THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY COURT OF COMMON PLEAS
The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2022-001266
Trial Court Case No. 2021-CP-27-00028

INITIAL BRIEF OF APPELLANT CITY OF HARDEEVILLE

City of Hardeeville.……Appellant,

v.

Jasper County, South Carolina, Jasper County Treasurer,
and Jasper County Auditor……..…Respondents,

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,

v.

City of Hardeeville, Nickel Plate Road, LLC, and Beaufort County,
South Carolina…….…..Cross Defendants.

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INTRODUCTION

This case is about which political subdivision of the State controls the governmental revenue generated by certain real property ("Real Property") now situate in the corporate limits of Appellant City of Hardeeville. The Real Property at issue has also allegedly been designated as multi-county industrial or business park property by Jasper County ("Multi-County Park"). The case appears to present at least one matter of first impression: whether a municipality's annexation of property subsequent to the date of the creation of Multi-County Park impacts the application of State law regulating taxation within multi-county parks.

This case also raises questions about whether the Multi-County Park was properly created and whether the consent and long-standing course of dealings of Respondent Jasper County ("Jasper"), Jasper County Treasurer ("Treasurer"), and Jasper County Auditor ("Auditor") (collectively, "Jasper Respondents"), and other entities permits Appellant to continue imposing either an *ad valorem* tax or an equivalent fee-in-lieu of tax against the Real Property, as has happened for fourteen years prior to this dispute, or whether Appellant is bound by the terms of an agreement to which Appellant is not a party and is obligated to provide municipal services without receiving the applicable tax revenue.

State law is clear that all property is presumed taxable and that the terms of a tax exemption must be strictly construed against the claimed exemption. Rather, the Circuit Court misapplied our Supreme Court's holding in *Horry County School District v. Horry County*, 346 S.C. 621, 552 S.E.2d 737 (2001), a case involving a school district's dispute with a county and municipality acting in lockstep, by extending and enlarging the *Horry County* holding to a dispute between statutory entities with distinctly different rights under State law: a county and a municipality. The Circuit Court's decision to assign this broad, liberal construction to the limited holding in *Horry County* is a misapplication of precedent and reversible error of law. Thus, the Circuit Court's

holdings that the agreement creating the Multi-County Park was valid, that the non-party Appellant was bound by that agreement, that the Real Property is exempt from taxation, and that all governmental revenue derived from the Real Property must be allocated pursuant to that agreement must be reversed.

STATEMENT OF ISSUES ON APPEAL

I. Whether The Circuit Court Incorrectly Concluded The Park Agreement Was Valid?

II. Whether The Circuit Court Incorrectly Concluded Appellant's Consent To The Park Agreement Was Not Required?

III. Whether The Circuit Court Incorrectly Concluded All Real Property In The Park Is Exempt From *Ad valorem* Taxation?

IV. Whether The Circuit Court Incorrectly Concluded All Park Revenues Must Be Allocated And Distributed In Accordance With The Park Agreement?

STATEMENT OF THE CASE

On February 1, 2021, Appellant filed a Complaint against Jasper Respondents, seeking a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, South Carolina Code Annotated section 15-53-10, et seq., and Rule 57, SCRCP, to declare the rights, duties, and responsibilities of Appellant and Jasper Respondents, and for injunctive relief prohibiting Jasper Respondents from violating State law and/or their respective duties and responsibilities thereunder all as relates to the Real Property. (*Jasper Order*, p. 2). On April 16, 2021, Appellant filed a Motion to Amend Complaint. (*Jasper Order*, p. 2). On June 21, 2021, the Honorable Bentley D. Price entered the parties' Consent Order to Amend Complaint. (*Jasper Order*, p. 2). Appellant's Amended Complaint sought injunctive relief and a declaratory judgment and requested that the Court determine and declare the rights and legal relationships of the parties as it relates to real

property annexed by Appellant that is located within the Multi-County Park. (*Jasper Order*, pp. 2-3).

On July 21, 2021, Jasper Respondents filed their Answer to Appellant's Amended Complaint and Amended Cross Complaint ("Jasper Answer and Cross Complaint"), in which Jasper Respondents cross complained against Beaufort County ("Beaufort") and Nickel Plate Road, LLC ("Nickel Plate"). (*Jasper Order*, p. 3; *Jasper Answer and Cross Complaint*, pp. 12-13). By the parties' consent, Appellant filed an Amended Complaint to which Jasper Respondents filed an Amended Answer and an Amended Cross Complaint, and Beaufort and Nickel Plate each filed an Amended Answer. (*Amended Answer of Beaufort; Amended Answer of Nickel Plate*). Neither Beaufort nor Nickel Plate have asserted any claims against Appellant or Jasper Respondents. (*Amended Answer of Beaufort, p. 2; Amended Answer of Nickel Plate, p. 6*).

In the Answer and Cross Complaint, Jasper Respondents requested a declaratory judgment and asserted a cause of action for unjust enrichment against Appellant for tax years 2011 through 2019 in the amount of $463,226.13. (*Jasper Answer and Cross Complaint*, p. 19, p. 21). Jasper Respondents' 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 Respondent; (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. (*Jasper Order*, p. 3). On July 27, 2021, Jasper Respondents filed a Motion for Partial Summary Judgment ("Jasper's Motion") for judgment as a matter of law on these issues. (*Jasper Order*, p. 3).

Appellant served its First Set of Interrogatories and First Set of Requests for Production on Jasper Respondents on August 9, 2021. (*Jasper Order*, p. 3). In response, Jasper Respondents filed a Motion for Protective Order on August 24, 2021, requesting an order staying the time for Jasper Respondents' answers and objections to Appellant's discovery requests until at least thirty days after the Court entered a decision on Jasper Respondents' Motion for Partial Summary Judgment. (*Jasper Order*, p. 3).

On October 15, 2021, Appellant filed its 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. (*Jasper Order*, p. 3). In Hardeeville's Motion, Appellant argued that there are no genuine issues of material fact, that this dispute involves basic statutory interpretation and contract law, and that the Court could find as a matter of law that the underlying park agreement was invalid and did not bind Appellant. (*Jasper Order*, p. 3). In Hardeeville's Response, Appellant also argued that there is a genuine issue of material fact as to whether the underlying park agreement is valid, and until Jasper Respondents responded to Appellant's discovery requests, granting summary judgment to Jasper Respondents would be premature. (*Jasper Order*, pp. 3-4).

On October 25, 2021, Jasper Respondents filed a Memorandum of Law in Support of its Motion for Partial Summary Judgment and Reply to Appellant's Response in Opposition. (*Jasper Order*, p. 4). Also on October 25, 2021, Jasper Respondents filed a Memorandum of Law in Opposition to Appellant's Motion for Summary Judgment and the Affidavit of Records Custodian Wanda Hendrix Simmons. (*Jasper Order*, p. 4).

On October 27, 2021, the Court held a hearing on Jasper Respondents' and Appellant's cross-motions for summary judgment. (*Jasper Order*, p. 4). On November 11, 2021, Nickel Plate,

with the permission of the Court, filed a Memorandum in Opposition to Appellant's Motion for Summary Judgment. (*Jasper Order*, p. 4).

On June 2, 2022, counsel for Jasper Respondents submitted a letter to The Honorable H. Steven DeBerry, IV ("Jasper Letter") enclosing a copy of a May 5, 2022 letter issued by South Carolina Attorney General's Office ("SC AG Letter"). (*Jasper Letter*, pp. 1-6). Jasper Letter argued that the SC AG Letter supported Jasper Respondents' positions and would be "helpful in making [the Court's] decision." (*Jasper Letter*, p. 2). On June 3, 2022, counsel for Appellants submitted a responsive letter to the Honorable H. Steven DeBerry, IV, arguing that the SC AG Letter was not drafted to address the dispute before the Circuit Court, as the SC AG Letter, like *Horry County*, concerned a school district and to the extent that it touched on any issue at dispute, the SC AG Letter, instead, supported Appellant's position. (*Hardeeville Letter*, p. 1).

On July 13, 2022, the Honorable H. Steven DeBerry, IV, entered an Order denying Appellant's Motion for Summary Judgment, Granting Jasper Respondents' Motion for Partial Summary Judgment, and Ordering Jasper Respondents to 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 the Order ("Jasper Order"). (*Jasper Order*, p. 24)

On July 25, 2022, Appellant timely filed its Motion to Reconsider. (*Hardeeville Motion to Reconsider*, pp. 1-9). On August 4, 2022, Jasper Respondents filed Jasper County's Response to City of Hardeeville's Motion to Reconsider. (*Jasper Response to Motion to Reconsider*, pp. 1-7). On August 10, 2022, Appellant filed City of Hardeeville's Reply to Jasper County's Response to City of Hardeeville's Motion to Reconsider. (*Hardeeville Reply*, pp. 1-5).

On September 2, 2022, the Honorable H. Steven DeBerry, IV, entered an Order denying Appellant's Motion to Reconsider. (*Denial Order*, p. 1). On September 13, 2022, pursuant to South

Carolina Appellate Court Rule 203(b)(1), Appellant timely served its Notice of Appeal. (*Hardeeville Notice of Appeal*, pp. 1-36).

STATEMENT OF THE FACTS[1]

On February 7, 2000, Jasper enacted an ordinance in which Jasper authorized the execution of an agreement to create the Multi-County Park ("Park Ordinance"). Section I of the Park Ordinance purports to incorporate the Park Agreement by reference into the Park Ordinance: "The form of the joint industrial park agreement (the 'Agreement') is attached hereto and all the terms of the Agreement are hereby incorporated herein."[2] The Agreement for Development of Joint County Industrial and Business Park ("Park Agreement"), which was approved by the Park Ordinance, was last executed on April 10, 2000. The Park Agreement's has a stated effective date of December 31, 1999, which is 38 days before the execution of the Park Agreement was authorized by the Park Ordinance. Neither the collection nor distribution of Appellant's revenue is contemplated or referenced in the Park Agreement.

Appellant is not a signatory or otherwise a party to the Park Agreement or to any contract related to the Multi-County Park.

On October 5, 2006, Appellant annexed the Real Property based on a 100% petition from the Real Property's owners. Jasper does not own any portion of the Real Property.

Since 2006, Appellant and/or Jasper Respondents have been directly involved in the collection of Appellant's levy and distribution of 100% of the collected revenue to Appellant.

[1] For purposes of this Court's review, the factual statements are based on the parties' allegations, rather than facts as determined through discovery.

[2] The Park Agreement does not specifically incorporate the Park Ordinance by reference. Rather, Section 7 of the Park Agreement provides that: "Revenues received by Jasper County shall be distributed by Jasper County to the political subdivisions of Jasper County (hereinafter referred to as the 'Jasper Participating Taxing Entities') in accordance with an ordinance adopted by Jasper County." No specific reference to the Park Ordinance is contained in Section 7 or elsewhere in the Park Agreement.

From 2006 until November 2020, neither Jasper Respondents nor Beaufort or Nickle Plate suggested to Appellant that Appellant was not entitled to levy and collect 100% of Appellant's revenue from the Real Property.

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the [circuit] court pursuant to Rule 56(c), SCRCP." *Garrard v. Charleston Cty. Sch. Dist.* 429 S.C. 170, 189, 838 S.E.2d 698, 708 (Ct. App. 2019), (alteration in original) (quoting *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). Under Rule 56(c), SCRCP, '[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Bauknight v. Buchanan*, No. 2022-UP-346, 2022 S.C. App. Unpub. LEXIS 435, at *6 (Ct. App. Aug. 24, 2022).

"Summary judgment is appropriate [only] when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue as to any material fact such that [the moving party] must prevail as a matter of law." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted in original); Rule 56(c), SCRCP. The "'standard of review in evaluating a motion for summary judgment is to liberally construe the record in favor of [Hardeeville] and give [it] the benefit of all favorable inferences that might reasonably be drawn therefrom.'" *Companion Prop. & Cas. Ins. Co. v. Airborne Exp. , Inc.*, 369 S.C., 388, 390-91, 631 S.E.2d 915, 916 (Ct. App. 2006) (quoting Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991)). "Summary judgment should be denied where [the non-movant has] submit[ted] a mere scintilla of

evidence." *Zurich Amer. Ins. Co. v. Tolbert*, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010) citing *Hancock v. Mid–South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

ARGUMENTS

I. THE COURT ERRED IN FINDING THAT THE PARK AGREEMENT IS VALID AND SATISFIES SECTION 4-1-170 (A)(3) AND SECTION 13(D).

The Circuit Court erroneously held that the Park Agreement satisfied the requirements of S.C. Const. art. VIII, § 13(D) and the three requirements of South Carolina Code Annotated section 4-1-170 (A). (*Jasper Order*, pp. 11-12).

In relevant part, Section 13(D) provides that "Counties may jointly develop an industrial or business park . . . [and the] written instrument . . . is binding on all participating counties." Section 13(D) neither explicitly provides nor even suggests that any governmental entity (other than "participating counties" and, by application of *Horry County*, a school district) is bound by the participating counties' park agreement. *See also* S.C. Code Ann. § 4-1-170 (A) ("By written agreement, counties may develop jointly an industrial or business park [and t]he written agreement entered into by the participating counties . . . ."). This is not only basic statutory interpretation but also simple contract law. As a general rule, a contract is binding only on the parties to that contract. *See, e.g.*, *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997); *Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994) (holding a party not in privity with contracting parties has no right to enforce a contract). Appellant is not a party to the Park Agreement. (*Jasper Order*, pp. 15-16).

Additionally, Section 13(D) must be read in its factual context. Each parcel in this State is, necessarily, located in a county *and* a school district. By contrast, absent annexation, or the creation of a new municipality (both of which require consent of all or a substantial portion of impacted landowners), a parcel of real property is not automatically located in an incorporated municipality.

Thus, a constitutional provision specifically addressing counties, but not municipalities, is consistent with the factual reality in which all real property in this State exists.

Thus, absent some other basis in statute or judicial precedent, Appellant cannot be bound by the Park Agreement to which it is not a party. Recognizing that municipalities have distinctly different characteristics from school districts, the General Assembly expressly addressed the unique interest of municipalities by creating section 4-1-170(C).

The mere existence of section 4-1-170(C) illustrates the legal error of the Circuit Court's sole-county-control construction of Section 13(D). That is, the Circuit Court's Order holds that only counties can control the creation a multi-county park. (*Jasper Order*, pp. 16, 24). This holding is legal error because under such interpretation, section 4-1-170(C), which expressly requires a municipality's consent (in any circumstance), would necessarily be an unconstitutional enactment. As our Supreme Court has instructed, a court must presume that when the General Assembly enacts a statutory provision, that provision is constitutional. *See generally Davis*, 322 S.C.at 73, 470 S.E.2d at 94.

A court cannot construe a statute without regard to its plain and ordinary meaning and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993). A statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object. *Davis v. County of Greenville*, 322 S.C. 73, 470 S.E.2d 94 (1996).

The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face. *Kennedy v.*

S.C. Ret. Sys., 345 S.C. 339, 549 S.E.2d 243 (2001). If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005). Under the plain meaning rule, a court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011); *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 29-30, 661 S.E.2d 349, 351-52 (2008).

Section 13(D) and section 4-1-170 must be read together to reach a harmonious construction. *See, e.g.*, *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) ("'[T]he statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.'" (quoting *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006))). Section 13(D) provides that the creation of a multi-county park is solely by agreement of the member counties. That agreement must be in writing. *Id.* The agreement is binding on the parties. *Id.* Similarly, section 4-1-170 permits a multi-county park to be "develop[ed]" "[b]y written agreement." There is ***no*** other mechanism for creation of a multi-county park under either Section 13(D) or section 4-1-170. Thus, the written agreement is the sole controlling mechanism for the multi-county park and all matters that flow from creating a multi-county park, and a court is not permitted to "blue pencil" or otherwise judicially amend a park agreement. *See generally Poynter Invs.*, 387 S.C. at 583, 694 S.E.2d at 15.

The cannon of statutory construction, "expressio unius est exlusio alterius," or "inclusio unis est exclusio alterius" applies here. Those expressions mean that "to express or include one

thing implies the exclusion of another, or of the alternative." Black's Law Dictionary 602 (7th ed. 1999) (quoted in *Hodges v. Rainey,* 341 S.C. 79, 86, 533 S.E.2d 579, 582 (2000). Again, a court's reading is, and must be, consistent with the factual scenario in which ***any*** multi-county park could be created, not just the Multi-County Park at issue in this dispute.

Section 4-1-170(A) requires the written agreement to "(1) ***address*** sharing expenses of the park; (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" (emphasis added). Notably, the General Assembly elected to use different language for each required element of the agreement. Park expenses need only be "addressed," while revenue must be "specif[ied] by percentage" and the "manner in which revenue must be distributed" must likewise be "specified."

Where a term is not defined in a statute, the Court must employ a common understanding of the undefined term. "The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." *Sonoco Prods. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008). Reading these three requirements in concert and comparing the language, the Court must conclude that "specify" means something other than and requires more particularity than merely "addressing." Further, reviewing the Park Agreement in its entirety, specifically sections 5, 6, and 7, the parties elected to (a) address expense sharing by specific percentage, and (b) specify percentages for revenue distribution between Jasper and Beaufort, as required by section 4-1-170(A)(2), but (c) told the Park Agreement's reader to look elsewhere for the specific manner in which revenue must be distributed. (Park Agreement, p. 3). It was legal error for the Circuit Court to conclude this is what

the General Assembly intended without torturing the language of the statutory requirement to "specify."

Thus, at a minimum, the Park Agreement does not comply with section 4-1-170(A)(3) because the Park Agreement fails to "specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties." Section 7 of the Park Agreement provides that any revenue Jasper receives pursuant to the Park Agreement will be distributed "in accordance with an ordinance adopted by Jasper County." On the face of the Park Agreement there is no provision for the actual distribution of revenue. Rather, a reader would have to find one or more subsequent documents that provide for revenue distribution. That is not what section 4-1-170 requires. Thus, the Park Agreement fails as a matter of law and could not bind Appellant.[3]

It cannot have been the General Assembly's intent, in enacting legislation requiring that the "written agreement must include provisions which . . . ***specify*** the manner in which revenue must be distributed to each of the taxing entities," section 4-1-170 (A) (emphasis added), to allow parties to the Park Agreement to ***fail*** entirely to specify the manner in which revenue is to be distributed. Nor could a court assume it would have been the General Assembly's intention that this element could be satisfied by interminable, various future legislative actions by a local government, and still comply with the plain language of section 4-1-170.

Additionally, the revenue distribution under a park agreement covers those governmental entities that have jurisdiction over the property at the time of the agreement. A municipality that subsequently annexes property after a multi-county park's creation would possess interests that

[3] Jasper Respondents admitted "[w]ritten agreements creating a multi-county industrial park must address . . . the manner in which revenue must be distribute to the taxing entities within of each the counties." Jasper Answer, ¶ 21.

exist outside of the park agreement, as contemplated by the text of Section 13(D) and section 4-1-170, because such an annexing municipality is neither a county, nor otherwise a contracting party. If, and to the extent the counties that are parties to a park agreement want to include a municipality in the arrangement, then section 4-1-170(C) requires the counties to amend the agreement to obtain the municipality's consent such that section 4-1-170(A)(3), which requires the agreement specify the manner in which revenue must be distributed to each of the taxing entities in each of the participating counties, is satisfied. (See also *Horry County*). This is how the General Assembly must have understood the plain meaning of Section 13(D) when enacting section 4-1-170.

In addition to being the appropriate legal construction of these sections, this is also compelled by common sense. The Circuit Court's Order permitting Jasper Respondents to capture and distribute Appellant's millage would have the practical impact of "blue penciling" the Park Agreement to make Appellant a *de facto* party to the Park Agreement. Rather than ordering that, the Circuit Court ought to have ordered that Jasper Respondents must seek to amend the Park Agreement to include Appellant, which would require Appellant's consent under section 4-1-170(C) and basic premises of contract law, the Circuit Court judicially mandated Appellant's addition to the Park Agreement not only without Appellant's consent, but also over Appellant's very vehement objection and on unknown terms.

The Circuit Court's Order has the impact of materially changing several fundamental elements of the Park Agreement after the Real Property is already located inside Appellant's jurisdiction and such "blue penciling" violates section 4-1-170(C) and general principles of contract interpretation, which requires a municipality's consent to be added to the Park Agreement. The Circuit Court's Order commits additional error by failing to specify the manner in which the Circuit Court has amended the Park Agreement, failing provide the amount of revenue that

Appellant would receive or permitting Appellant to cease to provide municipal services. Thus, following the Order, the Circuit Court has made Appellant a party to the Park Agreement, but neither Appellant nor Jasper Respondents know how much revenue Appellant is actually to receive.

II. THE COURT ERRED IN FINDING THAT DISCOVERY IS NOT NECESSARY FOR DETERMINING THAT THE PARK AGREEMENT IS VALID AS A MATTER OF LAW.

It is factually undisputed that, following Appellant's annexation of the Real Property in 2006, Appellant began levying, collecting, and retaining 100% of the taxes related to the Real Property, and, in 2008, Appellant contracted with the Auditor and the Treasurer to levy and collect Appellant's taxes and fees against all property located in Appellant's jurisdiction, including the Real Property, and distributed 100% of these collections to Appellant.

During the 14 years following annexation and the 12 years after the Auditor and the Treasurer were directly contracted to, and began levying and collecting for, and distributing taxes to, Appellant, until October 2020, not once did Jasper Respondents (which were aware of and had not objected to the annexation of the Real Property and had directly participated in the tax levy and collection contract among Appellant and the Auditor and the Treasurer) suggest that any entity other than Appellant was entitled to any portion of the revenue generated by the Real Property because of Appellant's imposition of millage.

Since Appellant's annexation of the Real Property in 2006, Appellant, Jasper, Nickel Plate, and Beaufort, and since 2008, Auditor and Treasurer directly, have interpreted the Park Agreement as the Park Agreement is written: it does not contemplate the collection of Appellant's millage as part of the Multi-County Park or the distribution of Appellant's revenue to anyone other than Appellant.

For at least 12 years, all parties have acted as if the governing constitutional, statutory, and contractual principles permitted Appellant to levy and collect its own millage not subject to any re-allocation or distribution according to the Park Agreement. Thus, under Jasper Respondents' own longstanding interpretation and direct participation, Appellant's millage should continue to be collected and distributed to Appellant without any interference by Jasper Respondents, Beaufort, or Nickel Plate. *See, e.g.*, Answer (Cross-Complaint), ¶¶ 35, 37, 38, & 40.

Something occurred in 2020 that altered the parties' longstanding course of dealing. However, Jasper Respondents have refused to participate in discovery in advance of Jasper Order.[4]

The Circuit Court committed further error in determining that discovery was unnecessary to determine whether the Park Agreement was valid as a matter of law. (*Jasper Order*, pp. 14-15, 24). For the Circuit Court to understand the revenue distribution, the Circuit Court could not merely read the Park Agreement itself but would have to find each and every subsequent document that addressed revenue distribution. That is not what section 4-1-170(A) requires. Jasper Respondents asserted that at least three subsequent ordinances have modified this revenue distribution. (*Jasper Answer*, pp. 15-17). However, nothing in the record proves that Jasper has not subsequently modified, rescinded, or repealed the revenue distribution. Further, despite these, at least, three amendments, nothing appears to indicate Jasper is now compliant with our Supreme Court's admonition in *Horry County*: "we note an inadequacy in the [park] agreement itself . . . section 4-1-170(3) requires the agreement creating the MCBP to 'specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.'" *Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001).

[4] Likewise, Jasper Respondents have failed to respond to Appellant's request for related information pursuant to S.C. Code sections 30-4-10 *et. seq.* ("SC FOIA"), which were submitted to Jasper on December 23, 2020. *See City of Hardeeville's Reply to Jasper County's Response to City of Hardeeville's Motion to Reconsider*, p. 3.

Although the Circuit Court could have held in favor of Appellant's motion for summary judgment by determining that the Park Agreement failed, on its face, to comply with the requirements of section 4-1-170(A) and our Supreme Court's admonishment in *Horry County*, the Circuit Court committed a reversible error of law in reaching the conclusion that the Park Agreement was compliant with State statute, in the absence of discovery, given Jasper Respondent's position that interpreting and understanding the Park Agreement is only possible via reference to actions and ordinances issued by Jasper, subsequent to execution of the Park Agreement. Additionally, Jasper Respondents offered the Circuit Court no explanation for their 12 or 14 years' prior course of conduct, in contravention of their current position, and in Jasper Respondents' motion for summary judgment, this failure to provide responsive discovery must be construed against them. *See Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc.* (Ct. App. 2006). Similarly, the Circuit Court erred by failing to defer to Jasper Respondents' longstanding interpretation of the Park Agreement or by requiring that Jasper Respondents participate in discovery to rationalize their current position with their interpretation of the Park Agreement for the prior 14 years. As the authorities responsible for budgeting, levying, and collecting taxes and fees, and then distributing those taxes and fees according to the Park Agreement, for more than 14 years, Jasper Respondents interpreted the Park Agreement as having no impact whatsoever on Appellant. "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002); (citing *Dunton v. South Carolina Bd. of Examiners in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). See also *Kiawah Dev. Partners, II v. S.C. Dept. of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014) (holding that courts are to give "deference to an

administrative agency's interpretation of an applicable statute or its own regulation," when the agency's interpretation is consistent with, and not contrary to, the plain language of the statute).

III. THE COURT ERRED IN FINDING THAT APPELLANT'S CONSENT TO THE PARK AGREEMENT WAS NOT REQUIRED.

As a general rule, a contract is binding only on the parties to that contract. *See, e.g.*, *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997); *Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994) (holding a party not in privity with contracting parties has no right to enforce a contract).

The language of section 13(D) of the South Carolina Constitution is plain, unambiguous, and conveys a clear and definite meaning: "Counties may jointly develop an industrial or business park . . . [and the] written instrument . . . is binding on all participating counties" (emphasis added). Counties are bound by their written instruments regarding a multi-county park. Nothing in paragraph D purports constitutionally to bind a municipality to a multi-county park instrument.

If the Constitution does not force a municipality to be bound, then in order for a municipality to be bound, the language creating such an obligation must be found elsewhere in statute. But, like the Constitution, the relevant statutory authority contains no such binding language: "By written agreement, counties may develop jointly an industrial or business park . . . as provided in Section 13 of Article VIII of the Constitution of this State." S.C. Code Ann. § 4-1-170(A) (emphasis added). Section 4-1-170(A) points the reader back to the constitutional provision discussed above, which contains no language binding a municipality.

Absent constitutional and statutory authority forcing a municipality to be bound by a written agreement, Appellant must not have been bound unless it had been made a party to the Park Agreement and, thus, became bound by contract. However, as is previously noted, a primary source of the dispute in this case is that Appellant is not a party to the Park Agreement. (*Jasper*

Order, pp. 15-16). As a result, based on basic principles of statutory and contractual construction, it was legal error for the Circuit Court to conclude Appellant is bound by the Park Agreement.

South Carolina Code Annotated section 5-3-150 ("section 5-3-150") provides a method for annexing property into a municipality. When annexing property, section 5-3-150 requires, among other things, the annexing municipality (a) provide notice to the county administrator, (b) hold a public hearing during which (i) the municipality must alert the public to what public services will be assumed by the municipality, and (ii) reveal what taxes and fees the municipality would be borne against the new city property for the public services, and (c) provide notice of the timeline for assumption of the public services.

Section 5-3-150 provided the basis through which Appellant annexed the Real Property. According to the record, the Real Property's landowner, which constituted 100% of the landowners of the property being annexed, petitioned Appellant to annex the Real Property. There is no evidence in the record suggesting that Appellant failed to comply with section 5-3-150's requirements. Because the statutes at issue must be read harmoniously, the point of Appellant's annexation was the point in the timeline at which Jasper Respondents ought to have raised any concerns over Appellant's ability to levy and collect, based on the existence of the Park Agreement, or ought to have sought Appellant's consent to the Park Agreement. There is no evidence in the record that either such objection was raised, or such consent was sought.

IV. THE COURT ERRED IN FINDING THAT ALL PROPERTY IN THE PARK, INCLUDING THE ANNEXED PROPERTY, IS EXEMPT FROM ALL *AD VALOREM* TAXATION.

Further, the Court must read Section 13(D) and section 4-1-170 in concert with section 5-3-150. Nothing in Section 13(D), section 4-1-170, or section 5-3-150 suggests the General Assembly intended to limit a municipality's ability to annex property or to levy and collect taxes necessary to support the public services provided to that annexed property. Rather, section 5-3-

150(1) specifically requires a municipality annexing property to provide notice to the public what services will be provided and when and how much those services will cost the landowners of the property being annexed through taxes and fees.

Section 5-3-150(5) provides that for purposes of this section, any real property included within a multicounty park under section 4-1-170 is considered to have the same assessed valuation that it would have if the multicounty park did not exist. Notwithstanding any other provision of law, any real property which is or has been included within a multicounty park under section 4-1-170 and title to which is held by the State of South Carolina, ***only may be annexed*** with prior written consent of the State of South Carolina, and when title to real property in the park is held by a political subdivision of the State, the property ***may be annexed only*** with prior written consent of the governing body of the political subdivision holding title. (emphasis added).

The Circuit Court ought to have, and this Court must read, all of section 5-3-150 in concert with itself and with Section 13(D) and section 4-1-170. Section 5-3-150(1) provides general authority for a municipality to annex property and levy taxes and fees in exchange for providing services. Section 5-3-150(4) provides that (a) property owned by a local government and leased to a company pursuant to a "title transfer" fee-in-lieu of tax structure maintains the same assessed value to the annexing municipality ***after annexation*** as the property's original cost and (b) provides the lessee (not the local government) can consent to the annexation. Section 5-3-150(5) provides that property subject to a multi-county park arrangement under section 4-1-170, as is present in the instant dispute, maintains the same assessed value to the annexing municipality ***after annexation*** as the property would have had absent the multi-county park designation and when title to the property is in the name of a county, for example, that county must consent to the annexation. That is, when the General Assembly intended to restrict a municipality's ability to

annex multi-county park property and, therefore, tax that property, it expressly did so.[5] *See* section 5-3-150(5) ("when title to real property in the park is held by a political subdivision of the State, the property may be annexed only with prior written consent of the governing body of the political subdivision holding title").[6]

The General Assembly's intention, particularly when read in concert with section 4-1-170, is plain: a municipality may annex, levy, and collect taxes and fees, as part of the property's becoming part of a municipality even after property is located in a multi-county park. Further, nothing in the plain language of section 5-3-150 suggests the General Assembly intended for a municipality to be bound to an existing multi-park agreement following annexation. Indeed, such a reading contradicts the plain reading of section 5-3-150(1) which requires, as a condition of the annexation, that the requisite "public hearing must include . . . a statement as to what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services." Had the General Assembly intended to require that a municipality consent to a multi-county park agreement as part of the annexation process, the General Assembly could have done so.

Further, as a matter of public policy, the General Assembly would not have intended for a municipality to be able to annex property, which requires the municipality to provide services to the annexed property, but then leave the capture and distribution of revenue generated by the annexed property up to another entity, such as the county. Essentially, in that scenario, a municipality would be required to provide services, but would receive no revenue, which result

[5]Again, the cannon of statutory construction, "expressio unius est exlusio alterius," or "inclusio unis est exclusio alterius" applies here.

[6]Jasper does not own the Real Property. Thus, Hardeeville was not required to obtain Jasper's consent prior to annexation.

contradicts the plain language of section 5-3-150(1). The Circuit Court erroneously interpreted *Horry County* to have considered and dismissed, similar policy arguments made by the Horry County School District. The Circuit Court misconstrued *Horry County* by failing to acknowledge that none of the statutes applicable to annexation or multi-county parks treat municipalities and school districts interchangeably.

CONCLUSION

In applying these principles, construing State statues and the State Constitution in harmony, and finding that school districts and municipalities are treated differently under State statute, the Circuit Court should have found, and this Court should now find, in favor of Appellant.

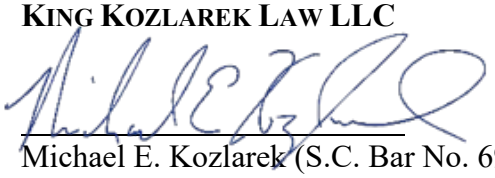
This Court should find that Appellant's annexing property located in the Multi-County Park, after that park was created, resulted in the annexed property being subject to *ad valorem* taxation. Instead of foisting an unworkable agreement with uncertain terms on a non-party, the Circuit Court should have deferred to the wisdom of the General Assembly's requirement that municipalities must consent to these county-based park agreements. This Court should hold that Appellant's *ad valorem* taxation does not constitute park revenues generated from park property and that Appellant's revenues from the Real Property, therefore, are not to be allocated and distributed in accordance with the judicially blue-penciled Park Agreement.

And, at the very least, instead of ignoring the parties 14-year course of dealing, the Circuit Court should have required that the parties meaningfully participate in discovery before entering the Jasper Order.

For these reasons, Appellant respectfully asks this Court to reverse the decision of the Circuit Court and find for Appellant in all respects, or in the alternative, find that the case should be remanded to the Jasper County Court of Common Pleas for further proceedings consistent with the opinion of this Court.

Respectfully submitted,

KING KOZLAREK LAW LLC



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November 29, 2022
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY COURT OF COMMON PLEAS

The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2022-001266
Common Pleas Case No. 2021-CP-27-00028

City of Hardeeville.……Appellant,

v.

Jasper County, South Carolina, Jasper County Treasurer,
and Jasper County Auditor……..…Respondents,

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,

v.

City of Hardeeville, Nickel Plate Road, LLC, and Beaufort County,
South Carolina…….…..Cross Defendants.

PROOF OF SERVICE

I certify that a copy of the foregoing ***Initial Brief of Appellant City of Hardeeville***, has been served on all counsel of record on November 29, 2022, by emailing and placing same in the United States mail, postage prepaid, addressed as follows:

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November 29, 2022

Via Electronic Filing (ctappfilings@sccourts.org) and US Mail
The Honorable Jenny A. Kitchings
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Re: City of Hardeeville v. Jasper County, et al.
Case No. 2021-CP-27-00028
Appellate Case No. 2022-001266

Dear Ms. Kitchings:

Enclosed for filing in connection to the above reference matter, please find Appellant's Initial Brief, Designation of Matter to be included in the Record on Appeal, and Proofs of Service.

By copy of this correspondence we are serving all counsel of record with a copy of the attached documents via email and US Mail.

Should you have any questions regarding this matter, please do not hesitate to contact me.

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Sincerely,

Michael E. Kozlarek

MEK/cbs
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