet with the planning

commission to go over some of these things. Chairman of the Planning Commission, John Pearson, reported to council that the ordinance was changed due to the

enabling Act of SC where the comprehensive plan and zoning ordinance had to be updated every 5 years. The Commission had been meeting with Shawn Colin of COG and Scott Slatton, Commission Secretary every 4 to 6 weeks for the last few months. Mr. Pearson said that he had talked with Kay Lawson who was very knowledgeable about the zoning ordinances and when she saw the ordinance, some omissions caught her eye and Mr. Pearson asked that this be tabled until these could be corrected along with anything that council felt should be included or left out. Council member Smith said that she would like to be at that meeting. Mayor Bell said that Mr. Colin was contacted today and said council could have the public hearing tonight and have second reading at any time after this date.

A motion to accept the Revised Comprehensive Plan on second reading was made by Council member Smith. A second to the motion was made by Council member Bettis. Vote in favor of the motion was unanimous.

A motion to table the second reading of the Revised Zoning Ordinance was made by Council member Smith and a second to the motion was made by Council member Arnold. The vote in favor of the motion was unanimous.

Mayor Bell said the financial report was evident and if any council member had any questions to see Mr. Slatton upon his return.

Mr. Bailey was not present due to illness.

Fire Chief Ronnie Godfrey reported that the fire department had all its new equipment purchased with grant money installed and it is working great. The thermal imaging camera had been used at a fire this past weekend to find a fire in a commercial building. Mayor Bell said that he noticed the other day that a car arrived at the department and from the time it got there, the trucks were moving within 4 minutes of the call. You can't ask for better than that. Chief Godfrey said that he had 32 men on the roster. Crescent Department is open 8-5 Monday – Friday and Woodruff is manned 7 days a week. He stated he is currently working with the county to get a substation in the Road 50 area. The department has the equipment to man it by shifting other resources around, all that is needed is the land and a building. A property owner has already agreed to donate the land if funding for a building is secured.

Jesse Goggins, Street Superintendent was asked how the street signs were coming. He stated that they had all the signs and poles in and all they needed to do was drill the holes. Mr. Wood of Tanglewood Acres asked what days debris items are collected. He was told it varied but the city would pick up anything that was put out. Mr. Wood was reminded however, that everything needed to be separated because different trucks pick up different things.

Police Chief Wood reported that the police department now has cameras and radars in all the cars. The equipment was purchased with grant money. Chief Wood said that the Neighborhood Watch would be a great asset to the department. The police have trouble

with people not "seeing anything" when they get to the scene of any kind of trouble. With the Neighborhood Watch, the person could simply call in and say he was a member of the N.W. and would not have to even give his name. Concerning curfews, Chief Wood asked what they were to do with the kids once they pick them up. With only two officers on a shift and if one is tied up babysitting, what would the officers do? If the individual did not perpetrate a major infraction, DSS will not get involved so officers could not take them to DSS. Chief Wood was asked by Mayor Bell if he had a problem with bringing the dispatchers back? Chief Wood said he had no problem but felt that was a budget issue. Mayor Bell said that he felt it would help with response time and if a dispatcher dispatched an officer, they would be familiar with the individual as well as correct location and what the officer would be going into because, in most instances, they will be familiar with the people involved. Mayor asked Chief Wood if the equipment was still operational and was told, yes.

Council member Smith asked Chief Wood about an update on the officers. Ms. Smith was told that he had one officer who had surgery and was recovering and it would be 2 to 3 weeks before he came back and one officer that still has 6 weeks at the academy. Council member Smith asked with the three new cars, what determined who got the new vehicle? Chief Wood said that he went by seniority since he felt that anyone who was committed and faithful to the department should be rewarded.

Council member Arnold asked if there was a particular procedure for an officer making an arrest. Chief Wood said that there definitely was that was learned at the academy. Councilman Arnold said that he had to call the police concerning someone that came up on his porch and stated that someone had been shooting at him. When the officer arrived the officer didn't search the boy or handcuff him, he just put him in the car. Chief Wood said that he would talk with Councilman Arnold after the meeting and he would definitely check into it.

Mayor Bell reported that Mr. Slatton was currently on an aircraft carrier with his brother and would be sailing from Honolulu to San Diego.

A motion was made by Council member Kennedy to go into Executive Session to discuss compensation of the city manager and discuss a proposal regarding B J Workman Memorial Hospital. A second was made by Council member Bettis. Vote was unanimous.

Council went into Executive Session at 7:50 p.m.

The meeting was called back to order at 8:28 p.m.

A motion to amend the agenda to adjust the salary of the city manager was made by Council member Arnold. A Second was made by Council member Kennedy and the vote was yes – Mayor Bell, Council members Bettis, Kennedy, Norman and Arnold. Council member Smith voted no. The motion was carried.

Woodruff City Council Meeting
 April 25, 2005
 7:00 p.m.

The regular meeting of the Woodruff City Council was held on Monday, April 25, 2005 in the council chambers at Woodruff City Hall. The agenda was posted on the bulletin board at city hall the week prior to the meeting and was faxed to the local media.

Members of Council present were: Mayor Bell; Mayor Pro-tem Gist; Council members Bettis, Smith, Norman and Arnold. Also present were: City Manager Scott Slatton; City Attorney Terry Clark; Codes Manager Jeannie Huey; Director of Public Works Buddy Bailey; Police Chief Jeff Wood and Fire Chief Ronnie Godfrey. Street Superintendent Jessie Goggins was absent.

Mayor Bell called the meeting to order at 7:00 p.m.

Council member Arnold led the group in a brief devotional.

Council member Smith made the motion to accept the minutes of the March 28, 2005 meeting. A second was made by council member Norman. Council member Bettis requested that on page 2 to omit about city hall information being sent to state offices in Columbia. Mayor Pro-tem Gist made the motion to accept with noted changes. A second was made by council member Bettis and vote in favor of the motion was unanimous.

A Proclamation proclaiming Mental Health Month was presented to council.

Council members comments were next on the agenda. Council member Bettis congratulated Council member Smith on graduating the Municipal Association Elected Officials' Institute. Council member Bettis stated that the Woodmen of the World have pledged \$2,500 toward the city hall renovation. Ms. Cynthia NeSmith is coming Friday at 11:00 a.m. to discuss grant funding for city hall. Council member Smith asked council members to work with Scott to help with the budget to cut garbage fees.

Second reading of a revised zoning ordinance was then discussed. Part 1. Restrictions Should be developed on where a flea market may operate and under what conditions. Though there are no specific recommendations to make at this time, the city council should consider this subject for addition to the zoning ordinance in the near future.

Council then considered the following changes to the ordinance as presented by Council member Smith"

(2)Article VII, Section II, I – Remove the 5-year sign removal clause from this paragraph. A motion was made by Council member Smith to remove. A second was made by council member Bettis and the vote in favor of the motion was unanimous.

(3) Article VII, Section II – add the following language as an item in this section to read: "No portable, marquee/message sign may be used by any business on Main Street between Pine Street and Georgia Street, except message signs that do not exceed 15 square feet in total size. Excepted signs be removed from view from the street at the end of the business' posted hours of operation each day." Council member Smith made the

Page 2
April 25, 2005

motion to accept this change. A second was made by council member Bettis. Voting yes – Smith, Bettis, Norman and Gist. Voting no – Arnold and Bell. Motion was carried 4-2.

(4) Article VII, Section III, 4 – Remove this regulation from the ordinance so as to allow the use of non-rigid signs. Council member Smith made the motion to accept this change. A second was made by Council member Bettis. Voting yes – Smith, Bettis, Norman and Gist. Voting No – Arnold and Bell. The motion was carried 4-2.

(5) Article X, Section I, 2(a) – Remove this regulation from the ordinance (non conforming signs). A motion was made by Council member Smith to remove. A Second was made by Council member Norman. The vote in favor of the motion was unanimous.

A motion to approve the revised Zoning Ordinance as noted was made by Council member Smith and second made by council member Norman. Vote in favor of the motion was unanimous.

Discussion of a curfew inside the city limits of Woodruff was then held. Teresa Foster, SCDJJ, said that she had some research from Columbia that said that some towns welcomed it and some did not. Gaffney currently has a curfew. She asked if the city establishes a curfew will it target the parents or the kids for noncompliance. She then discussed the procedures under which DJJ could become involved in a child that breaks curfew. Taking a child to DJJ is a way of connecting with the services they probably need anyway. Detaining the child is last resort. She stated that cities that have used the curfew report that the crime rate had declined by not having kids out after 2:00 a.m. and it was the best thing they had done. Council member Arnold said that the good, he feels, outweighs the bad. He had talked with some citizens and that they had approved of the curfew. Council member Gist wanted to know if the city was having problems? Mayor Bell responded he believed the problem occurred mostly in the summer. He also said he felt that it would help with the drug problems, the problems with vandalism and litter.

Under New Business the vested rights amendment to the zoning ordinance was discussed. The amendment would all an investor to complete development as approved by the city for up to seven years after initial approval, even if the zoning had changed to disallow the development. Further action was tabled until May, 2005.

The manager's report was next on the agenda. The city is currently at 18% or better on expenses. The city received \$35,000 tax check for property tax; \$9,000 fire district and \$27,000 aid to subdivisions.

Director of Public Works Bailey stated that he did not have enough information for the sludge removal. The engineers are doing field work this week.

Fire Chief Godfrey reported that several civic organizations are using the meeting room at the fire department.

Street Superintendent Goggins was absent from the meeting.

Page 3
April 25, 2005

Police Chief Wood reported that things were normal. Council member Gist asked his opinion of the curfew. Chief Wood reported that man power would be the big problem. Council member Norman said that she had a problem with loitering and beer cans.

Mr. Slatton reminded council that if they planned to attend the municipal association yearly meeting in July, their reservations needed to be turned in by May 11, 2005. The budget Workshop is May 10 and 17.

The Housing Grant Public Meeting will be Thursday, May 28, beginning at 1:00 p.m.

The Thompson Car Wash grand opening will be held May 14

The next Woodruff City Council meeting will be held on May 23 since May 30 is Memorial Day.

A motion to go into Executive Session was made by Council member Bettis and second by Mayor Pro-tem Gist. Vote was unanimous. Items: Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee – i.e. – performance of municipal judge. (2) Discuss contract with Woodruff Roebuck Water District.

Executive Session.

A motion was made by Mayor Pro-tem Gist to come out of Executive Session. Second was made by Council member Norman. Vote was unanimous.

A motion was made by Mayor Pro-tem Gist to amend the agenda for appointments. A second was made by Council member Smith and the vote in favor of the motion was unanimous.

Mayor Bell announced he will appoint council members Arnold and Kennedy to serve on a committee to meet with the Woodruff-Roebuck Water District Commissioners to study the future relationship between the city and the water district.

A motion to adjourn was made by Council member Norman and second by Council member Smith. Vote in favor of the motion was unanimous.

Council adjourned at 9:45

A motion was made by Council member Arnold to increase the city manager's salary by \$5,000 per year retroactive to January 31, 2005. A second to the motion was made by Council member Kennedy. The motion was opened for discussion.

Council member Smith said that a few months ago council voted down a 2% raise and now it wants to give him 10% before the people have had any relief on sewer bills. He was hired at \$15,000 more than the previous manager made. We sold property but still attached the fee. We are all responsible for how the town is going and I feel he deserves a raise but not more than the people need relief. People know we spent money on police cars and trucks and now they don't trust us. She said she would consider a 2% raise like the other city employees got but not 10% at this time.

Council member Norman said that she had to agree with Ms. Smith and she had to think about the elderly. She said she could not agree with the \$5,000.

Council member Bettis said that she felt Scott was doing a very good job; he was very efficient at what he does. She said she is on a fixed income and pays the fee. She stated that if the city is to keep him, he needs more money. He has worked three years without a raise and she stated she feels he deserves one because of the good job he has done.

Council member Smith said that she would consider a 2% raise because every employee has their own expertise and are doing a good job. She stated she does not feel right giving him 10% and every other employee getting only 2%. Mayor Bell said that council is talking about one raise and that the employees received 3%. Council member Bettis said that people have been talking to her and told her to try to keep this guy because he is doing a good job.

Council then voted. Voting yes to give Mr. Slatton a \$5,000 raise were: Mayor Bell, Council members Bettis, Kennedy and Arnold. Voting No – Council members Norman and Smith. Motion was carried 4-2.

A motion to adjourn was made by Council member Smith and second by Council member Kennedy. The vote in favor of the motion was unanimous.

The meeting was adjourned at 8:40 p.m.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
ELIZABETH EARLEY, JOHN)	C.A. # 2016-CP-42-3288
EARLEY, et al.,)	
Plaintiffs,)	AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
-versus-)	MOTION FOR TEMPORARY RELIEF
	and IN OPPOSITION TO DEFENDANTS'
	MOTION TO DISMISS
THE CITY OF WOODRUFF, SC,)	
and THE TERRACES AT)	
WOODRUFF, a South Carolina)	
Limited Liability Company,)	
<u>Defendants.</u>)	

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is John Earley. I am over 18 years of age. I live at 425 Stone Ave., Woodruff, SC 29388. My wife and I built a house on this property in February of 1998. I have resided at this address continuously since that time. Our home is a single-family dwelling. We live in a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are owner-occupied.
2. Stone Avenue abuts Armory Drive at the point where what is projected to become the entrance to the business office of the Terraces at Woodruff Community which is the subject of the above-referenced lawsuit is located. Our property is located approximately 312 feet from that Property.
3. To the best of my knowledge and belief, our property was zoned R-1 at the time my wife and I built our home and has remained R-1 during the entire time we have resided at 425 Stone Avenue. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the

attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3. I recall that one other effort was made to rezone the Armory Road Property in about 2000 or 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

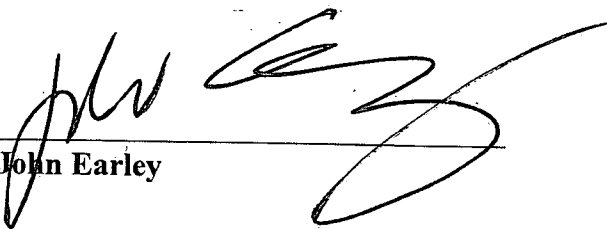
4. In early March, 2016, we observed that the Property was being cleared, and then on March 5, 2016, three of our neighbors who live closest to the Property received letters purporting to "explain" the proposed development of the Property. This explanation, however, failed to mention that the development would include a business office or community center or that the site would serve as the administrative center for other housing projects in the Woodruff area, of which I am informed there are now three underway.
5. I am informed that on April 26, 2016, our neighbors Donna Pearson and Tammy Farber spoke at a City Council meeting asking when the Property on Armory Drive had been rezoned to allow for multi-family development. At that time Lee Bailey, the city manager, offered Ms. Pearson an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation.
6. I am informed that in or around May of 2016 my neighbor Henry Kerns spoke with the city manager Lee Bailey and Alyson Leslie, the city planner, upset about the project and wanting answers as to when the property was supposedly rezoned to R-2A and protesting the proposed development.
7. On June 24, 2016, my wife and I scheduled an appointment for Monday, June 27, to speak with Lee Bailey and City of Woodruff employee Alyson Leslie. When Elizabeth and I arrived on June 27, we met with Mr. Bailey and the city attorney, Terry Clark.

We asked them to provide us with information showing when the Property on Armory was rezoned to R-2A. In an apparent attempt to mislead us, Mr. Bailey originally said, "I think they are wanting to build 1 or 2 duplexes there," but Mr. Clark informed us that in fact 10 duplexes (20 units) were being planned. At that meeting, my wife communicated that even under an R-2A zoning (which was never properly enacted) the City of Woodruff still could not allow the proposed development with the office/community building. Mr. Clark responded that the land could be subdivided to accommodate the proposed use, but a plain reading of the Woodruff Zoning Ordinance shows that the office/community center component of the project would still be impermissible under an R-2A designation.

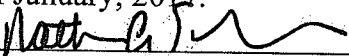
8. During the same meeting, I asked for some type of paperwork showing when the Property was rezoned to R-2A from R-1. The city manager Lee Bailey said that it would take about one week to put something together for us. It took nearly a month to receive a package (attached as Exhibit A) purporting to document the alleged zoning changes.
9. Apparently as a direct result of our meeting with Mr. Clark and Mr. Bailey, near the very end of June of 2016, the Woodruff City Council, without any prior notice of which I am aware, appointed five people to the dormant Planning Commission and four people to the Board of Zoning Appeals.
10. On July 6, 2016, our neighbor Donna Pearson learned that the Planning Commission planned to hold a meeting the following day for to vote on a proposal to rezone the Property from "R-2A" to R3. Without Donna's persistence we would not have known about this meeting.

11. The Planning Commission met on July 7, 2016. Donna Pearson and my wife attended this meeting together. My wife asked to speak at the meeting and was informed she would not be permitted to speak.
12. On July 26, 2016, my wife, my neighbor Henry Kerns, and I all spoke at the City Council meeting to explain the negative impact the proposed development will have on our impact the community and to complain about the many irregularities in the way the City had handled the project. Contrary to the baseless predictions of the Defendants' civil engineer, we anticipate an enormous increase in the amount of traffic along Stone Avenue. As already indicated, our street ends at the intersection across from the entrance to the Terraces office complex which is slated to serve not only the 20 duplexes on Armory Drive but also 24 dwelling on the other side of town and apparently about 25-additional acres worth of additional development. Our quiet street will be transformed into a busy cut-through road.
13. On August 2, 2016, the City Council held a special meeting to approve the zoning change to R-3. Donna Pearson, Mr. Kerns, and my wife and I were originally told that we would not be allowed to speak at the meeting. Not until our attorney called the City of Woodruff to inquire about the reasons we would not be permitted to speak was this decision reversed.
14. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
15. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.

[Affidavit of John Earley—Signature Page]


John Earley

SWORN to before me this 3rd day
of January, 2017.


Notary Public for South Carolina

My commission expires: June 10, 2025

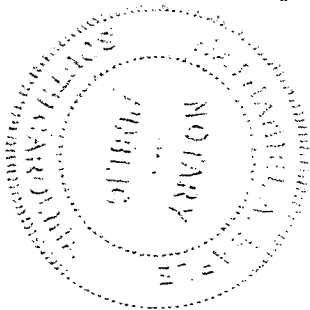


EXHIBIT A

[An identical Exhibit A is attached to the Affidavit of Elizabeth Earley, which appears above in the Record on Appeal at pages 104 - 121.]

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN)

C.A. # 2016-CP-42-3288

EARLEY, et al.,)

Plaintiffs,)

AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RELIEF
and IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS

-versus-)

THE CITY OF WOODRUFF, SC,)

and THE TERRACES AT)

WOODRUFF, a South Carolina)

Limited Liability Company,)

Defendants.)

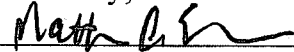
The undersigned, being duly sworn, swears or affirms as follows:

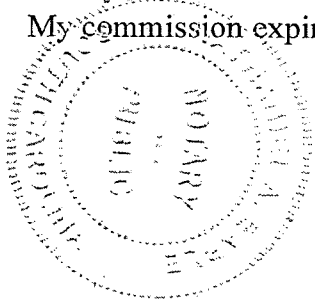
1. My name is Lloyd Wilkins. I am over 18 years of age. I live at 320 Stone Ave., Woodruff, SC 29388. I have resided at this address for over 17 years. My home is a single-family dwelling.
2. Stone Avenue abuts Armory Drive at the point of what is projected to become the entrance to the business office of the Terraces at Wodruff Community which is the subject of the above-referenced lawsuit. My property is located approximately 315 feet from that Property which is the subject of the above-referenced lawsuit.
3. To the best of my knowledge and belief, my home was zoned R-1 at the time I purchased my home and has remained R-1 during the entire time I have resided at 320 Stone Avenue. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3.

4. In early 2016, I became aware that the Property was being developed and began discussing the situation with my neighbors.
5. In August of 2016, I attended a special public hearing called by the Woodruff City Council regarding the Property but was not allowed to speak at that meeting to express my concerns. The only way I knew about the meeting was through neighbors who obtained information about the meeting from speaking with a City Council member.
6. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared, and there may have been a few footers in place, but no structures had yet been erected on the Property.


Lloyd Wilkins

SWORN to before me this 3rd day
of January, 2017.


Notary Public for South Carolina
My commission expires: June 10, 2025



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

**MOTION OF THE CITY OF
WOODRUFF TO DISMISS
THE COMPLAINT**

The Defendant City of Woodruff (hereinafter sometimes referred to as “the City”) hereby notices its motion and moves to dismiss the Complaint in whole or in part. This motion is made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, and on the general ground that the Complaint fails to state facts sufficient to constitute a cause of action, and on the following specific grounds:

1. The Plaintiffs have not alleged a factual basis for statutory standing under S.C. Code section 6-29-760(C), the specific statute that addresses and controls actions contesting a rezoning ordinance or 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). The Complaint further fails to allege any other status sufficient to confer standing and fails to allege any injury in fact.

2. Any allegations in the Complaint that challenge the validity of current City zoning designations for properties other than the property of the Defendant The Terraces at Woodruff fail to state facts sufficient to constitute a cause of action, inasmuch as any such challenge is subject to and time-barred by the provisions of State law, including S.C. Code section 6-29-760(D).

3. The Complaint fails to state facts sufficient to constitute a cause of action contesting the rezoning ordinance or amendment concerning the property of the Defendant The Terraces at Woodruff on the basis of noncompliance with any notice requirements of S.C. Code section 6-29-760, inasmuch as the Complaint alleges (in paragraphs 16, 17, and 18) that at least four of the Plaintiffs were present at or spoke at Planning Commission or City Council meetings concerning the rezoning and prior to the rezoning. These allegations establish that at least four of the Plaintiffs had actual notice of the rezoning process for the subject property and these allegations establish substantial compliance by the City with any statutory notice requirements.

[This space intentionally left blank for signatures on the next page.]

Respectfully submitted,

s/Danny C. Crowe

Danny C. Crowe (S.C. Bar No. 1480)
CROWE LAFAVE, LLC
Post Office Box 1149
Columbia, South Carolina 29202
Phone: (803) 724-5728
dannyc@crowelafave.com

s/Terry F. Clark

Terry F. Clark (S.C. Bar No. 1250)
City of Woodruff
Post Office Box 1389
Woodruff, South Carolina 29388
Phone: (864) 476-8154
tclark@cityofwoodruff.com

ATTORNEYS FOR DEFENDANT
CITY OF WOODRUFF

October 3, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	
ELIZABETH EARLEY, JOHN)	C.A. # 2016-CP-42-3288
EARLEY, et al.,)	
)	
Plaintiffs,)	MOTION TO RECONSIDER
)	Rule 59(e), S.C.R.C.P.
-versus-)	
)	(Jury Trial Demanded)
THE CITY OF WOODRUFF, SC,)	
and THE TERRACES AT)	
WOODRUFF, a South Carolina)	
Limited Liability Company,)	
)	
<u>Defendants.</u>)	

THE PLAINTIFFS in the above-captioned civil action challenging the zoning practices of the City of Woodruff, through counsel, hereby move the Court to alter and amend its ORDER dismissing the Complaint, entered May 24, 2017 (the "Order"), on the basis of the following considerations:

I. Similarly-Situated Plaintiffs Have Been Permitted to Challenge Spot Zoning

The Court granted its motion to dismiss in part on a finding that the Plaintiffs lack standing to challenge any zoning decision made by the City of Woodruff with respect to the property located along Armory Drive which is the subject of the Complaint. In its Order, the Court interpreted the standing limitation of South Carolina Code Section 6-29-760(C) in its narrowest possible sense, as meaning "touching" or "sharing a common boundary" with the property whose zoning designation is being challenged. (Order, p. 7). Although the Plaintiffs alleged that they live directly across the street, their neighborhood is separated from the subject property by Armory Drive, the

existence of an intervening street is found to be a sufficient basis for denying standing to the Plaintiffs. (Order, p. 8).

Moreover, although the Court declined to consider the Plaintiffs' affidavits at the January 5, 2017, hearing, those affidavits clarify that when the Complaint alleged that the Plaintiffs live "in the immediate vicinity" of and "in the neighborhood directly across Armory Drive from" the Defendants' project, in the case of several Plaintiffs there is no other intervening property between the project in question and the Plaintiffs' properties *except* Armory Drive. In other words, several Plaintiffs are separated from the project in question *only* by Armory Drive. The Plaintiffs' affidavits are attached hereto as **Exhibits "A" – "D"** and are incorporated herein by reference.

The Plaintiffs respectfully submit that the Court's interpretation of South Carolina Code Section 6-29-760(C) is significantly narrower than the interpretation placed upon this statute and its predecessors by the courts of this State. For example, in *Bob Jones University, Inc. v. City of Greenville*, 133 S.E.2d 843, 243 S.C. 351 (1963), 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 land 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. Despite this finding, the South Carolina Supreme Court proceeded to reach and rule upon the merits of the plaintiff's spot zoning complaint.

In *Knowles v. City of Aiken*, 407 S.E.2d 639, 305 S.C. 219 (1991), the South Carolina Supreme Court addressed the standing issue somewhat less directly. In *Knowles*, the City of Aiken

had “annexed a tract of land *near* the [plaintiff’s] residence” (Italics added). However, the Court did *not* find that the Plaintiff’s lack of adjacency to the tract in question was adequate to deny her standing to challenge the City of Aiken’s zoning decision. Rather, the Court limited itself to questioning the plaintiff’s standing as she had “failed to plead a specific legally cognizable interest that has been directly and adversely affected, has failed to join the owners of the [tract in question], and has failed to exhaust her administrative remedies” *Knowles v. City of Aiken*, 407 S.E.2d 640-41, 305 S.C. 220-21.

Admittedly, both *Bob Jones* and *Knowles* were decided prior to enactment of the Comprehensive Planning Enabling Act of the 1994; however, Plaintiffs are unaware of any legislative history or case law to suggest that the legislature intended to withdraw the right of owners separated from a rezoned property by nothing but a roadway to challenge such rezoning. Apart from *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008), in which the Supreme Court found that a plaintiff “whose sole interest for objecting to [the] zoning board’s action [was] to prevent competition,” and whose property (which hosted a cell tower) was approximately a mile away from the rezoned parcel, no South Carolina appellate court has ruled on the meaning of the word “adjoining” as used in Section 6-29-760(C); and even the *ATC South* court dealt with Section 6-29-760(C) summarily. 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 Woodruff Zoning Ordinance Recognizes the Rights of Owners of “Surrounding Property” to Protest Zoning Changes

Section 6-26-706(C) should be read in conjunction with the text of the Official Zoning Ordinance of City of Woodruff (the “Ordinance”), excerpts from which are attached as **Exhibit**

“E”. Article XIII of the Ordinance, entitled “Amendments,” recognizes that certain property owners have a special interest in proposed zoning changes. Specifically, in Section III, Paragraph 3, “Notice of Hearing,” the 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.” Moreover, Paragraph 5 in the same section of the Ordinance extends 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 Plaintiffs in this action received such letters. The Woodruff Zoning Ordinance itself therefore clearly recognizes that landowners in the Plaintiffs’ situation have an enhanced interest in zoning changes such as the one at issue in the current litigation.

III. S.C. Code Section 6-29-760(D) Does not Preclude the Plaintiffs from Seeking a Declaratory Judgment

On Page 10 of the Order, the Court finds that challenges to the City of Woodruff Zoning Ordinance are time-barred by the provisions of Section 6-29-760(D) of the South Carolina Code. However, the Plaintiffs have not asked the Court to invalidate the 2005 Zoning Ordinance, but rather to declare the substance of that ordinance as it pertains to the zoning designations of the property which is the subject of this dispute and of the Plaintiffs’ own properties. The Plaintiffs contend that all of the properties in question were originally properly 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.

WHEREFORE, the Plaintiffs respectfully request that the Court reconsider and withdraw its May 24, 2017, Order dismissing the Complaint and grant a jury trial on the causes of action alleged therein.

Respectfully submitted,

s/Nathan A. Earle
Nathan A. Earle (SC Bar # 73814)
Attorney at Law
1541 Wade Hampton Blvd., Suite E
Greenville, SC 29609
(864) 915-5228
nathanearle@upstatelegal.net
ATTORNEY FOR THE PLAINTIFFS

June 2, 2017

[Exhibits to the Plaintiffs' Motion to Reconsider dated June 2, 2017]

Exhibit "A" of Plaintiffs' Motion to Reconsider was the Affidavit of Donna Pearson, dated January 3, 2017, which was previously included in the Record on Appeal at pages 91-96, above.

Exhibit "B" of Plaintiffs' Motion to Reconsider was the Affidavit of Bruce Pearson, dated January 3, 2017, which was previously included in the Record on Appeal at pages 97-100, above.

Exhibit "C" of Plaintiffs' Motion to Reconsider was the Affidavit of Margie Mills Kerns, dated January 3, 2017, which was previously included in the Record on Appeal at pages 101-103, above.

The remaining two Exhibits to the Plaintiffs' Motion to Reconsider dated June 2, 2017, are reproduced below.

7

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN)

C.A. # 2016-CP-42-3288

EARLEY, et al.,)

AFFIDAVIT IN SUPPORT OF PLAINTIFFS'

Plaintiffs,)

MOTION FOR TEMPORARY RELIEF

-versus-

and IN OPPOSITION TO DEFENDANTS'

MOTION TO DISMISS

THE CITY OF WOODRUFF, SC,)

and THE TERRACES AT)

WOODRUFF, a South Carolina)

Limited Liability Company.)

Defendants.)

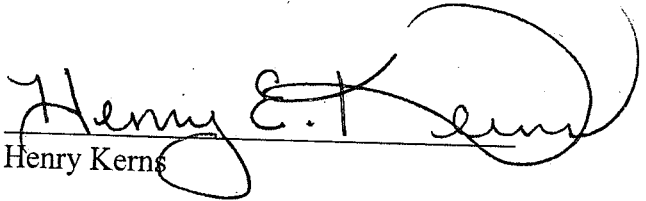
The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Henry Kerns. I am over 18 years of age. I live at 325 Chamblin Street, Woodruff, SC 29388. I have resided at this address for over 20 years.
2. I am married to Margie Mills Kerns, who has resided at 325 Chamblin Street for over 30 years.
3. My home is located directly across Armory Drive from the Property which is the subject of the above-referenced lawsuit.
4. To the best of my knowledge and belief, my home was zoned R-1 at the time I moved in, during the entire time I have resided at 325 Chamblin Street to my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification, except for the effort in the summer of 2016 to rezone the Property which is the subject of this lawsuit to an R-3 designation. I am informed that one other effort was made to rezone the subject Property in 2000 or 2001 to accommodate a

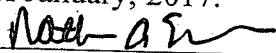
- mobile home on a foundation as a single-family dwelling (consistent with the R-1 designation).
5. In early 2016, I became aware that the Property was being developed, I began making inquiries about the project.
 6. In March of 2016, I received a letter from the City of Woodruff (Attached as Exhibit A) indicating that a private developer had purchased the Property and planned to install a 20-unit duplex housing development. The letter further (and inaccurately) indicated that plans submitted by the developer met all city and county zoning and setback requirements. No mention was made in the letter about an office or community center being part of the proposed development.
 7. I expressed concerns about the project to Mayor Kenneth Gist, others on City Council, and the City Manager. In May of 2016, my neighbor Donna Pearson and I met with the Woodruff City Manager. At that meeting we were presented with an unsigned City of Woodruff Zoning Map and a copy of what we were told was the city zoning ordinance. I was surprised to learn that my property was shown on the map as R-2A as I was under the impression that my property was zoned R-1. The City Manager informed us that the change from R-1 to R-2A was made sometime around 2004 or 2005 but could not provide us with a more specific date or with documentation proving that the zoning change had actually occurred.
 8. I started attending City Council meetings and also helped to pay for a title search of the Property from a local attorney. Despite our best efforts were never able to obtain accurate information about the project during the summer of 2016.
 9. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street,

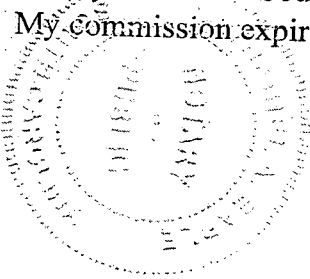
about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.

10. Throughout the entire process the City of Woodruff has given me and my neighbors the runaround, refusing to answer questions, shifting responsibility, and promising to provide zoning documentation that was never delivered.

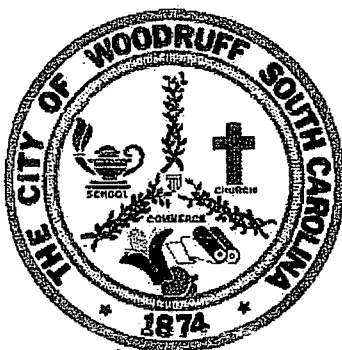

Henry Kerns

SWORN to before me this 3rd day
of January, 2017.


Notary Public for South Carolina
My commission expires: June 10, 2025



CITY OF WOODRUFF, SOUTH CAROLINA
OFFICIAL ZONING ORDINANCE



With amendments through January 25, 2010

Prepared by

The Planning Commission of the City of Woodruff
and
The Appalachian Council of Governments

April 25, 2005

Ordinance Number: _____

State of South Carolina
County of Spartanburg
City of Woodruff

An Ordinance to Adopt
The Official Zoning Ordinance

Whereas, the City of Woodruff Zoning Ordinance requires refinements be made as necessary to maintain its effectiveness and efficiency, and

Whereas, the City of Woodruff Planning Commission has recommended that several refinements be made as a result of review by that body;

Then, Let it Therefore Be Resolved, by the City Council of the City of Woodruff, South Carolina, that upon review of the *City of Woodruff Zoning Ordinance*, and upon consideration of public input, the recommendation of the Planning Commission to adopt the Zoning Ordinance Update is hereby accepted, and is adopted in full force and effect within the municipal limits of the City of Woodruff.

RESOLVED, This 25th Day of April 2005.

Mayor, City of Woodruff

Clerk, City of Woodruff

First Reading: January 31, 2005

Public Hearing: February 28, 2005

Second Reading: April 25, 2005

Section IX Duties of Administrative Officials, Board of Zoning Appeals, City Council, and Courts on Matters of Appeal

It is the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this Ordinance. Under this Ordinance, the City Council shall have only the duty of considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law.

ARTICLE XIII AMENDMENTS

The regulations, restrictions, and boundaries set forth in this Ordinance may, from time to time, be amended, supplemented, changed, or repealed by the City Council, after study by the Planning Commission, and in accordance with the following procedures.

Section I Action by the Applicant

The following action shall be taken by the applicant for an amendment to this Ordinance.

1. Initiation of Amendment: Proposed changes or amendments may be initiated by the City Council, Planning Commission, and in accordance with the following procedures.
2. Application: An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be changed, and the names and addresses of the owner or owners of the property. Such application shall be filed with the City Clerk not later than thirty (30) days prior to the Planning Commission meeting at which the application is to be considered.
3. Fee: When a proposed amendment is initiated by an individual or parties other than the City Council, Planning Commission, or Board of Zoning Appeals, a fee of thirty-five (\$35) dollars shall be paid to the City Clerk for each application for administrative expenses involved.

Section II Action by the Planning Commission

The Planning Commission shall consider and make written recommendations to the City Council concerning each proposed zoning amendment. The Planning Commission may hold separate Public hearings or may sit concurrently with the public hearing held by the City Council.

Section III Action by the City Council

1. City Council Consideration: The City Council shall consider changes and amendments to this Ordinance not more than six (6) times a year at one (1) meeting during the months of January, March, May, July, September and November. The City Council may waive this part of the Ordinance if it finds that an emergency exists by a favorable vote of three-fourths (3/4) of all the members, including the mayor.
2. Public Hearing: No amendment shall be adopted by the City Council until after public notice and hearing.
3. Notice of Hearing: Notice of a public hearing shall be published in a newspaper of general circulation, at least fifteen (15) days prior to the hearing. The notice shall be blocked in, carry an appropriate descriptive title, and shall state the time, dates, and place of the hearing. When a proposed amendment affects the district classification of property, notice shall also be made by posters the property concerned or by mailing notices to the owners of the

- surrounding property. The City Council, at the close of the public hearing, may defer taking lawful action on the proposed amendment until it has sufficient time to consider any new evidence or suggestions presented at the public hearing.
4. Action by City Council: Before taking such lawful action as it may deem advisable, the City Council shall consider the recommendation of the Planning Commission on each proposed zoning amendment. If no recommendation is received from the Planning Commission within thirty (30) days from the date of the public hearing, it shall be deemed to have approved the proposed amendment. If the Planning Commission fails to recommend approval of a request for an amendment, the City Council may reject the recommendation of the Planning Commission by a favorable vote of three fourths (3/4) of all the members of the Council, including the Mayor,
 5. Protests: In case of a protest against any proposed zoning change signed by the owners of twenty (20) percent or more of the lots included in the proposed change, or of those immediately adjacent to in the rear or on either side extending two hundred and fifty (250) feet, or of those directly opposite extending two hundred and fifty (250) feet from the street frontage of such opposite lots, any amendment shall not become effective except by favorable vote of a majority of all the members of the City Council, including the Mayor. No protest petition shall be valid unless it is (1) written, (2) bear the actual signature of the requisite number of property owners and states that they protest the proposed amendment, and (3) is received by the Building Inspector in time to allow at least two (2) normal working days (excluding weekends and legal holidays) prior to the public hearing on the amendment, as to allow time for municipal personnel to check the accuracy and sufficiency of the petition.
 6. Reconsideration of Request for Amendment: When the City Council shall have denied a request for an amendment, it shall not consider another request for an amendment affecting the same property until one (1) year from the date of the previous denial.

ARTICLE XIV PROVISION OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS

The provisions of this Ordinance shall be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive, or that imposing the higher standards, shall govern.

ARTICLE XV COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis of the alleged violations shall be filed with the Building Inspector. He shall record properly the complaints, immediately investigate, and take action as provided by this Ordinance,

ARTICLE XIV SEPARABILITY

If for any reason one or more sections, sentences, clauses, or parts of this Ordinance are held unconstitutional or invalid, such decision shall not affect, impair, or invalidate the remaining provisions of this Ordinance.

ARTICLE XV EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its passage and adoption.

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

**DEFENDANT
TERRACES AT WOODRUFF'S
RETURN TO PLAINTIFFS' MOTION
TO RECONSIDER**

Defendant, Terraces at Woodruff (the "Terraces"), respectfully submits the following Memorandum in Opposition to the Plaintiffs' Motion to Reconsider and further adopts and incorporates the motions and memoranda filed on behalf of Defendant The City of Woodruff (the "City") as if repeated herein.

During a January 5, 2017, hearing, this Court heard arguments concerning the Defendant's motion to dismiss the Plaintiff's complaint that challenged the rezoning of certain properties within the city. Specifically, the Plaintiffs allege the Defendant City of Woodruff improperly rezoned property owned by the Defendant Terraces at Woodruff. The Defendant's motion to dismiss, based on SCRCP 12(b)(6) alleged the Plaintiffs failed to state a cause of action of specific grounds relevant to the controlling statute, S.C. Code Ann. Sec 6-29-760. The Defendant's motion further alleges the Plaintiffs lack standing, that certain assertions as to rezoning of properties in 2005 are time barred by Sec. 6-29-760(D) and that the Defendant City of Woodruff substantially complied with the notice requirements for zoning.

On February 24, 2017, this Court issued a Form 4C Order, granting the Defendant's motion to dismiss and on May 24, 2017, issued its formal order (the "Order"). On June 2, 2017, the Plaintiffs timely filed a Motion to Reconsider (the "Plaintiffs' Motion"). This response addresses the grounds upon which the Plaintiffs base their Motion in the order listed in Plaintiffs' Motion.

I. The Plaintiffs offer no applicable case law in support of their Motion.

The Plaintiffs contend that similarly situated plaintiffs have been permitted to challenge spot zoning. This contention alone brings nothing new to light in order for this Court to find the Plaintiffs have standing. The cases cited in Plaintiffs' Motion are, on their face, different from the case before this Court. In their Motion, the Plaintiffs cite *Bob Jones University, Inc. v. City of Greenville*, 133 S.E.2d 843, 243 S.C. 351 (1963). In *Bob Jones*, standing of the appellants was never at issue. Rather, the issue was whether the rezoning amounted merely to spot rezoning, which would be detrimental to the appellants. Because standing was not at issue in that case, and because the Plaintiff/Appellant in *Bob Jones* is in no other way similar to the Plaintiffs in this case, *Bob Jones* provides nothing of value to support the Plaintiff's Motion. *Bob Jones* does, however, offer this Court guidance regarding other matters alleged in the Plaintiff's Motion, although nothing that supports the Plaintiffs. For example, in *Bob Jones*, the South Carolina Supreme Court stated:

A municipal zoning ordinance is presumably valid. *Momeier v. John McAlister, Inc.*, 231 S.C. 526, 99 S.E. (2d) 177; *City of Florence v. Turbeville*, 239 S.C. 126, 121 S.E. (2d) 437, 85 A.L.R. (2d) 1143. Hence, the burden of proof is upon the party attacking the amendment to establish that the acts of the city council were arbitrary, unreasonable and unjust. *Keller v. City of Council Bluffs*, 246 Iowa 202, 66 N.W. (2d) 113, 51 A.L.R. (2d) 251.

It is the contention of the appellant that the rezoning of the Wilson property from residential to commercial constitutes "spot zoning" and, because of such, the amendatory ordinance was invalid. **"Spot zoning" is a process of singling 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.** *Bartlett v. Middletown Township*, 51 N.J. Super. 239, 143 A. (2d) 778. It has been held that the granting of a special zoning permit extending area previously zoned for commercial use so as to embrace

adjacent property zoned for residential use does not constitute spot zoning. *Neal v. City of Atlanta*, 212 Ga. 687, 94 S.E. (2d) 867. (Emphasis added).

In the case cited, the Court recognizes that singling out a parcel and changing it to a "classification totally different" merely for the benefit of the owners and detriment to other owners brings into question the rezoning, which rezoning is otherwise presumptively valid. In the case before this Court, the property was rezoned from one residential classification to another, only. This reclassification to another residential zoning as well as the presumption that the zoning was valid further undermines the Plaintiffs' allegations that they have standing to bring a cause of action.

Plaintiffs also cite *Knowles v. City of Aiken*, 407 S.E.2d 639, 305 S.C. 219 (1991) which is even further attenuated from the facts of the case before this Court, fails to show any similarity between the Plaintiffs, and likewise fails to bring anything new to light pertaining standing. Contrary to Plaintiffs' assertions, *Bob Jones* and *Knowles* support the Defendants' position, as well as this Court's decision (Order, pg. 8), that the Plaintiffs lack standing. Therefore, this Court should not reconsider its Order based on this issue in the Plaintiffs' Motion.

II. The Plaintiffs disregard the actual and constructive notice they received of the rezoning.

The Plaintiffs allege they have "enhanced interest" in zoning changes and are therefore entitled to additional opportunities to protest. Barring the failure to establish standing, this allegation ignores the facts found by this Court, chronicled in its Order that the Plaintiffs had actual notice of the rezoning (Order, pg. 11). The Carolina Supreme Court offers guidance in *Bob Jones* that is applicable in establishing a test for untimely protests:

In amending its zoning ordinance, as it pertains to the Wilson property, the city council has complied with all procedural requirements as are set forth in the statute law of the State and the ordinance of the city pertaining thereto. However, the appellant does raise a

question with respect to the written protests and objections made by a number of residents and landowners within the area here involved. Admittedly, these protests and objections were not filed within five days before the first public hearing, as required by the ordinance of the City of Greenville. It was proper for the city council of Greenville to disregard such written protests and objections because such were not timely filed. *Central Realty Corporation v. Allison*, 218 S.C. 435, 63 S.E. (2d) 153. The record here shows that on each reading of the amendatory ordinance, the vote was six in favor of the amendment and one against it. This was more than the three-fourths of the members of the city council of Greenville, including the Mayor and six aldermen. Had the protests and objections been filed within the time allowed by the ordinance, they would have been of no avail because more *360 than three-fourths of the council voted in favor of the amendment.

Untimely protests and objections are not required to be heard by zoning or planning commissions or committee. Any allegation that an untimely protest should have been heard must be weighed against the outcome of rezoning.

In the case before this Court, the facts could not be more dissimilar from *Bob Jones*. In this case, the Plaintiffs had notice of the rezoning process, attended rezoning meetings, etc. (Order, pg 11). In order for the Plaintiffs to make any argument that the outcome of the zoning process would have been different had they protested, the Plaintiffs must show that they were denied the opportunity, which the Court has found not to be the case, or they must show that untimely protests would have altered the outcome of the rezoning process. The Plaintiffs in this case have failed to do one and have not alleged the other. Therefore, this Court should not reconsider its Order based on this issue in the Plaintiffs' Motion.

III. The time-bar of S.C. Code Ann. Sec. 6-29-760(D) is applicable to this case.

In its Motion, Plaintiffs bring nothing new to light regarding this Court's finding that certain of Plaintiffs allegations are, "time-barred by the requirement of S.C. Code Sec. 6-29-760(D)." (Order, pg. 10). In addition, the Court's findings in its Order regarding the Plaintiffs' lack of standing, among other reasons, renders this section of the Plaintiffs' Motion moot. Therefore, this Court should not reconsider its Order based on this issue in the Plaintiff's Motion.

For the foregoing reasons, Defendant Terraces at Woodruff, LLC, respectfully prays that the Court deny Plaintiffs' Motion to Reconsider.

Respectfully submitted,

s/ Michael A. Graham

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June 9, 2017

Columbia, South Carolina

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

**RETURN OF DEFENDANT CITY OF
WOODRUFF TO PLAINTIFFS'
MOTION TO RECONSIDER**

The Defendant City joins the Defendant Terraces in opposing Plaintiffs' Motion to Reconsider. The City submits this Return to set out reasons for its opposition.

Initially, the City notes that Plaintiffs, by their Motion to Reconsider, attempt to bootstrap evidentiary documents into the Record (and, presumably, the Record on Appeal) by characterizing and attaching them as "Exhibits" to their Motion. Specifically, Plaintiffs, with their Motion, submitted Affidavits from Plaintiffs Donna Pearson, Bruce Pearson, Margie Kerns and Henry Kerns, as well as excerpts from the City's Zoning Ordinance. However, the City also notes that Plaintiffs, in their Motion, did not take exception to, or otherwise challenge or criticize, the ruling of the Court at the hearing on January 5, 2017, that the same Affidavits would not be considered by the Court. The City **OBJECTS** to the Exhibits to Plaintiffs' Motion on several grounds.

First, the three Affidavits marked as Exhibits A, B, and C to Plaintiff's Motion to Reconsider were three of the six Affidavits (each captioned as "Affidavit in Support of Plaintiffs' Motion for Temporary Relief and in Opposition to Defendants' Motion to

Dismiss”) attempted to be offered to the Court at the hearing on January 5. (The Affidavit of Henry Kerns, marked as Exhibit D to Plaintiffs’ Motion, apparently was not among the six received by the undersigned, although, like the others, it also is dated January 3.) At the motion hearing on January 5, the Defendants objected to the Affidavits as (1) inappropriate if intended for consideration with the City’s Rule 12(b) Motion, and (2) untimely if made in support of Plaintiffs’ motion for temporary injunction because they were not filed with the Plaintiffs’ motion for temporary injunction as required by Rule 6(d). This Court sustained Defendants’ objection at the hearing and excluded the Affidavits from consideration.

The Affidavits (as well as the zoning ordinance excerpt) continue to be inappropriate for reconsideration of the Court’s Order granting the City’s Rule 12(b) motion. The Rule 12(b) motion was a motion based on the pleadings of the Complaint, was not an evidentiary motion, and was not converted into a Rule 56 motion. The efforts of Plaintiffs’ attorney to submit the Affidavits again by way of a Motion to Reconsider should not be allowed.

Bob Jones University, Inc. v. City of Greenville, 243 S.C.351, 133 S.E.2d 843 (1963) and Knowles v. City of Aiken, 305 S.C. 219, 407 S.E. 2d 639 (1991) provide no support for Plaintiffs’ contention that they have standing. As noted by Plaintiffs in their Motion (page3), “Admittedly, both *Bob Jones* and *Knowles* were decided prior to enactment of the Comprehensive Planning Enabling Act of 1994...” This admission is significant and fatal to Plaintiffs’ position.

Prior to the Local Government Planning Enabling Act of 1994 (and its specific requirement for standing for rezoning as contained in section 6-29-760(C)), the State statutory schemes authorizing municipal zoning (former Section 5-23-10 et seq. and

former Section 6-7-710 et seq.) contained no limitation on standing to challenge rezoning similar to the current Section 6-29-760(C). Additionally, the issue of standing was not discussed in Bob Jones and was expressly not reached in Knowles (305 S.C. at 221, 407 S.E. 2d at 641). Although Plaintiffs criticize ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) as sole authority, that case is, and remains, good law on the required standing for zoning challenges.

Plaintiffs' references (at pages 3 and 4 of its Motion) to the "Exhibit E" of City ordinance excerpts are inappropriate as objected to above; the City's motion to dismiss was directed to the pleading of the Complaint. However, even if considered, the zoning ordinance excerpts concerning "protests" are misread by Plaintiffs; the "special interest" urged by Plaintiffs to be revealed by the excerpts refers to a super-majority vote triggered by a petition of 20% or more of lot owners within a specified distance from the area to be rezoned. No such petition is alleged by the Plaintiffs in the Complaint. Moreover, the standing requirement of Section 6-29-760(C), a state statute, prevails over a municipal ordinance and would control regardless of the language of a conflicting municipal ordinance.

Plaintiffs' argument at page 4 of their Motion, that their challenge to rezoning in 2005 is not time-barred, rests on the strained argument that a declaratory judgment action is not, in the language of section 6-29-760(D), "a challenge to the adequacy of notice" or a "challenge to the validity of a regulation or map, or amendment to it." Clearly, a declaratory judgment action is just such a "challenge."

Plaintiff's Motion to Reconsider reveals no errors in the Court's Order filed on May 24 and no basis for alteration or amendment of the Order. The City urges that its objection

to the Exhibits to Plaintiffs' Motion should be sustained and the Exhibits should be stricken. For the reasons set out above and in the Return of Defendant Terraces, the City urges that the Plaintiffs' Motion to Reconsider should be denied.

Respectfully submitted,

s/Danny C. Crowe

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s/Terry F. Clark

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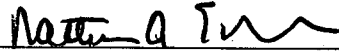
ATTORNEYS FOR DEFENDANT
CITY OF WOODRUFF

June 13, 2017

CERTIFICATE OF COUNSEL

In accordance with Rule 210(g), S.C.A.C.R., I certify that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 15, 2018



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