

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
CITY OF HARDEEVILLE,)
)
)
Plaintiff,)
)
vs.)
)
JASPER COUNTY, SOUTH CAROLINA,)
JASPER COUNTY TREASURER, and)
JASPER COUNTY AUDITOR,)
)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE No.: 2021-CP-27-00028

RECEIVED
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SC Court of Appeals

AND

JASPER COUNTY, SOUTH CAROLINA,)
)
Cross Co-Plaintiff,)
)
VERNA GARVIN, in her official capacity as)
Jasper County Treasurer,)
)
Cross Co-Plaintiff, and)
)
MONICA WILSON, in her official capacity as)
Jasper County Auditor,)
)
Cross Co-Plaintiff)
)
vs.)
)
CITY OF HARDEEVILLE, NICKEL PLATE)
ROAD, LLC, and BEAUFORT COUNTY,)
SOUTH CAROLINA,)
)
Cross-Defendants)

**ORDER OF THE COURT
FOR
DEFENDANT JASPER COUNTY**

This matter came before the Court pursuant to Defendant Jasper County's ("Jasper") Motion for Partial Summary Judgment and Plaintiff City of Hardeeville's ("Hardeeville") Motion for Summary Judgment. Both parties requested in their summary judgment motions that the Court rule on the parties' respective declaratory judgment causes of action.

This case presents the Court with a number of issues that require the proper interpretation of complex and arcane statutory and constitutional provisions governing economic development and public finance in South Carolina. Although Jasper's and Hardeeville's requests for a declaratory judgment require the Court to consider a number of separate sub-issues, both parties have essentially asked the Court for answers to the same two questions: (1) what is legally required for the proper development of a multi-county industrial park as contemplated by Article VIII, Section 13(D) of the South Carolina Constitution and Title 4 of the South Carolina Code; and (2) if the development of a multi-county industrial park satisfies these constitutional and statutory requirements, what is the legal effect on the property tax status of property located within that park.

Having reviewed the parties' pleadings, motions, affidavits, and other filings and having considered the arguments of counsel, the Court finds in favor of Jasper and grants its Motion for Partial Summary Judgment for the reasons set forth below.

STATEMENT OF THE CASE

On February 1, 2021, Hardeeville filed a Complaint against Jasper, the Jasper County Treasurer ("Treasurer"), and the Jasper County Auditor ("Auditor") (collectively, the "Jasper Defendants"). On April 16, 2021, Hardeeville filed a Motion to Amend Complaint. On June 21, 2021, the Court entered the parties' Consent Order to Amend Complaint. Hardeeville's Amended Complaint sought injunctive relief and a declaratory judgment, and requested that the Court determine and declare the rights and legal relations of the parties as it relates to certain property

annexed by Hardeeville that is located within a multi-county industrial park jointly developed by Jasper and Beaufort County (the “Park”).

On July 21, 2021, the Jasper Defendants filed their Answer to Hardeeville’s Amended Complaint and Amended Cross Complaint (“Answer and Counterclaim”). In the Answer and Counterclaim, the Jasper Defendants requested a declaratory judgment from the Court and asserted a cause of action for unjust enrichment against Hardeeville. The Jasper Defendants’ counter-request for a declaratory judgment similarly asked the Court to determine and declare (i) the rights of the parties with regard to the revenue arising from Park property, including Park property annexed by Hardeeville; (ii) whether Park property is exempt from *ad valorem* taxes; (iii) whether the *ad valorem* taxes on Park property are converted to fee-in-lieu of taxes as a matter of law; and (iv) whether the revenues derived from Park property must be distributed in the manner provided in the underlying park agreement between Jasper and Beaufort County. On July 27, 2021, Jasper filed a Motion for Partial Summary Judgment (“Jasper’s Motion”) moving the Court for judgment as a matter of law on these issues.

After Jasper’s Motion was filed, Hardeeville served its First Set of Interrogatories and First Set of Requests for Production on Jasper on August 9, 2021. In response, Jasper filed a Motion for Protective Order on August 24, 2021, requesting an order staying the time for Jasper’s answers and objections to Hardeeville’s discovery requests until at least thirty (30) days after the Court enters a decision on Jasper’s Motion for Partial Summary Judgment.

Then, on October 15, 2021, Hardeeville filed its own Motion for Summary Judgment (“Hardeeville’s Motion”), a Response to Jasper’s Motion for Partial Summary Judgment (“Hardeeville’s Response”), and the Affidavit of Michael Czymbor. In Hardeeville’s Motion, Hardeeville argued that there are no genuine issues of material fact, this dispute involves basic statutory interpretation and contract law, and the Court could find as a matter of law that the

underlying park agreement was invalid and did not bind Hardeeville. In Hardeeville's Response to Jasper's Motion, Hardeeville alternatively argued that there is a genuine issue of material fact as to whether the underlying park agreement is valid, and until Jasper responded to Hardeeville's discovery requests, granting summary judgment would be premature at this stage of the litigation.

On October 25, 2021, Jasper filed a Memorandum of Law in Support of its Motion for Partial Summary Judgment and Reply to Hardeeville's Response in Opposition. Also on October 25, 2021, Jasper filed a Memorandum of Law in Opposition to Hardeeville's Motion for Summary Judgment and the Affidavit of Records Custodian Wanda Hendrix Simmons.

On October 27, 2021, the Court held a hearing on Jasper's and Hardeeville's cross-motions for summary judgment. On November 11, 2021, Nickel Plate Road, LLC, with the permission of the Court, filed a supplemental Memorandum in Opposition to Hardeeville's Motion for Summary Judgment.

FINDINGS OF FACT

I. THE CREATION OF THE PARK

On February 7, 2000, Jasper enacted an ordinance (the "Park Ordinance") approving the development of the Park, which is a multi-county industrial park jointly developed with Beaufort County ("Beaufort"). [Amended Complaint (hereinafter "Compl.") Ex. A; Affidavit of Wanda Hendrix Simmons (hereinafter "Simmons Aff.") Ex. 1-A at Jasper_000078]. The Park Ordinance made reference to and attached the form of the written Agreement for Development of Joint County Industrial and Business Park between Jasper and Beaufort (the "Park Agreement"). [Compl. Ex. A; Simmons Aff. Ex. 1-A at Jasper_000078]. Specifically, the Park Ordinance provided the following with respect to the Park Agreement:

The form of **the [Park Agreement] is attached hereto and all terms of the [Park] Agreement are hereby incorporated herein.** The forms, terms and provisions of the [Park] Agreement presented to this meeting and filed with the Clerk of Jasper

County Council be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the [Park] Agreement were set out in this Ordinance in its entirety.

[*Id.* (emphasis added)].

The Park Ordinance, including the Park Agreement as an attachment, was read at three public meetings of Jasper’s County Council on three separate days with an interval of greater than seven days between the second and third readings. [Compl. Ex. A; Simmons Aff. Ex. 1-A–B]. The Park Agreement was executed by the respective County Councils for Jasper and Beaufort on April 10, 2000 and February 14, 2000, respectively. [Compl. Ex. B; Simmons Aff. Ex. 1-A]. The Park Ordinance, Beaufort’s respective park ordinance authorizing the Park Agreement, and an executed copy of the Park Agreement were filed with Jasper’s Register of Deeds Office at Book 8, pages 82–84, on April 10, 2000 between 3:44 PM and 3:51 PM. [Compl. Ex. A; Simmons Aff. Ex. 1-A].

II. TERMS OF THE PARK AGREEMENT

A. Park Property is Exempt from *Ad Valorem* Taxes, and Park Property Owners Must, Instead, Pay a Fee-In-Lieu of *Ad Valorem* Taxes.

Consistent with the provisions of Section 4-1-170 of the South Carolina Code and Article VIII, Section 13(D) of the South Carolina Constitution, the Park Agreement states that all property located in the Park is exempt from *ad valorem* taxation during the term of the Park Agreement. [Compl. Ex. B § 4; Simmons Aff. Ex. 1-A at Jasper_000082]. Instead of *ad valorem* taxes, owners of property located inside the Park’s boundaries are required to pay a fee-in-lieu of *ad valorem* taxes. [*Id.*]. The amount that any Park property owner is required to pay is “equivalent to the *ad valorem* property taxes or other in-lieu-of payments that would have been due and payable” if the property was not located in the Park (“Park Revenues”). [*Id.*].

B. The Park Agreement Allocates Park Expenses and Park Revenues and Directs How Park Revenues Must Be Distributed to Each County’s Taxing Entities.

The Park Agreement contains specific provisions addressing the requirements of Section 4-1-170(A) of the South Carolina Code, which includes requirements to (1) address sharing expenses of the Park (“Park Expenses”), (2) specify by percentage the revenue to be allocated to each county, and (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties. [See Compl. Ex. B; Simmons Aff. Ex 1-A at Jasper_000083]. First, the Park Agreement addresses the allocation of Park Expenses between Jasper and Beaufort. [*Id.*]. Under Section 5 of the Park Agreement, Park Expenses are to be allocated as follows:

5. **Allocation of Park Expenses.** The Counties shall bear expenses, including, but not limited to, development, operation, maintenance and promotion of the Park in the following proportions:

A. Site Location County	100%
B. Partner County	0%

[*Id.* (emphasis in original)].

Second, the Park Agreement addresses the allocation of Park Revenues between Jasper and Beaufort. [*Id.*]. Under Section 6 of the Park Agreement, Park Revenues are allocated as follows:

6. **Allocation of Park Revenues.** The Counties shall receive an allocation of all revenue generated by the Park through payment of fees in lieu of *ad valorem* property taxes or from any other source in the following proportions:

A. Site Location County	99%
B. Partner County	1%

[*Id.* (emphasis in original)].

Third, the Park Agreement addresses the manner in which the Park Revenues allocated to Jasper must be distributed to each of the taxing entities within Jasper. Under Section 7 of the Park Agreement, “[r]evenues received by Jasper County shall be distributed by Jasper County to the

political subdivisions of Jasper County . . . *in accordance with an ordinance adopted by Jasper County.*” [*Id.* (emphasis added)]. At the time Jasper and Beaufort executed the Park Agreement, the incorporated and referenced Park Ordinance had already been adopted by Jasper’s County Council.¹ The Park Ordinance provides further detail about the manner in which Park Revenues must be distributed to each of the taxing entities within Jasper:

SECTION IX. Jasper County hereby designates that the distribution of the fee-in-lieu of ad valorem taxes pursuant to the [Park] Agreement actually received by Jasper County for Park premises be paid to each of the taxing entities in Jasper County which levy ad valorem property tax in any of the areas comprising the Park **in the same percentage as is equal to that taxing entities’ percentage of the millage rate being levied in the then current tax year for property tax purposes, provided that the County may, from time to time, by ordinance, amend the distribution of the fee-in-lieu of tax payments to all taxing entities.** A portion of the fee-in-lieu of ad valorem taxes which Jasper County receives pursuant to the Agreement for Park premises may be, from time to time any by ordinance of Jasper County Council or its successor, designated for the payment of special source revenue bonds.

[Compl. Ex. A; Simmons Aff. Ex. 1-A at Jasper_000079–80 (bold emphasis added) (underline emphasis in original)].

III. APPROVAL AND ISSUANCE OF SPECIAL SOURCE REVENUE BONDS SECURED BY PARK REVENUES.

A. The Park Ordinance Approved Jasper’s Issuance of Special Source Revenue Bonds Secured by Park Revenues.

The Park Ordinance also authorized Jasper to issue special source revenue bonds (“Bonds”) payable from Park Revenues. Section IX of the Park Ordinances states, in part, as follows:

A portion of the fee-in-lieu of ad valorem taxes which Jasper County receives pursuant to the [Park] Agreement for Park premises may be, from time to time and by ordinance of Jasper County Council or its successor, designated for the payment of special source revenue bonds.

¹ Compare Compl. Ex. A with Compl. Ex. B (showing that the Park Ordinance was adopted by Jasper’s County Council on February 7, 2000, and Jasper’s County Council executed the Park Agreement on April 10, 2000).

[Compl. Ex. A; Simmons Aff. Ex. 1-A at Jasper_000079–80 (emphasis in original)]. In other words, if Jasper did not issue Bonds, then all Park Revenues must be proportionally distributed to Jasper’s taxing entities. If, however, Jasper issued Bonds, the Park Ordinance permitted Jasper to use a portion of Park Revenues to make Bond payments.

B. Jasper Issued the Bonds.

On April 16, 2001, Jasper adopted General Bond Ordinance No. 01-04 (the “General Bond Ordinance”). The General Bond Ordinance authorized the issuance of Bonds in one or more series for a total principal amount of up to \$20,000,000.00. [Compl. Ex. C; Simmons Aff. Ex. 1-C]. Contemporaneously with the adoption of General Bond Ordinance No. 01-04, Jasper adopted the First Supplemental Ordinance No. 01-05, providing for the issuance and sale of bonds not to exceed \$7,000,000.00. [Compl. Ex. D; Simmons Aff. Ex. 1-E]. Then, on October 20, 2003, Jasper adopted the Second Supplemental Ordinance No. 02-16, providing for the issuance and sale of Bonds not to exceed \$7,000,000.00. [Compl. Ex. E; Simmons Aff. Ex. 1-F].²

C. The Park Agreement was Amended to Secure Payment of the Bonds with the First 40% of Park Revenues Received by Jasper.

The General Bond Ordinance adopted by Jasper (which again authorized the issuance of Bonds) expressly amended Section IX of the Park Ordinance, and, thus, the manner in which the Park Agreement required Park Revenues to be distributed to each of the taxing entities within Jasper. [Compl. Ex. C § 11.1; Simmons Aff. Ex. 1-C at Jasper_000025]. After the amendment, Section IX of the Park Ordinance now reads:

SECTION IX. Jasper County hereby directs that, of the fee-in-lieu of *ad valorem* taxes pursuant to the [Park] Agreement actually received by Jasper County for Park premises, one (1%) percent of such fees be paid to Beaufort County. Of the remainder of such fees,

² The General Bond Ordinance, First Supplemental Ordinance No. 01-05, and Second Supplemental Ordinance No. 02-16 are collectively the “Bond Ordinances.” The Bond Ordinances were each read at three public meetings of Jasper’s County Council on three separate days with an interval of greater than seven days between the second and third readings. [See Compl. Exs. C–E; Simmons Aff. Exs. 1-C–G].

forty (40%) percent shall be designated for the payment of special source revenue bonds, and the balance shall be paid to each of the taxing entities in Jasper County which levy an *ad valorem* property tax in any areas comprising the Park in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes.

[*Id.*]. Section 7 of the Park Agreement is controlled by the terms of Section IX of the Park Ordinance. Accordingly, the amendment to the Park Ordinance also amended the manner in which Park Revenues must be distributed to each of the taxing entities within Jasper under the Park Agreement.

Thus, after 1% of Park Revenues are distributed to Beaufort, the Park Agreement requires the next 40% of Park Revenues to be used as payment for Bonds. [Compl. Ex. C § 5.2; Simmons Aff. Ex. 1-C at Jasper_000017]. The Park Agreement then distributes the remainder of Park Revenues to each of the taxing entities within Jasper (which would include Hardeeville when it later annexed the Annexed Property as described in Section IV below) “in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes.” [*Id.*].

IV. HARDEEVILLE'S ANNEXATION OF PARK PROPERTY

The properties comprising the Park are identified in the Park Agreement as three tracts of land: Tract I, consisting of 170.565 acres; Tract II, consisting of 41.464 acres; and Tract III, consisting of 106.75 acres. [Compl. Ex. B; Simmons Aff. Ex. 1-A at Jasper_000087]. At the time the Park was created, no Hardeeville property was located within the geographic boundary of the Park. [See Compl. ¶¶ 9 & 38]. On October 5, 2006—over six years after the Park was created—Hardeeville annexed into its jurisdictional limits property that was already located within the geographic boundary of the Park (the “Annexed Property”) [Compl. ¶ 38].

STANDARD OF REVIEW

Summary judgment must be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. To determine whether there is a genuine issue of material fact, the evidence and all inferences which can be reasonably drawn from the evidence are to be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The moving party’s initial burden is discharged by showing to the court that there is an absence of evidence to support the nonmoving party’s case. *Id.* Once the moving party makes this demonstration to the court, the nonmoving party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial.*” *Id.* (emphasis in original); *Midland Mutual Life Ins. Co. v. Darrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). “Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.” *Dawkins v. Field*, 354 S.C. 58, 70, 580 S.E.2d 433, 439 (2003) (quoting *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)).

CONCLUSIONS OF LAW

I. THE PARK AGREEMENT IS VALID.

The threshold question in this case is whether the Park Agreement meets the requirements of Title 4 of the South Carolina Code and Article VIII, Section 13(D) of the South Carolina Constitution. Under both the Code and the Constitution, there are two primary requirements to create a park: (1) two or more contiguous counties, and (2) a written agreement that includes the three requirements enumerated in Section 4-1-170(A)(1)–(3).³ See S.C. Code Ann. §§ 4-1-170(A) & -172; S.C. CONST. art. VIII, § 13(D).

There is no dispute that Jasper and Beaufort are contiguous counties. There is also no dispute that the Park Agreement satisfies subsections (A)(1) & (A)(2) of Section 4-1-170. Thus, the only question at issue regarding the general validity of the Park Agreement is whether the Park Agreement sufficiently satisfies Section 4-1-170(A)(3). For the reasons explained below, the Court finds that there is no genuine issue of material fact and Jasper is entitled to judgment as a matter of law because the Park Agreement is valid under Section 4-1-170 of the South Carolina Code and Article VIII, Section 13(D) of the South Carolina Constitution.

A. The Park Agreement Satisfies Section 4-1-170(A)(3).

Under Section 4-1-170(A)(3), “the written agreement entered into by the participating counties must include [a] provision which: . . . (3) [specifies] the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.” Jasper argues the Park Agreement sufficiently satisfies this statutory subsection because the Park Agreement expressly incorporated by reference the terms of the Park Ordinance, which specified the manner

³ Section 4-1-170(A) states that “[t]he written agreement entered into by the participating must include provisions which: (1) address sharing expenses of the park; (2) specify by percentage the revenue to be allocated to each county; (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.” S.C. Code Ann. § 4-1-170(A)(1)–(3).

in which Park Revenues must be distributed to each of the taxing entities within Jasper. Hardeeville argues the Park Agreement does not satisfy Section 4-1-170(A)(3) because the specific manner in which Park Revenues must be distributed to each of the taxing entities in Jasper is not within the four corners of the Park Agreement. [*See* Hr’g Tr. p. 24, ll. 10–14 (Oct. 27, 2021)]. In other words, Hardeeville argues a park agreement may only be comprised of a single document and cannot incorporate by specific reference other documents already in effect to comprise the entirety of that agreement.

As an initial matter, it is basic contract law that a contract may incorporate by reference the terms of another document. *E.g.*, *Shaw v. East Coast Builders of Columbia, Inc.*, 291 S.C. 482, 484, 354 S.E.2d 392, 392 (1987) (citing *Twiggs v. Williams*, 98 S.C. 431, 82 S.E. 676 (1914)). There is nothing within Section 4-1-170 that either expressly or implicitly prohibits a park agreement from supplementing its terms by reference to another document’s terms. Hardeeville has not presented any legal authority to the Court in support of its argument that the Park Agreement cannot adequately satisfy the provisions of Section 4-1-170(A)(3) by referencing the terms of the Park Ordinance.

Hardeeville argues *Horry County School District v. Horry County* 346 S.C. 621, 552 S.E.2d 737 (2001) supports its position that the Park Agreement does not satisfy Section 4-1-170(A)(3). The Court does not agree. In that case, the Supreme Court noted that the park agreement failed to comply with Section 4-1-170(A)(3) because the agreement did not provide a basis for determining what proportion of park revenues went to debt service and what proportion to school operations. 346 S.C. at 631, 552 S.E.2d at 742. However, the *Horry County* Court did not address, let alone hold, that a park agreement’s terms could not be supplemented by another, incorporated and referenced document.

Additionally, in the present case, the Park Ordinance (both originally and as amended by the General Bond Ordinance) states that Park Revenues

shall be paid to each of the taxing entities in Jasper County which levy an *ad valorem* property tax in any areas comprising the Park in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes.

[Compl. Ex. A § IX; *id.* at Ex. C § 11.1]. This language instructs the taxing authorities in Jasper to distribute Park Revenues in the same manner they allocated *ad valorem* revenues each year. And because the manner of distribution is based on the millage rate being levied in the current tax year, this language also specifies what proportion of Park Revenues goes to debt service and what proportion goes to operations. Therefore, the Court finds that *Horry County* is neither applicable nor instructive to whether the Park Agreement is valid.

Moreover, the Court finds that the credibility of Hardeeville's argument regarding the alleged invalidity of the Park Agreement is further undermined by the materials submitted with Nickel Plate Road, LLC's ("Nickel Plate") Opposition to Plaintiff's Motion for Summary Judgment. Nickel Plate asserts that incorporating the terms of a park ordinance is common method by which park agreements satisfy Section 4-1-170(A)(3)'s requirements. [Nickel Plate Mem. 4]. In support of this position, Nickel Plate attached as Exhibit A to its Memorandum an agenda packet from the Oconee County Council. [*Id.* at Ex. A]. Included within that agenda packet was a copy of an Agreement for Development of a Joint County Industrial and Business Park (Project Ruby Slipper) between Oconee County and Pickens County (the "Oconee-Pickens Park Agreement"), with an effective date of December 31, 2021. [Nickel Plate Mem. Ex. A]. Section 7 of Oconee-Pickens Park Agreement, "Revenue Allocation within Each County," states, in pertinent part, the following: "Revenues allocable to Oconee County by way of fees in lieu of *ad valorem* taxes generated from properties located in Oconee County shall be distributed within Oconee County *in*

accordance with the applicable governing ordinance of Oconee County in effect from time to time.” [*Id.* (emphasis added)]. The difference in this language from the language in the Park Agreement is negligible.

The undisputed evidence in this case shows that park agreements have satisfied the requirements of Section 4-1-170(A)(3) through reference to ordinances since the early 2000s and are still doing so to this day. Hardeeville did not present any legal authority to suggest that a park agreement’s reference to an ordinance’s terms is insufficient or invalidates the underlying park agreement. The remaining requirements to create a valid park agreement under Section 4-1-170 are not in dispute. Therefore, the Court finds that there is no genuine issue of material fact and the Park Agreement is valid and enforceable as a matter of law.

C. Discovery is Not Necessary for Determining that the Park Agreement is Valid as a Matter of Law.

As an alternative argument, Hardeeville argues that granting Jasper’s Motion on the issue of the Park Agreement’s validity is premature until Jasper responds to Hardeeville’s first set of discovery requests because there could exist information and documents that would support Hardeeville’s arguments. Jasper argues that Hardeeville’s discovery requests seek information that is not relevant to Jasper’s Motion, and, therefore, answering Hardeeville’s discovery requests is not necessary for the Court to rule on Jasper’s declaratory judgment cause of action. [Jasper’s Mot. Prot. Order ¶ 7]. The Court agrees with Jasper.

Both parties’ initial pleadings sought a declaratory judgment regarding the legal effect the Park Agreement had on the property tax status of Hardeeville’s Annexed Property. In making their requests for declaratory judgment (in their respective pleadings and summary judgment motions) both parties relied exclusively on the documents attached to Hardeeville’s Complaint. Although Hardeeville claims that additional discovery *could* uncover additional facts that may be relevant

to this case, Hardeeville has failed to even generally identify documents or information that would have any impact on making the determinations the parties requested in their declaratory judgment causes of action. Hardeeville's claim that discovery is necessary is further belied by Hardeeville's Motion, which claimed that there was no genuine issue of material fact and the Court could determine that the Park Agreement was invalid and that Hardeeville was not bound to the terms of the Park Agreement as a matter of law.⁴

For purposes of withstanding Jasper's Motion, Hardeeville must "demonstrate that further discovery *will likely uncover additional relevant evidence.*" *Dawkins*, 354 S.C. at 71, 580 S.E.2d at 440 (emphasis added). Hardeeville has failed to make this demonstration. Accordingly, the Court finds that Jasper's answers to Hardeeville's discovery requests would not create a genuine issue of material fact for purposes of ruling on Jasper's Motion.

II. HARDEEVILLE'S CONSENT TO THE PARK AGREEMENT WAS NOT REQUIRED.

The next issue the Court must decide is whether Hardeeville's consent to the Park Agreement was required for the Annexed Property to be bound by the terms of the Park Agreement. Hardeeville argues that the Annexed Property is not bound by the Park Agreement because Hardeeville did not consent to the Park Agreement's terms. Jasper argues that Hardeeville's consent was not required because no Hardeeville property was located inside the

⁴ Hardeeville also argues that the Affidavit of Wanda Simmons Hendrix was untimely filed, and the Court should, therefore, not consider the documents attached to Ms. Simmons' Affidavit. Jasper, on the other hand, argues Ms. Simmons' Affidavit was timely because it was in response and reply to issues raised for the first time in Hardeeville's Motion and Hardeeville's Response. The evidence shows that Hardeeville's initial pleadings did not allege that the Park Agreement was generally invalid or deficient in any way. These arguments were not raised until Hardeeville's Motion and Hardeeville's Response. Ms. Simmons's Affidavit (a records custodian affidavit), which contained certified copies of the relevant ordinances and meeting minutes, was plainly in response and reply to these newly raised issues. Ms. Simmons' Affidavit was filed four days prior to the hearing, and was, therefore, timely filed. *See* Rules 6(d) & 56(c), SCRCP.

Park's geographical boundaries at the time the Park was created. The Court agrees with Jasper and finds that as a matter of law Hardeeville's consent was not required.

A statute must be interpreted according "to its plain and ordinary meaning, and this Court may not resort to subtle or forced construction in an attempt to limit or expand the statute's scope." *New York Times Co. v. Spartanburg Cty. Sch. Dist. No. 7*, 374 S.C. 307, 310, 649 S.E.2d 28, 29–30 (2007) (citing *City of Columbia v. Am. Civ. Liberties Union of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 749 (1996)). The statutory provision governing when a municipality's consent is required states, in full, the following: "If the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality *prior to the creation of the multi-county industrial park.*" S.C. Code Ann. § 4-1-170(C) (emphasis added).

The Court finds that Section 4-1-170(C) plainly requires counties to obtain a municipality's consent *only if* a park would encompass municipal property *at the time the park is created*. Accepting Hardeeville's proposed interpretation of Section 4-1-170(C) would require this Court to impose a duty on counties entering into park agreements to predict a municipality's future annexation of park property and seek out that municipality's consent before the municipality annexes park property. This interpretation would also permit a municipality, without any express authority, to usurp a county's authority to create a park and determine how that park's revenues are to be allocated and distributed—authority expressly given to counties by the South Carolina Constitution and South Carolina Code and affirmed by the South Carolina Supreme Court. *See* S.C. Code Ann. §§ 4-1-170(A) & -172; S.C. CONST. art. VIII, § 13(D); *Horry Cty. Sch. Dist.*, 346 S.C. 621, 552 S.E.2d 737. This interpretation not only leads to a plainly absurd result, but it would require the Court to impose a meaning that is not present in the statutory or constitutional text. Therefore, Hardeeville's interpretation must be rejected. *See Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 272, 802 S.E.2d 794, 797 (2017) ("If a statute's language is plain, unambiguous, and

conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”) (quoting *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2002)); *Duke Energy Corp. v. S.C. Dep’t of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (“[C]ourts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly.”).

III. ALL PROPERTY IN THE PARK, INCLUDING THE ANNEXED PROPERTY, IS EXEMPT FROM ALL AD VALOREM TAXATION.

Because the Court finds that that the Park Agreement is valid and Hardeeville’s consent to the Park Agreement was not required, the Court also finds that all property in the Park, including the Annexed Property, is exempt from all *ad valorem* taxation as a matter of law. Article VIII, Section 13(D) of the South Carolina Constitution states that “[t]he area comprising parks and all property having a situs therein is exempt from all *ad valorem* taxation.” S.C. CONST. art. VIII, § 13(D) (emphasis added); *see also Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 630, 552 S.E.2d 737, 741 (2001). The Court is unaware of any exception to this constitutional provision that makes all park property exempt from all *ad valorem* taxation. There is no dispute that the Annexed Property is located within the Park’s geographical boundaries.

Hardeeville argues that the Annexed Property is not bound by the Park Agreement’s required revenue distribution scheme. [Pl.’s Resp. 6–7; Pl.’s Mot. Summ J. 3 9–5]. However, Hardeeville’s entire argument is premised on the false idea that a municipality can take up residence in a park after its creation, annex park property into its jurisdictional limits, and then collect *ad valorem* taxes levied on that property without any regard to the agreement governing the park.

The Court does not find any merit to these arguments. The South Carolina Constitution does not say all property, *except for municipal property*, is exempt from all *ad valorem* taxation.

It simply states that all park property is exempt from all *ad valorem* taxation and that owners will make payments in lieu of taxes, with such payments to be distributed pursuant to the park agreement. S.C. CONST. art. VIII, § 13(D) (“***The area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation.*** . . . The participating counties shall reduce the agreement to . . . share expenses and revenues of the park to a written instrument.”) (emphasis added). Therefore, contrary to Hardeeville’s arguments, the South Carolina Constitution does limit Hardeeville’s ability to collect *ad valorem* taxes from the Annexed Property—because the Annexed Property is constitutionally exempt from *ad valorem* taxation.

For these reasons, there is no genuine issue of material fact and Jasper is entitled to judgment as a matter of law that all Park property, including the Annexed Property, is exempt from all *ad valorem* taxation.

IV. PARK REVENUES MUST BE ALLOCATED AND DISTRIBUTED IN ACCORDANCE WITH THE PARK AGREEMENT.

The Park Agreement is statutorily required to govern how all Park Revenues must be distributed to each of the taxing entities within Jasper and Beaufort. *See* S.C. Code Ann. § 4-1-170. Section 4-1-170 provides that the Park Agreement must “(2) specify by percentage the revenue to be allocated to each county; [and] (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.” S.C. Code Ann. § 4-1-170(A). In other words, Section 4-1-170 not only requires that Park Revenues be distributed in accordance with the Park Agreement, but it also grants Jasper and Beaufort complete discretion over the distribution of each county’s respective Park Revenues to each county’s taxing entities. *See Horry Cty. Sch. Dist.*, 346 S.C. at 626–30, 552 S.E.2d at 739–41 (Rejecting the School District’s argument that Section 4-1-170 did not grant the county the discretion over how to

allocate park revenues and finding that Section 4-1-170 “specifically allocates that revenue to the *county, not to any other taxing entity.*”) (emphasis added).

Hardeeville argues the statutorily granted discretion to counties over the allocation of park revenues extends only to a taxing entity’s park property if that taxing entity is not a municipality. The Court does not agree. The Court is unaware of any South Carolina authority which limits a county’s discretion over the allocation of park revenues resulting from a validly created park simply because the property is municipal property.

A recently issued May 5, 2022 opinion from the South Carolina Attorney General’s Office explains in detail the extent of a county’s discretion (by way of a valid park agreement) over the allocation of a park’s revenues for *all taxing entities’ park property*. Specifically, the Attorney General was asked, among other questions, the following: (1) is park revenue generated from fee-in-lieu of taxes required to be distributed in the same proportion that it would if the property were taxable, (2) is a county required to employ a specific allocation method for the distribution of park revenue, and (3) is there any remedy for a “*local government entity*” within a county to redress the inequitable allocation of park revenues. *See Op. S.C. Att’y Gen., 2022 WL 1606364, at *1 (May 5, 2022) (emphasis added).*

Analyzing Sections 4-1-170 and 4-29-67 of the South Carolina Code and the Supreme Court’s decision *Horry County*, the Attorney General concluded that counties are under no obligation to either distribute park revenues in the same proportion as it would if the property were taxable or employ a specific methodology in doing so. *Id.* at *4.⁵ And in response to the final question (whether there was any statutory remedy for a “*local government entity*” who believed

⁵ The only limitation on the county’s discretion in allocating park revenues is that each taxing entity within a park “must receive *some* allocation” of the park revenues. *See Op. S.C. Att’y Gen., 2022 WL 1606364, at *4 (May 5, 2022) (emphasis added).* However, Hardeeville does not argue it will not receive at least a portion of Park Revenues generated from the Annexed Property. Rather, Hardeeville simply suggests that its allocation is not as much as it would be if the Annexed Property were taxable.

that the distribution of park revenues was inequitable), the Attorney General concluded “the law does not provide for remedy for school districts *or other taxing entities* who believe they received an inequitable allocation of fee in lieu revenue in the agreement creating a [park].” 2022 WL 1606364, at *1 (S.C.A.G. May 5, 2022) (emphasis added).

Neither the statutory scheme nor the *Horry County* decision nor the Attorney General’s opinion make any distinction between a municipality’s property and other taxing entities’ property with respect to a county’s discretion over the allocation of park revenues. Therefore, the Court finds, as a matter of law, that Park Revenues, including those generated from the Annexed Property, must be distributed pursuant to the terms of the Park Agreement.

The undisputed material facts show that the Park Agreement requires 99% of Park Revenues be allocated to the county where the property generating Park Revenues is located and the remaining 1% of Park Revenues to the other participating county. [Compl. Ex. B; Simmons Aff. Ex. 1-A].⁶ For Park property located in Jasper, the Park Agreement requires the first 40% of Park Revenues (after payment of 1% to Beaufort) to be used as payment for the Bonds.⁷ [Compl. Ex. C; Simmons Aff. Ex. 1-C]. The Park Agreement requires the remainder of Park Revenues to be distributed proportionally to each of Jasper’s taxing entities according to “the same percentage as is equal to that taxing entity’s percentage of the millage rate being levied in the then current tax year.” [*Id.*].

Accordingly, there is no genuine issue of material fact and the Court finds as a matter of law that Park Revenues, including those generated from the Annexed Property, must be allocated

⁶ The practical effect of this distribution scheme, because all Park property is physically located in Jasper, is that 99% of Park Revenues must be distributed to Jasper and 1% of Park Revenues must be distributed to Beaufort.

⁷ If the total principal and interest due on the Bonds is greater than 40% of Park Revenues, then the difference is forgiven; however, if the total principal and interest due on the Bonds is less than 40% of Park Revenues, the difference must be paid to the bondholder as additional interest on the Bonds. [Compl. Ex. C; Simmons Aff. Ex. 1-C]. In other words, 40% of Park Revenues always go to the bondholders before the remainder is distributed to each of the taxing entities within Jasper.

and distributed in accordance with the Park Agreement. Therefore, the Court further finds as a matter of law that Park Revenues must be allocated and distributed as follows: 1% of all Park Revenues must first be distributed to Beaufort; 40% of the remaining Park Revenues, after distribution to Beaufort, must then be distributed as payment for the Bonds; the remainder of Park Revenues, after distribution as payment for the Bonds, must then be distributed to each of Jasper's taxing entities in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year.

V. JASPER PROPERLY ISSUED THE BONDS AND PAYMENT FOR THE BONDS IS SECURED BY 40% OF REMAINING PARK REVENUES.

A. Jasper Properly Issued the Bonds.

Jasper has requested as part of its declaratory judgment cause of action for the Court to declare Jasper properly issued the Bonds as a matter of law. Hardeeville has not asserted any argument contesting this issue. The Court finds that Jasper properly issued the Bonds as a matter of law.

Ordinances authorizing the issuance of special source revenue bonds pursuant to Section 4-1-175 "shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings." S.C. Code Ann. § 4-9-120. "All proceedings of council shall be recorded and all ordinances adopted by council shall be compiled, indexed, codified, published by title and made available to public inspection at the office of the clerk of council." *Id.*

The undisputed material facts show that the Park Ordinance and all Bond Ordinances complied with these statutory requirements. The Park Ordinance, which incorporated the Park Agreement, was read at three public meetings of Jasper's County Council on three separate days with an interval of greater than seven days between the second and third readings. [Simmons Aff.

Ex. 1-A & 1-B]. Next, the General Bond Ordinance and First Supplemental Bond Ordinance No. 01-05 were read at three public meetings of Jasper’s County Council on three separate days with an interval of greater than seven days between the second and third readings. [*See id.* at Ex. 1-C–E]. Finally, The Second Supplemental Ordinance No. 02-16 was read at three public meetings of Jasper’s County Council on three separate days with an interval of greater than seven days between the second and third readings. [*See id.* at Ex. 1-F & 1-G].

Furthermore, although Hardeeville has not contested Jasper’s adoption of the Bond Ordinances, even if Hardeeville did make such a challenge, the applicable statute of limitations for doing so has long since expired. Ordinances authorizing the issuance of bonds must be challenged “within sixty days after the enactment by the council.” S.C. Code Ann. § 4-9-1220. Thus, there is no genuine issue of material fact that the Park Ordinance and the Bond Ordinances were all properly adopted by Jasper. Therefore, the Court finds as a matter of law that Jasper properly issued the Bonds.

B. Payment for the Bonds is Secured by 40% of Remaining Park Revenues.

Jasper has also requested as part of its declaratory judgment cause of action for the Court to declare that payment for the Bonds is secured by 40% of Park Revenues. Hardeeville has not asserted any argument contesting this issue. The Court finds as a matter of law that payment for the Bonds is secured by 40% of Park Revenues.

Counties that receive park revenues pursuant to Article VIII, Section 13 of the South Carolina Constitution “may issue special source revenue bonds secured by and payable from all or part of that portion of the revenues which the county is entitled to retain pursuant to the agreement required by Section 4-1-170 in the manner and for the purposes set forth in Section 4-29-68.” S.C. Code Ann. § 4-1-175. Pursuant to Section 4-29-68, park “[r]evenues received by a county . . . which may be pledged or from which bonds may be payable and secured pursuant to . . . Section

4-1-175 may be used jointly to pay or secure a single series of bonds.” S.C. Code Ann. § 4-29-68(D).

The Park Ordinance provides that a portion of Remaining Park Revenues “may be, from time to time and by ordinance of Jasper County Council or its successor, designated for the payment of special source revenue bonds.” [Compl. Ex. A; Simmons Aff. Ex. 1-A]. On April 16, 2001, Jasper adopted the General Bond Ordinance and authorized the issuance of special source revenue bonds not to exceed \$20,000,000.00. [Compl. ¶ 19; Compl. Ex. C; Simmons Aff. Ex. 1-C]. The General Bond Ordinance secured the Bonds by designating up to 40% of Remaining Park Revenues to be used as payment for the Bonds. [*Id.*].

Contemporaneously with Jasper’s adoption of the General Bond Ordinance, Jasper also adopted Supplemental Ordinance No. 01-05. This ordinance provided for the issuance and sale of special source revenue bonds in the amount of \$7,000,000.00. [Compl. ¶ 32; Compl. Ex. D; Simmons Aff. Ex. 1-E]. In the same manner as the General Bond Ordinance, Supplemental Ordinance No. 01-05 secured the Bonds by designating up to 40% of Park Revenues to be used as payment for the Bonds. [Compl. Ex. D; Simmons Aff. Ex. 1-E]. Then, on October 20, 2003, Jasper adopted Supplemental Ordinance No. 02-16. This ordinance provided for the issuance and sale of another series of special source revenue bonds in the amount of \$6,000,000.00. [Compl. ¶ 34; Compl. Ex. E; Simmons Aff. Ex. 1-F]. Again, Supplemental Ordinance No. 02-16 secured the Bonds by designating up to 40% of Park Revenues to be used as payment for the Bonds. [Compl. Ex. E; Simmons Aff. Ex. 1-F].

Therefore, there is no genuine issue of material fact and Jasper is entitled to judgment as a matter of law that payment for the Bonds is secured by 40% of Park Revenues.

ORDER

IT IS THEREFORE ORDERED that Hardeeville's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that Jasper's Motion for Partial Summary Judgment is granted, and the Court declares the following as a matter of law:

1. The Park Agreement is valid.
2. All property located within the Park, including the Annexed Property, is exempt from all *ad valorem* taxation.
3. The City of Hardeeville's annexation of property located within the Park after the Park was created does not result in the Annexed Property being subject to *ad valorem* taxation.
4. Jasper County properly issued special source revenue bonds, and the payments of the bonds are secured by Park Revenues.
5. Park Revenues generated from Park property, including the Annexed Property, must be distributed and allocated in accordance with the Park Agreement.
6. Pursuant to the Park Agreement, Park Revenues must be distributed as follows: 1% must first be distributed to Beaufort County; 40% of the remainder after distribution to Beaufort County must then be distributed to the bondholders; the remainder, after distribution to both Beaufort County and the bondholders, must be distributed pro rata to applicable taxing entities within Jasper County, including the City of Hardeeville.

IT IS FURTHER ORDERED that Jasper shall serve its answers and objections to Hardeeville's First Set of Interrogatories and First Set of Requests for Production within 30 days of the date of this Order, subject to any extensions available to Jasper under the South Carolina Rules of Civil Procedure or any extension that may be granted to Jasper by this Court or Hardeeville.

AND IT IS SO ORDERED.



Jasper Common Pleas

Case Caption: City Of Hardeeville VS Jasper County, South Carolina , defendant, et al
Case Number: 2021CP2700028
Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771