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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
The Honorable Kristi L. Harrington, Circuit Court Judge

Lower Court Case No. 2014-CP-08-1840
Appellate Case No. 2015-000713

BP Amoco Chemical Company .....Appellant,

v.

City of Charleston; Tract 7, LLC; Cainhoy Land & Timber, LLC; and Southern Timber, LLC.....Defendants,

Of whom Cainhoy Land & Timber, LLC and Southern Timber, LLC are .....Respondents.

FINAL BRIEF OF RESPONDENTS, CAINHOY LAND & TIMBER, LLC AND SOUTHERN TIMBER, LLC

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COUNTERSTATEMENT OF THE CASE

I. Procedural History

This appeal stems from a lawsuit filed on August 15, 2014 by BP Amoco Chemical Company (hereinafter referred to as "BP" or "Appellant"), challenging the enactment of ordinances re-zoning properties belonging to the three landowner Defendants, Tract 7, LLC, Cainhoy Land & Timber, LLC, and Southern Timber, LLC. These properties, totaling some nine thousand acres, are located in the City of Charleston. BP also contends, in causes of action not related to the Respondents, that a letter of intent that it entered into with Tract 7, LLC, binds Tract 7, LLC to give BP an option to purchase approximately one hundred fifty acres along Flagg Creek -- at a price to be determined in the future -- to serve as a buffer between BP's property and the residential and commercial development planned for the Defendants' properties. The Respondents, two of the landowner Defendants, Cainhoy Land & Timber, LLC and Southern Timber,

LLC, moved to dismiss the Complaint as to them on the basis that BP does not have standing to challenge their zoning because their properties are not – and are not alleged to be – adjacent to BP's property. Their properties are separated from BP's property by Tract 7's more than fifteen hundred acres and Flagg Creek. Furthermore, BP does not have standing through the public importance exception to standing. In addition, Respondents argued that BP's action was untimely as to Cainhoy Land & Timber, LLC and Southern Timber, LLC under S.C. Code Ann. § 6-29-760(D) because the zoning ordinances were enacted more than sixty days before BP filed its suit. On November 13, 2014, the Circuit Court granted Respondents' Motion to Dismiss Appellant's claims with prejudice, finding that BP is not an adjoining landowner under S.C. Code Ann. § 6-29-760(C), and alternatively, that the action is barred by the statute of limitations set out in Section 6-29-760(D). Thereafter, on November 24, 2014, BP filed a motion for reconsideration pursuant to Rule 59(e), SCRCP, which was denied on March 3, 2015. On April 1, 2015, BP filed a Notice of Appeal.

II. Statement of the Facts

BP asserted the following causes of action against Cainhoy Land & Timber, LLC and Southern Timber, LLC (hereinafter collectively referred to as "Respondents"): (1) declaratory judgment that City Ordinances 2014-25, 2014-26, 2014-82 violate the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (*See* R. pp. 27-30 ¶¶ 59-67); (2) declaratory judgment that City Ordinances 2014-25 and 2014-26 violate City Ordinance § 54-255 (*See* R. pp. 30-32 ¶¶ 68-72); (3) declaratory judgment that City Ordinances 2014-25 and 2014-26 violate City Ordinance § 54-254 (*See* R. pp. 33-36 ¶¶ 80-85); and (4) declaratory judgment that City Ordinances 2014-25 and 2014-26

violate the South Carolina Coastal Tidelands and Wetlands Act. (*See* R. pp. 38-39 ¶¶ 96-102). Plaintiff is asserting additional causes of action against the City of Charleston and Tract 7, LLC. (*See* R. pp. 32-33, 36-38, and 39-47 ¶¶ 73-79, 86-95, and 103-144). Plaintiff is also seeking injunctive relief against all Defendants. (*See* R. pp. 47-48 ¶¶ 145-153).

Specifically, the Complaint alleges that Plaintiff brings its claims pursuant to S.C. Code Ann. § 6-29-760(C), which provides that "[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party." (*See* R. p. 28 ¶ 61). The Complaint alleges that "Tract 7, LLC, Cainhoy Land & Timber, LLC and Southern Timber, LLC . . . are affiliated entities that share common ownership and management." (*See* R. p. 16 ¶ 7).[1] The Complaint states that these entities own three tracts of land that total approximately 9,087.22 acres, which are located off of Clements Ferry Road and Cainhoy Road in the Cainhoy Community of Berkeley County, South Carolina. (Defendants Cainhoy Land & Timber, LLC and Southern Timber, LLC's Motion to Dismiss, Ex. A).[2] BP has owned and operated a manufacturing facility located in Berkeley County since 1978, employing 230 employees and utilizing the services of an additional 200 contract employees. (*See* R. p. 17 ¶¶ 13-14).

The Complaint alleges that in 2013, Defendants, owners of these tracts of land, decided to develop them as a mixed use development that could include over 18,000

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[1] The owners of Tract 7, Cainhoy Land & Timber, LLC, and Southern Timber, LLC are in fact separate entities.

[2] Exhibit A to Defendants Cainhoy Land & Timber, LLC and Southern Timber, LLC's Memorandum in Support of Motion to Dismiss is an aerial photograph showing the approximate boundaries of the properties in relation to the BP property.

residential dwelling units. (*See* R. p. 18 ¶ 22). According to the Complaint, the three separate owners recommended amendments to the PUD Ordinance that were considered by the City Planning Commission and later by City Council. (*See* R. p. 19 ¶¶ 24-25). On November 6, 2013, City Council enacted the amendments to the PUD Ordinance. (*See* R. p. 20 ¶ 30). Thereafter, Tract 7, LLC, Cainhoy Land & Timber, LLC and Southern Timber, LLC submitted three separate Cainhoy PUD Master Plan applications to the City on January 24, 2014. (*See* R. p. 21 ¶ 31). The Planning Commission recommended approval of the master plan on February 6, 2014 and held a public hearing on the Cainhoy PUD Master Plan applications on February 11, 2014. (*See* R. p. 22 ¶ 37). BP was in attendance at the public hearing on February 11, 2014 and spoke with the owners of the proposed development following the meeting. (*See* R. pp. 23-24 ¶ 44).

On February 25, 2014, a representative of BP addressed City Council and requested a deferral of all ordinances related to the Cainhoy PUD Master Plans. (*See* R. p. 24 ¶ 45). After being asked to defer the ordinances, as a courtesy to BP, the owners agreed to defer action with respect to the Tract 7 Master Plan. (*See* R. pp. 23-24 ¶¶ 44). The ordinances related to Cainhoy Land & Timber, LLC and Southern Timber, LLC were not deferred and were adopted by City Council on February 25, 2014. Thereafter, BP and the property owners entered into negotiations for BP to purchase an area on Tract 7 between the contemplated residential development and BP's property to provide a buffer. (*See* R. p. 25 ¶ 48). As of June 17, 2014, BP and Tract 7, LLC had not reached an agreement about the sale of the land. (*See* R. pp. 25-26 ¶¶ 49-52). BP did not request City Council to defer adoption of the Tract 7, LLC Master Plan and Zoning Text at the meeting on June 17, 2014, and the City Council adopted Ordinance 2014-82 relating to

the Tract 7 Master Plan. (*See* R. p. 26 ¶¶ 53-54). No agreement between BP and Tract 7 has been reached to date. (*See* R. p. 27 ¶ 58).

ARGUMENTS

A. STANDARD OF REVIEW

When reviewing an order granting a motion to dismiss, "the appellate court applies the same standard of review implemented by the trial court." *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a motion to dismiss, "the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E. 2d 188 (2007), citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E. 2d 601, 602 (1995). "The question presented is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler*, 373 S.C. at 647, citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). If those facts and inferences would entitle the plaintiff to relief on any theory, then a dismissal for failure to state a claim is improper. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009).

Important for the purposes of this appeal, a motion under Rule 12(b)(6) does not admit legal conclusions alleged in the Complaint:

> The characterization of the activity as "outside the contract" is not an allegation of fact, but is an unsupported conclusion which is contrary to the admitted facts. Therefore, the trial judge properly disregarded it. *See Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct.App.2000) (finding Rule 12(b)(6), SCRCP, replaces the Code Pleading rules regarding demurrers and "retains the Code Pleading standard ... rather than the more lenient notice pleading standard found in the federal rules.") (citation omitted); *Charleston County Sch. Dist. v. S.C. State Ports Auth.*, 283 S.C. 48, 50, 320 S.E.2d 727, 729 (Ct.App.1984) ("A demurrer admits the facts

well pleaded in the complaint but does not admit the inferences drawn by the plaintiff from the facts, nor does it admit conclusions of law."); *Sease v. City of Spartanburg*, 242 S.C. 520, 527, 131 S.E.2d 683, 687 (1963) (finding allegations in the complaint which merely characterize the facts are mere conclusions which are not admitted by a demurrer).

Charleston County School District v. Laidlaw Transit, Inc., 348 S.C. 420, 425-26, 559 S.E.2d 362, 364-65 (S.C.App. 2001) (*cert. denied 2002).*

B. THE LOWER COURT PROPERLY GRANTED RESPONDENTS' MOTION TO DISMISS BP'S CLAIMS CHALLENGING ORDINANCES 2014-25 AND 2014-26 FOR LACK OF STANDING BECAUSE APPELLANT IS NOT AN ADJOINING LANDOWNER TO PROPERTY OWNED BY RESPONDENTS

The lower court properly granted Respondents' Motion to Dismiss BP Amoco Chemical Company's claims challenging Ordinances 2014-25 and 2014-26 for lack of standing. Appellant claims that it has statutory standing to pursue its claims in this matter pursuant to S.C. Code Ann. § 6-29-760(C), which provides that "[a]n ***owner of adjoining land*** or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party." (Emphasis added). Appellant argues that the lower court erred in dismissing BP's claims challenging Ordinances 2014-25 and 2014-26 because it incorrectly based its decision on whether BP owns land adjoining land owned by Respondents instead of analyzing whether Appellant is an adjoining landowner to property subject to the challenged zoning ordinances. Appellant's argument ignores the plain language of the standing statute at issue.

The South Carolina General Assembly has addressed the issue of standing in zoning cases in S.C. Code Ann. § 6-29-760(C). This statute provides a clear and objective statement as to who may contest a zoning amendment or ordinance. The South

Carolina Supreme Court has summarized the principles of statutory construction as follows:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). The language of Section 6-29-760(C) is unambiguous. In comparison, S.C. Code Ann. § 6-29-950, which is not applicable to this case but is instructive for statutory interpretation, provides standing to sue for violations of zoning ordinances and confers standing on owners of "adjacent or *neighboring property*." (emphasis added). S.C. Code Ann. § 6-29-760(C), under which BP claims standing, allows suit to be brought only by owners of adjoining property, not "neighboring" property. The difference in the plain language of the statute reflects legislative intent to narrowly limit standing to challenge zoning ordinances. (*See* R. p. 8). Appellant BP is not an adjoining landowner to property owned by Respondents and does not own land that is adjoining to the property that is subject to Ordinances 2014-25 and 2014-26. Therefore, S.C. Code Ann. § 6-29-760(C) does not confer standing on BP for claims against Respondents.

BP attempts to avoid the fatal defects in its standing argument by asserting that the property owned by each of the Respondents and by Tract 7, LLC should be considered as one piece of property so that it adjoins BP's property. This is nonsensical. In support of its argument, Appellant claims in its Initial Brief that the creation of the Church Preservation Zone under Ordinances 2014-25 and 2014-26 makes it clear that BP is an adjoining landowner to property rezoned by those ordinances because the Church Preservation Zone is on property owned by Tract 7, LLC. Nevertheless, the location of the Church Preservation Zone does not change the cardinal rules of statutory construction and does not modify the nature of the separate ownership and location of each parcel of property. Furthermore, BP's argument that Respondents' representative's statements are evidence that the three parcels of property should be treated as one parcel for standing purposes is misplaced. This newspaper article was first submitted to the lower court as part of BP's Motion for Reconsideration prior to filing this appeal, so it was not before the Court when it granted Defendants' motion to dismiss. Regardless, Defendants do not -- and have never -- denied that their parcels of land are part of a comprehensive land use plan. Yet, it is indisputable that each of the properties is owned by different owners, each of the parcels of land was zoned under its own Master Plan & Zoning Text, and three separate PUD master plan applications were submitted. They are, by any definition, separate parcels of land, and BP's property adjoins only Tract 7.

BP admits in its Complaint that "Ordinance 2014-25 . . . is the Cainhoy Land & Timber PUD Master Text, and Ordinance 2014-26 . . . is the Cainhoy-ST PUD Master Plan and Zoning Text." (*See* R. p. 24 ¶ 46). These Master Plans and Zoning Texts apply to different parcels of land, owned by affiliated but separate landowners, within what has

been referred to as Cainhoy Plantation. The Tract 7 PUD was adopted months after the PUDs for the property owned by Cainhoy Land & Timber, LLC and Southern Timber, LLC. Collectively, Cainhoy Land & Timber, LLC and Southern Timber, LLC own over 7,500 acres. Tract 7, LLC owns approximately 1,573.5 acres. Whether Tract 7, LLC, Cainhoy Land & Timber and Southern Timber, LLC are affiliated or share members in common is not important. Each LLC is a separate entity under the law, independent of its members. *See* S.C. Code Ann. § 33-44-201 ("a limited liability company is a legal entity distinct from its members."). BP is not an owner of land adjoining the subject property, and in fact, the closest property belonging to either Respondent to the property owned by BP is separated by Tract 7's over 1573.5 acre tract. Therefore, BP is statutorily barred from claiming standing under S.C. Code Ann. § 6-29-760(C).

Based on the foregoing, the lower court properly dismissed Appellant's claims against Respondents due to lack of standing under S.C. Code Ann. § 6-29-760(C).

C. THE LOWER COURT PROPERLY CONCLUDED THAT THE PUBLIC IMPORTANCE EXCEPTION TO THE STANDING DOCTRINE DOES NOT APPLY TO APPELLANT'S CLAIMS

BP erroneously claims that it has standing to bring its claims against Cainhoy Land & Timber, LLC and Southern Timber, LLC under the public importance exception to the standing doctrine. South Carolina "courts recognize an exception to the requirement that a plaintiff possess standing where 'an actual issue is of such public importance as to require its resolution for future guidance.'" *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014) (*quoting Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). The mere fact that an issue may be one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue. *Crews v. Beattie*,

197 S.C. 32, 49, 14 S.E.2d 351, 358 (1941). "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 v. Charleston County*, 380 S.C. 191, 199, 669 S.E.2d 337 (2008). In addition, the Court must consider the following competing concerns when determining when the exception applies:

> Citizens must be afforded access to the judicial to the address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuit.

Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). "In cases falling within the ambit of important public interest, standing is conferred 'without requiring the plaintiff to show he has an interest greater than other potential plaintiffs.'" *Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40 (S.C. 2012) (citing *Davis v. Richland Cnty Council,* 372 S.C. at 500, 642 S.E.2d at 741-42).

The South Carolina Supreme Court previously addressed whether zoning is important to the public so as to allow the public importance exception to apply. The case involved a challenged county zoning decision regarding cell-phone towers owned by business competitors. In determining that the public importance exception did not apply to the challenged zoning decision, the Court reasoned that:

> Of course zoning is a matter of public importance, but the same may be said of most legislative and executive actions. 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. There is nothing public about ATC's concern with a competing cell-phone tower. Here a local government followed proper procedure and rezoned a single piece of property for a narrow purpose and the only complaint comes from a nonadjoining landowner which just happens to be a competitor.

ATC South, 380 S.C. at 199. When determining whether the public importance exception to standing could apply to Appellant BP in the present case, the lower court considered whether the issues presented are of such public importance as to require resolution for future guidance. (*See* R. p. 9). Fundamentally, this dispute involves whether the zoning ordinances related to the property owned by Cainhoy Land & Timber, LLC and Southern Timber, LLC, Ordinance 2014-25 and Ordinance 2014-26, are invalid, null, and void as violative of the South Carolina Local Government Comprehensive Planning Enabling Act; City Ordinances 54-255 and 54-254; and the South Carolina Coastal Tidelands and Wetlands Act. Similar to Plaintiff in *ATC South*, there is nothing public about BP's concern with Ordinances 2014-25 and 2014-26, the pieces of property are not adjoining, and the local government followed proper procedure to rezone the property. *Id.*

In the Complaint, Appellant claims that City Ordinance 2014-25 and 2014-26, which rezoned the property owned by Cainhoy Land & Timber, LLC and Southern Timber, LLC, violated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "Enabling Act"). The Enabling Act granted local governments the authority to create planning commissions to implement comprehensive plans governing development in their communities. Furthermore, the Enabling Act permits the governing body to adopt zoning ordinances to help implement a comprehensive plan. S.C. Code Ann. § 6-29-720 (2004 & Supp. 2009). The zoning texts for the properties at issue were adopted after being carefully considered by City Council. South Carolina courts have held that "[r]ezoning is a legislative matter. *Harbit v. City of Charleston*, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009) (*citing Lenardis v. City of Greenville*, 316 S.C. 471, 450 S.E.2d 597, 597 (Ct. App. 1994). Further, there is a strong presumption that

zoning ordinances are valid and are valid in their application. *Petersen v. City of Clemson*, 312 S.C. 162, 439 S.E.2d 317 (Ct. App. 1993) (*citing Bob Jones Univ. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963)). The burden of proving a zoning ordinance to be invalid is on the party attacking it, and it is incumbent upon that party to show through clear and convincing evidence the arbitrary and capricious nature of the ordinance. *Petersen,* 312 S.C. at 165 (*citing Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1992)). The action of a municipality regarding the rezoning of property will not be overturned by a court if the municipality's decision is "fairly debatable." *Id.* Only where the municipality's action is "so unreasonable as to impair or destroy constitutional rights" will the Court declare the municipality's action unconstitutional. *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965). BP's challenge to the rezoning of property owned by Respondents Cainhoy Land & Timber, LLC and Southern Timber, LLC does not implicate a matter of public importance requiring court resolution for future guidance simply because Appellant BP does not agree with the zoning of the property. Appellant's "efforts to cloak its zoning challenge as a matter of 'public importance' for the purpose of acquiring standing finds no traction in this record." *ATC South*, 380 S.C. at 200.

Appellant BP cites to several cases to support its argument that this matter rises to the level of public importance to warrant standing because the dispute goes beyond the private parties and involves illegal or unconstitutional government action. Paradoxically, BP cites *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014) for the proposition that the public importance exception applies when a plaintiff's causes of action calls into question the

constitutionality or legality of government action. The determination as to whether the public importance exception "applies in a particular case turns on whether resolution of the dispute is needed for future guidance." *Carnival Corp.*, 753 S.E.2d at 846 (*citing ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008)). The public policy exception to the standing requirement is applied only rarely. As the Supreme Court has most recently explained, "[s]tanding cannot be granted to every individual who has a grievance. . . . Courts are not bodies for the resolution of public policy and generalized grievances. Harms suffered by the public at large, like those Plaintiffs allege here, are to be remedied by the legislative and executive branches. If existing laws and regulations or their enforcement fail to protect the public from harm, it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box." *Carnival Corp.*, 753 S.E.2d at 853 (*citing Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). In the present case, there is no important constitutional or legal issue that needs to be resolved for future guidance to warrant standing because this suit is not required to have an important matter vindicated and clarified. (*See* R. p. 10). Appellant BP has a pending suit against Tract 7, LLC and the City of Charleston and can resolve those potential issues through that litigation.

In addition, none of the cases cited by Appellant involve zoning issues or statutes whereby the issue of standing is addressed in a specific statutory provision. Local zoning determinations are distinguishable from the authority cited by Appellant. *See Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014); *ATC South v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008). BP further claims that the public importance exception to standing applies because City

Ordinances 2014-25 and 2014-26 grant the developer of Cainhoy Plantation the authority to unilaterally control future zoning ordinances over the subject property in violation of the non-delegation and separation of power doctrines of the South Carolina Constitution. (*See* R. pp. 32-33 ¶¶ 73-79). These allegations in the third cause of action are asserted against the City of Charleston only and do not impact the Court's decision about whether Appellant BP has standing under the public importance exception to bring these claims against Respondents. To the extent that this Court may entertain Appellant's claims, Appellant BP claims that Section 2.1 of the Cainhoy Land & Timber PUD Master Plan and Zoning Text and the Cainhoy-ST PUD Master Plan and Zoning Text grants the developer of Cainhoy Plantation the authority to unilaterally control future zoning ordinances over the subject property in violation of the non-delegation and separation of power doctrines of the South Carolina Constitution. BP relies on Section 2.1 of the Zoning Texts to support these contentions. This reliance is misplaced. Section 2.1 simply acknowledges that the City Zoning Ordinance applies to the PUDs, except where varied by the Master Plan Zoning Texts. The language does not delegate any authority to the owners of PUD properties and only reflects the interplay between a PUD and a zoning ordinance.

Because BP's claims against Respondents are generally limited to the enactment of zoning specific to the property owned by Respondents, the lower court properly ruled that the claims BP asserts relating to these Respondents do not raise such important public issues that constitutional and statutory standing requirements should be ignored. Furthermore, BP has not raised any public policy issue in its claims against Cainhoy Land & Timber, LLC and Southern Timber, LLC that it has not also raised and is

litigating in its suit against Tract 7 and the City of Charleston. If, and to the extent that, the Court finds that BP's claims are so important that they must be heard for the benefit of the public, they can and are being heard in the case against Tract 7 and the City of Charleston.

Therefore, the lower court properly concluded that the issues in this case were not of such public importance as to require resolution for future guidance and dismissed Appellant's claims against Respondents due to lack of standing under the public importance exception to the standing doctrine.

D. THE LOWER COURT PROPERLY RULED THAT THE STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 6-29-760(D) BARS APPELLANT'S CLAIMS

Appellant's claims were untimely as to Respondents Cainhoy Land & Timber, LLC and Southern Timber, LLC. S.C. Code Ann. § 6-29-760(D) provides, "No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." The Complaint alleges that Ordinances 2014-25 and 2014-26, which pertain to these Respondents, were enacted on February 25, 2014. (*See* R. p. 24 ¶¶ 45-46). This lawsuit was not filed until August 15, 2014, which is more than sixty days after the enactment of these ordinances. For this reason, this suit is untimely as to Respondents.

In the Complaint, BP broadly alleges that there were compliance issues with the notice requirements set forth by S.C. Code Ann. §§ 6-29-760 and 6-29-1130(B). BP's reliance on the 30 day notice provisions of S.C. Code Ann. § 6-29-1130(B) of the South

Carolina Local Government Planning Enabling Act (the "Enabling Act") is misplaced. (*See* R. p. 20 ¶ 28). That Article governs land development regulations that pertain to changing land characteristics by redevelopment, construction or subdivision and does not apply to zoning ordinances. *See* S.C. Code Ann. § 6-29-1110(1). The City of Charleston substantially complied with the notice requirements of the statute setting forth the procedure for enactment or amendment of a zoning regulation enumerated in Section 6-29-760(A). Section 6-29-760(A) applies specifically to enactment or amendment of zoning regulations or maps and requires "at least *fifteen days'* notice of the time and place of the public hearing . . . given in a newspaper of general circulation." S.C. Code Ann. § 6-29-760(A) (emphasis added). BP's Complaint alleges that the City published notice of the agenda containing the proposed amendments in *The Post and Courier* on October 6, 2013, and a public hearing was held by City Council more than 15 days later in its October 22, 2013 meeting. (*See* R. p. 20 ¶¶ 27 and 28). Therefore, the City complied with the notice requirement of S.C. Code Ann. § 6-29-760(A).

South Carolina law does not specifically define substantial compliance in regard to S.C. Code Ann. § 6-29-760(D). However,

> American jurisprudence generally holds substantial compliance is met if the purpose of the statute is achieved. *See James v. County of Kitsap*, 115 P.3d 286, 293 (Wash.2005) (substantial compliance means a court should determine whether a statute has been followed sufficiently so as to carry out the intent for which the statute was adopted); *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 105 (Iowa 2004) (in deciding whether a party has substantially complied with a statutory requirement, the court evaluates whether the asserted compliance assures that the reasonable objectives of the statute will be met); *Rosenblatt v. City of Houston*, 31 S.W.3d 399, 404 (Tex.Ct.App.2000) ("Substantial compliance has been defined to mean performance of the essential requirements of a statute."); *Morrow v. Bobbit*, 943 S.W.2d 384, 389 (Tenn.Ct.App.1996) (substantial compliance is met when it is reasonable to conclude that the objective sought by the statute has been fully attained); *Thrash v. City of Asheville*,

> 393 S.E.2d 842, 845 (N.C.1990) ("Substantial compliance means compliance with the essential requirements of the statute."); *Sabatini v. Jayhawk Const. Co., Inc.*, 520 P.2d 1230, 1234 (Kan.1974) ("Substantial compliance requires compliance in respect to the essential matters necessary to assure every reasonable objective of the statute."); *Brow v. Sherwin–Williams Co.*, 109 N.E.2d 864, 866–67 (Ohio 1952) (the requirements of a procedural statute are met when the municipality substantially complies with the statute's procedural mandates, which requires the municipality to act in a way to achieve the purpose of the statute).

Responsible Economic Development v. Florence Consolidated Municipal Planning Comm'n, 2005 WL 7084861 (S.C. App.)(unreported). The South Carolina Supreme Court has also followed the same interpretation of substantial compliance. *See, e.g., Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 164–65, 547 S.E.2d 862, 866 (2001) (looking to the clear language and express purpose of a federal act to determine whether substantial compliance occurred); *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) (looking to the purpose of a statute in determining whether substantial compliance occurred). The language and purpose of the statute must be considered to determine whether there was substantial compliance.

S.C. Code Ann. §§ 6-29-760(A) and (B) set forth the notice requirements for amendments to zoning regulations or maps. Section 6-29-760 enumerates the requirements for public hearings. *Id.* The public hearings must be advertised and in cases involving rezoning, conspicuous notice must be posted on or adjacent to the property affected. *Id.* Even if, as the Complaint broadly alleges, the City of Charleston failed to comply with any of these procedures, the Complaint does not allege that it was prejudiced by any failure of notice, so as to overcome the substantial compliance standard set forth in the statute. *See Responsible Economic Development*, 2005 WL 7084861, *3 (S.C. App.) (unreported) (technical noncompliance of the signage does not defeat a

finding of substantial compliance); *Morrow v. Bobbit*, 943 S.W.2d at 389 (Tenn.Ct.App. 1996).

In order to determine whether there was substantial compliance with the notice requirements of S.C. Code Ann. § 6-29-760(B) with regard to the ordinances pertaining to the land owned by Respondents Cainhoy Land & Timber, LLC and Southern Timber, LLC, it is necessary to consider whether the objectives sought to be achieved by the notice requirements were met. The purpose of any posting requirement is to put interested parties on notice of a public hearing. Furthermore, S.C. Code Ann. § 6-29-760(B) requires "a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property." The City Planning Commission had a public hearing on February 6, 2014, wherein the Planning Commission recommended approval of the Cainhoy PUD Master Plans. (*See* R. p. 21 and 22 ¶¶ 33 and 37). A BP representative was in attendance at this meeting. Thereafter, on February 11, 2014, the City Council held a public hearing on the Cainhoy PUD Master Plans during which many individuals expressed opinions about the Cainhoy PUD Master Plans, including individuals associated with historical preservation organizations, members of the news media, and residents of the Cainhoy, Huger, and Wando Communities. (*See* R. p. 23 ¶¶ 39-42). Appellant admits that it was in attendance at the public hearing on February 11, 2014 and spoke with the property owners following the meeting. (*See* R. p. 23 ¶ 44). It further admits that on February 25, 2014, a representative for BP addressed City Council and requested that they defer enacting the ordinances.

(*See* R. p. 24 ¶ 45). Due to BP's and other interested parties' attendance at the public hearings, it is clear that the notice was adequate to all interested parties, and the objectives contemplated by Sections 6-29-760(A) and (B) were satisfied.

To hold that BP's technical notice argument tolls the limitations period would effectively nullify the statute of limitations for zoning ordinances and undermine the important public purpose that it serves. Nobody could ever safely develop property in reliance upon its zoning classification if the zoning is subject to challenge at any time because of a technical, latent notice defect in the enactment of the ordinance. Public policy demands that land use ordinances be stable and reliable, and the short limitations period that the General Assembly imposes serves this important purpose.

Based on the foregoing, the lower court properly ruled that the statute of limitations bars Appellant's claims.

E. THE LOWER COURT PROPERLY DISMISSED APPELLANT'S CLAIMS WITH PREJUDICE

BP claims that the circuit court improperly dismissed BP's claims that pertain to Cainhoy Land & Timber, LLC and Southern Timber, LLC with prejudice. Because BP does not have standing, statutory or otherwise, to assert its claims against these Respondents and because BP's challenge to their zoning ordinances is untimely as a matter of law, the circuit court properly dismissed the claims with prejudice. The Court's rulings were based upon the applicable law, not upon defective pleading. Regardless, BP does not say how it would plead differently to avoid the legal inadequacies of its claims against Respondents Cainhoy Land & Timber, LLC and Southern Timber, LLC. Furthermore, even if BP was allowed to re-plead to cure the deficiencies in its claims, it would not be able to cure those deficiencies because it is not an adjoining landowner to

the property owned by Cainhoy Land & Timber, LLC and Southern Timber, LLC and this zoning dispute is not a matter of sufficient public importance to waive BP's lack of standing. BP's property is inarguably separated from Cainhoy Land & Timber, LLC and Southern Timber, LLC by Tract 7, LLC's 1,573.5 acre property and Flagg Creek. Moreover, BP filed this action more than sixty days after the enactment of Ordinances 2014-25 and 2014-26, which exceeded the timeframe during which it could challenge these ordinances. Therefore, re-pleading would not remedy BP's timeliness issue.

In addition, BP claims that the causes of action against Respondents were dismissed because Appellant failed to plead that it was prejudiced by the City's failure to substantially comply with the applicable notice requirements. While the circuit court noted that the Complaint did not allege that Appellant BP was prejudiced by any alleged failure of substantial compliance with the notice requirement, it did not rely on defective pleading to dismiss BP's claims against Respondents. In fact, the allegations of the Complaint affirmatively demonstrate that BP suffered no prejudice from any notice defect because it was fully aware of and participated in the proceedings. The lower court carefully considered and discussed the process taken by the City Planning Commission prior to the passage of the ordinances, considered the public policy of finality and certainty with regard to land use, and concluded that there was substantial compliance with S.C. Code Ann. §§ 6-29-760(A) and (B).

Therefore, the lower court properly dismissed Appellant's claims against Respondents with prejudice.

CONCLUSION

For the foregoing reasons, this Court should affirm the lower court's dismissal of BP Amoco Chemical Company's claims against Cainhoy Land & Timber, LLC and Southern Timber, LLC.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
The Honorable Kristi L. Harrington, Circuit Court Judge

Lower Court Case No. 2014-CP-08-1840
Appellate Case No. 2015-000713

BP Amoco Chemical Company .....Plaintiff/Appellant,

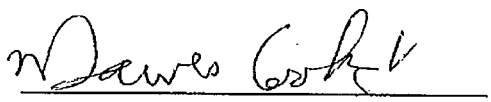
v.

City of Charleston; Tract 7, LLC; Cainhoy Land & Timber, LLC; and Southern Timber, LLC.....Defendants,

Of whom Cainhoy Land & Timber, LLC and Southern Timber, LLC are .....Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.



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