

**RECEIVED**

**Jul 12 2021**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

---

Case No. 2015-CP-26-8179  
Appellate Case No. 2021-000136

---

Robert DeCiero, a resident of Long Bay Estates Subdivision,  
Myrtle Beach, South Carolina .....Appellant,

v.

Horry County, State of South Carolina.....Respondent.

---

FINAL BRIEF OF APPELLANT

---

Thomas C. Brittain, Esq. (SC Bar No. 893)  
The Brittain Law Firm, P.A.  
4614 Oleander Drive  
Myrtle Beach, South Carolina 29577  
843-449-8562  
Attorney for Appellant

**TABLE OF CONTENTS**

	<u>PAGE</u>
Table of Authorities .....	ii
Statement of Issues on Appeal .....	1
Statement of the Facts .....	2
Statement of the Case .....	5
Standard of Review .....	7
 Arguments	
1. DID THE CIRCUIT COURT ERR IN FAILING TO REQUIRE HORRY COUNTY TO ABIDE BY ITS ORDINANCE REQUIRING ENFORCEMENT OF ZONING REGULATIONS?.....	8
2. DID THE CIRCUIT COURT ERR IN FINDING THAT THE PLAINTIFF MADE NO INVESTIGABLE COMPLAINT TO THE COUNTY AND THEREFORE THERE WAS NO “ALLEGED VIOLATION” OF THE ZONING ORDINANCE? .....	10
 Conclusion .....	 14
Certificate of Counsel .....	15

**TABLE OF AUTHORITIES**

**CASES**

ION, LLC v. Town of Mt. Pleasant, 526 S.E. 2d 716 (S.C. Sup. Ct. 2000) .....7

**RULES**

Article IV Section 431, Horry County Zoning Ordinance.....2, 5  
Article XIII Section 1300, Horry County Zoning Ordinance .....2, 5  
Article XIII Section 1306, Horry County Zoning Ordinance .....10, 11

**STATEMENT OF ISSUES ON APPEAL**

- 1. DID THE CIRCUIT COURT ERR IN FAILING TO REQUIRE HORRY COUNTY TO ABIDE BY ITS ORDINANCE REQUIRING ENFORCEMENT OF ZONING REGULATIONS**
- 2. DID THE CIRCUIT COURT ERR IN FINDING THAT THE PLAINTIFF MADE NO INVESTIGABLE COMPLAINT TO THE COUNTY AND THEREFORE THERE WAS NO "ALLEGED VIOLATION" OF THE ZONING ORDINANCE**

## STATEMENT OF THE FACTS

On June 2, 2015, counsel for Appellant, Thomas C. Brittain, sent to representatives for the Respondent, Janet Carter and County attorney Arrigo Carotti, a correspondence advising that, on behalf of certain Long Bay Estates residents, he was filing a formal complaint regarding violations of specific Horry County Codes by several homeowners within that subdivision (R. pp. 189-190). At that time, Mr. Brittain requested that the County immediately investigate the matter and enforce the provisions of the ordinances of Horry County in order to assure compliance. This was not the first time the County was made aware of these violations by Appellant. Appellant had appealed to the County on many occasions regarding these violations and had repeatedly requested that the County enforce their own ordinances, all to no avail.

By correspondence dated June 12, 2015, Ms. Carter responded that Horry County had no specific ordinance prohibiting short-term rentals in established neighborhoods (R. p. 191). She further stated that the matter had been discussed previously but that no ordinances were brought forward due to concerns such as the County's inability to police and enforce such an ordinance.

On July 13, 2015, Appellant and his counsel, Mr. Brittain, met with representatives of Respondent including Zoning Administrator Rennie Mincey to discuss the multiple property owners located within Long Bay Estates Subdivision that were violating Article IV Section 431 of the Horry County Zoning Ordinance by allowing large groups of people, many unrelated, to rent these homes on a weekly basis. Further, that these violations created a public nuisance for the residents of this subdivision including, but not limited to, traffic nightmares, late-night parties, congestion and excessive noise levels. During this meeting, Appellant and Mr. Brittain requested that Respondent enforce their zoning ordinances, as they are required to do in accordance with Article XIII Section 1300 of the Horry County Zoning Ordinance.

In follow up to this meeting, on August 18, 2015, counsel for Appellant emailed to Mr. Mincey and Mr. Carrotti, a Memorandum further outlining Appellant's position on the matter (R. p. 198) and on September 17, 2015, mailed a letter to Ms. Carter and Mr. Mincey following up on the matter. On September 21, 2015, Mr. Brittain received a written response to his Memorandum from Ms. Carter stating there was no ordinance in Horry County prohibiting short term rentals; however, she failed to address the Horry County Ordinance that restricts the number of persons allowed to reside in a single family home or the County's failure to enforce that Ordinance (R. p. 197).

On November 13, 2015, Appellant filed with the Horry County Court of Common Pleas (with Civil Action No. 2015-CP-26-8179) an action against Respondent for their failure to enforce the applicable zoning ordinances within Long Bay Estates (R. pp. 10-14). On December 16, 2015, Respondent filed its Answer.

On August 20, 2020 the nonjury trial of this action was held before The Honorable Benjamin H. Culbertson (R. pp. 15-144). Testimony was offered by the Plaintiff Robert DeCiero and two witnesses for the Defendant, Janet Carter and David Schwerd. Mr. Schwerd, the current zoning official for the County, admitted under oath that the County has an obligation and a duty to investigate complaints (R. p. 130, line 5; p. 118, lines 4-18) and that only recently, subsequent to the Plaintiff's complaints, was a written form required for such complaints (R. p. 130, line 22- p. 132, line 3). Further, the County does not oppose the fact that SF6 zoning is required in the Long Bay Estates Subdivision area and yet the County has never done a thing to investigate or take corrective action for the misuse of the properties located therein despite the repeated complaints of Robert DeCiero as well as other residents.

On September 23, 2020 Judge Culbertson issued an Order denying the County's responsibility and duties in connection with this case (R. pp. 3-6). On September 29, 2020 Plaintiff filed a Motion to Reconsider stating that Judge Culbertson's Order lacked clarification with regard to the duties and responsibilities of Defendant in investigating and enforcing applicable zoning regulations (R. pp. 145-146).

On January 15, 2021, Judge Culbertson issued a Form 4 Order denying Plaintiff's Motion to Reconsider (R. pp. 7-9). This appeal followed.

## STATEMENT OF THE CASE

Long Bay Estates is just south of Myrtle Beach, South Carolina. It is one of the oldest residential neighborhoods east of the Intracoastal Waterway in Horry County.

This sleepy little community was designed by the Ward family and others and the great Franklin Burroughs, as attorney, set forth deed restrictions and covenants ensuring for all time a sleepy little community of residential living.

As an interesting twist to the times, duplexes were allowed under certain circumstances but the tenor of residential deed restrictions are set forth to ensure a residential experience and not a tourist driven multi-family property zone environment.

Furthermore, this subdivision has been under constant assault from those who have attempted to skirt, ignore and avoid the deed restrictions that are in place and to that end residents of Long Bay Estates succeeded in the case of John Musick v. Thomas L. Dicks and Robert E. Dicks, Jr. (Case No. 2004-CP-26-2075/Appellate Case No. 2012-212773) where the Court of Appeals determined the deed restrictions were in fact valid, they had been properly set forth and were binding on all parties associated with ownership in the subdivision.

One of the troubling issues in coastal communities, Horry County, South Carolina included, is the encroachment and abuse of zoning regulations and deed restrictions to facilitate financial gain by those who build inordinate sized dwellings within the restricted zoning area and lease to numerous families, six, seven or more at a time.

Horry County has zoning ordinances and has placed upon herself the obligation to enforce them (see Article IV Section 431 and Article XIII Section 1300 of the Horry County Zoning Ordinance (R. p. 177) and its language which is set forth in Appellant's Initial Brief) and to that end the Appellant in this action and others has sought to have Horry County enforce its Zoning Ordinances in the Long Bay residential area.

---

There are huge numbers of cars, heavy traffic, litter problems, behavior problems, noise problems of a constant nature based on the density that is associated with the violation of the zoning regulations and the deed restrictions.

To that end, Appellant set forth in an action against Respondent seeking specific performance requiring Respondent to enforce its own zoning regulations under the law.

## STANDARD OF REVIEW

The Appellate Court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission. S.C. Code Ann. §14-8-200. The Court of Appeals has jurisdiction to correct errors of law in both law and equity actions. *I'ON, LLC v. Town of Mt. Pleasant*, 526 S.E. 2d 716 (S.C. Sup. Ct. 2000)

## ARGUMENT

### I. DID THE CIRCUIT COURT ERR IN FAILING TO REQUIRE HORRY COUNTY TO ABIDE BY ITS ORDINANCE REQUIRING ENFORCEMENT OF ZONING REGULATIONS

The court's order in connection with the above referenced matter is in error in several regards.

The testimony before the court without any contradiction is that Robert DeCiero, who is a long-suffering resident of Long Bay Estates Subdivision, which has seen an attack on its neighborhood status based on violations of zoning and restrictive covenants over the years, made ample objections to Horry County officials, including Janet Carter and others about the activities violating SF6 zoning in the area.

It is interesting to note that the County doesn't ever even oppose the fact that SF6 zoning is required in the area set forth within his complaints and yet have never done a thing to investigate or take corrective action for the misuse of the property.

The court can surely understand that with eight to ten homes having seven to eight families in them, the traffic in the area has become unbearable.

This is the reason for density related zoning ordinances (SF6) (R. pp. 178-179). Horry County has set forth in its ordinance that the County has a duty and an obligation to investigate and remedy any such complaints (R. p. 177).

It is clear from the testimony of the county officials and the presentation of the lawyer on behalf of the county that they readily have decided that this is too complex a matter, it ruffles too many feathers, and they are just not going to abide by the requirements of their ordinance.

The testimony in this case is uncontroverted. DeCiero made numerous complaints about violations of the zoning ordinance to the County, as did other residents of Long Bay Estates Subdivision.

All of a sudden it became an issue that they “weren’t in writing”. County officials further tried to avoid this responsibility before trial by claiming the County had no duty with regard to short-term rentals (this was a distraction; the short-term rental issue was not germane). Density in violation of the ordinance was and continues to be the issue. These blatant violations of the zoning ordinance in the Long Bay Estates Subdivision, with regard to density, should be properly investigated and remedied by the County.

Furthermore, the current zoning official for the County admitted under oath that the County had an obligation and a duty to investigate such complaints and that only recently, subsequent to the plaintiff’s complaints, was a written form required (R. p. 130, line 22-p. 132, line 3).

The court improperly denied the County’s responsibility and duties in connection with this case. This is a complaint that was made at the time legally, there is no testimony to contradict it, the failure to pursue it is a violation of the ordinance and the plaintiff has substantiated damages based on the same. The order should require the County to investigate such complaints by an order responsive to the Writ.

**II. DID THE CIRCUIT COURT ERR IN FINDING THAT THE PLAINTIFF MADE NO INVESTIGABLE COMPLAINT TO THE COUNTY AND THEREFORE THERE WAS NO “ALLEGED VIOLATION” OF THE ZONING ORDINANCE**

Horry County Zoning Ordinance 1306 states “whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate, and take whatever action is necessary to assure compliance with the ordinance (R. p. 213). (Ord. No. 51-99, § 31, 12-7-99)

This ordinance simply states that a person **may** file a written complaint, and that such complaint stating the causes and basis thereof shall be filed with the Zoning Administration. There is no compulsory language in this ordinance applying to the taxpayer (or person). Emphasis added. Nor is there any requirement or specifications, or definition with respect to what “stating fully the causes and basis of the complaint is.” In addition, while it states that a person may file a written complaint, the ordinance does not prohibit a person from making verbal complaints, via telephone, in person or otherwise. Respondent’s own witness, Ms. Carter admitted this at trial, stating “if someone called and said right now today this is the situation and it sounded as though something was going on in violation of the zoning ordinance, we could send someone out to check it.” (R. p. 104, lines 5-9). Yet, the entirety of the Circuit Court’s order rests on the fact that Appellant made no “investigable complaint” for which the County had a duty to investigate. Clearly, the County can investigate based on a verbal complaint, because Ms. Carter testified to that specifically. (R. p. 104, lines 5-9).

Moreover, even if this zoning ordinance is interpreted to mean that a written complaint is required the ordinance does not define what constitutes a complaint; nor does it delineate what

must be in the complaint. Likewise, Respondent have not cited any case law or other controlling rule, ordinance, etc. establishing what constitutes a “complaint” as used in zoning ordinance 1306. Moreover, the former Planning Director for the County, Ms. Carter testified that no investigation was done after receiving written communications from attorney Tommy Brittain regarding this matter, because the county never received a specific complaint with regard to any particular property (R. p. 103, line 10-p. 104, line 13). Yet, Horry County Ordinance 1306 does not require any specific details, including current violation, particular property, etc. (R. p. 213). Simply because Ms. Carter, the Horry County Planning Director, testified that specific property details and a current violation was required in order for a “investigable complaint” to have been filed, the ordinance simply does not require a person to state with specificity those details. Simply because it has been the County’s practice to require specific time, places, address, etc, does not mean that that information is required in order for the County to do the job it is being paid to do with taxpayer money.

The Circuit Court found that an investigable complaint was never filed. However, the ordinance does not use the term investigable complaint. That is simply a term that the County has come up with. The Circuit Court erred in holding that Plaintiff made no investigable complaint and therefore there was no alleged violation to remedy, because there is no requirement in the ordinance itself that the complaint made be “investigable.” (R. pp. 3-6). There is not even a requirement that the complaint be made in writing, because in fact, as Ms. Carter testified, they have and can investigate verbal complaints (R. p. 104, lines 11-13).

Appellants made many complaints, both verbal and written to the County regarding this issue. Mr. Deciero, testified at the hearing that he in fact contacted John Weaver with the County many times, but never received a call back (R. p. 27, line 22-p. 28, line 12), and also spoke to Ms.

Carter multiple times wherein he complained about zoning violations. (R. p. 31, line 18-p. 32, line 20). He further testified he finally hired The Brittain Law Firm and that the following written complaints were made: First, prior to filing a lawsuit, Thomas C Brittain, attorney for Plaintiff sent written correspondence to Janet Carter and Arrigo Carotti on June 2, 2015 (R. pp. 189-190) and June 19, 2015 (R. p. 192) and a detailed Memorandum on August 17, 2015 complaining about the alleged zoning violations (R. p. 198). Second, the filing of a lawsuit is, by definition a complaint, which was served on the attorney for the County, and certainly would constitute a complaint as stated in the ordinance, which in turn put the County on notice of the zoning violations, yet even after receiving the Complaint, the County as of the date of the hearing had yet to even look into the matter.

The Horry County Zoning Ordinance as written does not require a person to file a written complaint in order to have an alleged zoning violation looked into (R. p. 213). Ms. Carter on behalf of the County acknowledged such in her testimony (R. p. 104, lines 11-13). The evidence clearly supports that Appellant made multiple verbal complaints to the County alleging zoning violations. Yet, no action was taken by the County. The County's reason for failing to take action, is that Appellant's complaints were not written. However, Appellant sent several written complaints to the County including serving it with an official Summons and Complaint (R. pp. 10-14) regarding the zoning issues and its failure to enforce or investigate said allegations. The County then claims that Appellants written complaints were not specific enough. Yet, the ordinance does not list any requirements as to details or specific items that must be included by the taxpayer for the County to investigate. Maybe most interesting of all, is that after this lawsuit was filed, the County did in fact develop a form that is to be completed by a person alleging a

zoning violation. This official form certainly requires details regarding property, times etc. but this form was not available at the time Appellant was making his complaints.

The Circuit Court erred in finding that Appellant made no investigable complaint and therefore the County had no duty to enforce its own zoning ordinance. The evidence clearly shows that Appellant not only made multiple verbal complaints, but several written complaints as well. Without any supporting documents, case law, ordinances, etc., other than a form created well after this lawsuit was filed, the County simply cannot claim that in order for it to have a duty to investigate, the Complaint must be written and contain specific details. Simply put, the County cannot refuse to investigate because the complaint is not specific enough to its liking.

## CONCLUSION

No entity, even a County or State or this Nation, is above the law especially when an ordinance of the County pertaining to its obligations and duties requires investigation and enforcement.

Respectfully submitted,



---

Thomas C. Brittain, Esq.

(SC Bar No. 893)

The Brittain Law Firm

4614 Oleander Drive

Myrtle Beach, SC 29577

Telephone: (843) 449-8562

Dated: July 12, 2021

**RECEIVED**

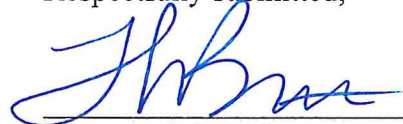
**Jul 12 2021**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

I hereby certify that Appellant's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



Thomas C. Brittain  
(SC Bar No. 893)  
The Brittain Law Firm, PA  
4614 Oleander Drive  
Myrtle Beach, SC 29577  
Telephone: (843) 449-8562

Dated: July 12, 2021