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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-00851
Appellate Case No. 2019-000728

National Trust for Historic Preservation in the United States and the City of Charleston,

Respondents/Appellants,

v.

City of North Charleston,

Appellant/Respondent.

THE CITY OF CHARLESTON'S PETITION FOR REHEARING

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NOW COMES Respondent/Appellant the City of Charleston ("Charleston"), by and through its counsel of record, pursuant to Rule 221(a), SCACR, following the filing of this Honorable Court's opinion in this appeal (the "Subject Opinion"), which affirmed the circuit court, and hereby petitions the Court to rehear this matter.

INTRODUCTION

This appeal concerns a contest to an annexation ordinance (the "Contested Ordinance") enacted by Appellant/Respondent, the City of North Charleston ("North Charleston"), under the auspices of S.C. Code Ann. § 5-3-100, which, in pertinent part, provides as follows: "If the territory proposed to be annexed *belongs entirely* to the municipality seeking its annexation and is *adjacent* thereto, the territory may be annexed by resolution of the governing body of the municipality" (emphasis added).

Without question, the property that the Contested Ordinance describes as being annexed into North Charleston (the "Acre") does not belong entirely to North Charleston, but rather includes a small portion of property (the "Overlapped Area") that is part of a larger parcel (the "National Trust Property") that is owned by Respondent/Appellant National Trust for Historic Preservation in the United States (the "National Trust") and is already within Charleston's corporate limits.[1] Moreover, and likewise without question, the Acre is separated from North Charleston's corporate limits by SC Highway 61 and the National Trust Property.

The circuit court rejected Respondents' challenge to the Contested Ordinance for lack of standing. In affirming the circuit court via the Subject Opinion, this Court cloaked North Charleston with jurisdiction over property that is not contiguous with its corporate limits and

[1] Hereinafter, "Respondents" refers to Charleston and the National Trust, collectively.

condoned one municipality leap-frogging the boundaries of another in pursuing an annexation. Most respectfully, the Subject Opinion is erroneous, and the Court should rehear this matter, because it overlooked and/or misapprehended a number of material points, as set forth herein.

BACKGROUND

In 1967, Georgia-Pacific Investment Company ("GPIC") acquired title to more than 12,000 acres of land, including real property lying to the southwest of SC Highway 61. (R. p. 2 ¶ 1, p. 242 ¶ 4.a, pp. 246–250.) On January 2, 1980, GPIC conveyed a portion of this property, namely, the National Trust Property, to The Nature Conservancy. (R. p. 2 ¶ 2, p. 243 ¶ 4.c, pp. 251–54.) On January 28, 1980, The Nature Conservancy conveyed the National Trust Property to the National Trust. (R. p. 2 ¶ 2, p. 240 ¶ 4.c, p. 243 ¶ 4.d, pp. 255–57.) Both deeds describe the National Trust Property as follows:

> [T]hat certain tract or parcel of land, in fee, situate, lying and being along the southern right of way line of Highway 61, County of Charleston, State of South Carolina, containing Twenty Six and Fifty Three Hundredths (26.53) acres, more or less, and more particularly described as follows:
>
> > Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the property owned by Grantor along the southern right-of-way line of Highway 61

(R. p. 252, p. 255.) The deed from GPIC also reserved to GPIC the right to establish eighteen (18) easements across the National Trust Property to provide access from Highway 61 to the remainder of GPIC's property. (R. pp. 253–254.) At the time, Charleston County designated the

National Trust Property as TMS No. 301-00-00-017. (R. p. 2 ¶ 2, p. 252, p. 255.) In 2005, Charleston annexed the National Trust Property. (R. p. 2 ¶ 5, pp. 37–38 ¶¶ 17 & 23, pp. 49–50 ¶ 17, p. 50 ¶ 23; pp. 301-302 ¶ 13, p. 303 ¶ 21, p. 320 ¶ 13, p. 321 ¶ 21.)

In 1989, GPIC conveyed its remaining property, consisting of 2,294.17 acres, to Whitfield Construction Company. (R. p. 2 ¶ 4, p. 243 ¶¶ 4.e & f, p. 258, pp. 259–263.) The deed to Whitfield expressly refers to the deed from GPIC to The Nature Conservancy in providing that sixteen (16) of the easements reserved such were being assigned to Whitfield. (R. p. 261.)

In 2009, Whitfield recorded plats (the "Easement Plats") showing eighteen (18) separate access easements running through the National Trust Property. (R. p. 3 ¶ 6, p. 243 ¶ 4.g, pp. 264–268.) The Easement Plats show the width of the National Trust Property as variable, in some places being less than the 100-foot width stated in the deed to the National Trust, and in some places being in excess of the 100-foot width stated in the deed to the National Trust. (R. pp. 264–268.) The Easement Plats also contain the following disclaimer: "THIS PLAT IS TO SHOW THE LOCATIONS OF THE EXISTING ACCESS EASEMENTS ONLY[.] THIS IS NOT A BOUNDARY SURVEY." (R. pp. 264–268); *see also* S.C. Code Regs. Ann. § 49-430.C(14) (defining "boundary survey").

At the time the Easement Plats were created, the National Trust Property was located in Charleston. (R. p. 243 ¶ 4.g, p. 244 ¶ 6, pp. 263–268.) Nothing on the plats indicates that the National Trust or Charleston reviewed and approved the plats, the location of the easements, or the width of the National Trust Property. (R. p. 5 ¶ 13, p. 243 ¶ 4.g, p. 244 ¶ 6, pp. 263–268.)

In 2017, Whitfield created the Acre, shown as "New Parcel 1" on Plat S17/0224 (the "Acre Plat"). (R p. 243 ¶¶ 4.g & h, p. 244 ¶ 6, p. 269.) Adam MacConnell, a project manager for North Charleston, confirmed that the Acre Plat shows Charleston County TMS No. 301-00-

00-797. (R. p. 240 ¶¶ 2 & 4.d, p. 244 ¶ 5, p. 269.) The Acre Plat utilized the Easement Plats to establish the boundaries for the Acre. (R. p. 4 ¶ 11, p. 244 ¶¶ 5–6, p. 269.)

The Acre Plat shows "Access Easement #3," as created by the Easement Plats, running from Highway 61 across the National Trust Property to the property corners of the Acre. (R. p. 244 ¶ 6, p. 264, p. 269, p. 303 ¶ 23, p. 322 ¶ 23.) The stated width of the National Trust Property on the Easement Plats for Access Easement #3 and on the Acre Plat is shown as 99.69 feet on the north side and 99.7 feet on the south side. (R. p. 244 ¶ 6, p. 264, p. 269.) This width conflicts with the stated width of the National Trust Property as being 100 feet from the southern right-of-way line of Highway 61, as delineated in the National Trust's title history, resulting in an overlap, or encroachment, of the Acre onto National Trust Property. (R. pp. 244 ¶¶ 6–7, p. 245 ¶ 8.)

As attested to by Daniel C. Forsberg, a professional engineer and land surveyor licensed by the State of South Carolina with over 39 years of experience, (1) the Acre Plat includes approximately 62 square feet of the National Trust Property as part of the Acre; (2) the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property; and (3) TMS No. 301-00-00-797 includes a small portion of the National Trust Property. (R. pp. 242 ¶¶ 1–2, p. 244 ¶ 6, p. 245 ¶ 8.)

After recording the Acre Plat, Whitfield conveyed the Acre, by reference to the Acre Plat, to Tim Whitfield Construction and Development LLC, which then conveyed the Acre, by deed incorporating the Acre Plat (the "Acre Deed") to North Charleston. (R. p. 244 ¶¶ 4.i & j, pp. 270–277.)

On December 21, 2017, North Charleston adopted Ordinance No. 2017-080 (i.e., the Contested Ordinance), which purports to annex an acre of land (i.e., the Acre), designated as

Charleston County TMS No. 301-00-00-797, located southwest of SC Highway 61, also known as Ashley River Road. (R. pp. 293–295.) Again, North Charleston adopted the Contested Ordinance under the auspices of § 5-3-100, which is only available as an alternate method of annexation when "the territory proposed to be annexed *belongs entirely* to the municipality seeking its annexation and is *adjacent* thereto . . . ." (R. p. 293 (emphasis added).)[2] In the Contested Ordinance, North Charleston represents that the Acre "belongs entirely" to North Charleston. (R. p. 293.)

The Contested Ordinance describes the Acre utilizing the same measurements depicted on the Acre Plat and states "the area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797." (R. p. 294.) The legal description in the Contested Ordinance describes the property being annexed by reference to the "easternmost," "northernmost," "westernmost," and "southernmost" corners of TMS No. 301-00-00-797. (R. p. 294.) The boundary lines in this legal description include the "northeasternmost," "northwesternmost," "southwesternmost," and "southeasternmost" property lines of TMS No. 301-00-00-797. (R. p. 294.) The map incorporated into the Contested Ordinance identifies the parcel being annexed as 301-00-00-797. (R. p. 295.) According to Forsberg, "if North Charleston annexed the Acre . . . as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." i.e., the Overlapping Area. (R. p. 246 ¶ 9.) Forsberg's affidavit was not refuted.

[2] Absent a basis to accomplish an annexation via one of the alternate methods provided in S.C. Code Ann. §§ 5-3-100, -110, -115, -120, -130, -140, or -150, a municipality has to utilize the annexation procedure set forth in S.C. Code Ann. § 5-3-300. To be clear, North Charleston wrongfully utilized the alternate method in § 5-3-100 where it did not apply, and North Charleston did not attempt to utilize any other procedure.

Pursuant to S.C. Code Ann. § 5-3-270, on February 16, 2018, the National Trust and Charleston filed and served a notice of intent to challenge the Contested Ordinance, and, on March 20, commenced an action challenging the Contested Ordinance. (R. pp. 30–46.) The complaint sought a determination that the Contested Ordinance was invalid because (1) the Acre did not "belong entirely" to North Charleston, (2) the Contested Ordinance included property owned by the National Trust since 1980 and previously annexed by Charleston in 2005, (3) the Acre was not contiguous or adjacent to North Charleston's municipal limits, and (4) the Contested Ordinance violated the long-standing public policy against "leap frog" annexations. (R. pp. 40–41 ¶ 38.)

The National Trust alleged standing to challenge the Contested Ordinance based on its ownership of a portion of the property being annexed and under the "public importance exception" to the general framework for standing to challenge municipal annexations. (R. p. 35 ¶¶ 4-6, p. 39 ¶ 32, pp. 39–40 ¶ 35.) Charleston alleged standing to challenge the Contested Ordinance because Charleston previously annexed a portion of the Acre in 2005 and because the purported annexation would permit North Charleston to "leap frog" over privately-owned territory previously annexed by Charleston. (R. p. 39 ¶¶ 33–34, pp. 39–40 ¶ 35.)

North Charleston answered the complaint on April 17, 2018, interposing a general denial and asserting affirmative defenses that the National Trust and Charleston did not have standing and that the complaint failed to state a claim. (R. pp. 47–58.) North Charleston also asserted a counterclaim, requesting a declaration that it was the sole owner of the Acre. (R. p. 55 ¶ 57, pp. 55–56 ¶ 58, p. 56, ¶¶ 59-63, p. 57 ¶¶ b–c.) Charleston and the National Trust replied to the counterclaims on May 17, 2018, and May 21, 2018, respectively. (R. pp. 59–66.)

North Charleston moved to dismiss the complaint pursuant to Rule 12, SCRCP, and Rule 56, SCRCP, arguing that the National Trust and Charleston lacked standing to challenge the Contested Ordinance. (R. p. 68.) Simultaneously, North Charleston moved for partial summary judgment, arguing that the Acre was "adjacent to" its municipal limits, as a matter of law. (R. p. 67.) The National Trust and Charleston later moved for summary judgment based on, among other things, the lack of contiguity or adjacency between the Acre and North Charleston's municipal limits. (R. pp. 69–72.) The circuit court heard these motions on December 10, 2018, and requested that the parties prepare proposed orders, which the parties then submitted. (R. pp. 130–154, pp. 236:17–237:8.)

On March 1, 2019, the circuit court entered an order (the "Original Order") dismissing the complaint and finding that neither the National Trust nor Charleston had standing to challenge the Contested Ordinance. (R. pp. 1–14.) The circuit court also held: "In the event that this Court is found to be in error regarding its ruling of lack of standing of the Plaintiffs, this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute." (R. pp. 1–2.) The circuit court refiled the Original Order on March 5, 2019 (the "Refiled Order"). (R. pp. 15–28.) As used herein, references to the "Order" include the "Original Order" and the "Refiled Order," which are identical.

On the issue of standing, the circuit court limited standing to challenge an annexation, in the absence of an allegation of deceitful conduct, to (1) the owners of the property being annexed and (2) the Attorney General. (R. p. 5.) The circuit court also concluded, as a matter of law, that the Contested Ordinance did not attempt to annex any property owned by the National Trust. (R. pp. 7–8.) With respect to the public importance grounds for standing, the circuit court held that only the Attorney General could contest a "leap frog" annexation on public importance grounds,

and that only an allegation of "deceitful conduct" would support standing in favor of the National Trust or Charleston. (R. pp. 8–9.)

Charleston received written notice of entry of the Original Order on March 4, 2019, and written notice of the entry of the Refiled Order on March 6, 2019. (R. p. 155.) On March 14, 2019, Charleston and the National Trust served separate motions to reconsider the Original Order and the Refiled Order as they pertained to the issue of standing. (R. pp. 155–176.) The circuit court denied both motions by order entered on May 1, 2019 (the "Reconsideration Order"). (R. p. 29.) Charleston received written notice of entry of the Reconsideration Order on May 2, 2019. (R. p. 363.)

On April 29, 2019, North Charleston filed a "Notice of Cross Appeal" of the circuit court's decision on adjacency, conditioned upon the National Trust or Charleston filing a "primary appeal." (R. pp. 358–362.) On May 24, 2019, Charleston served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. (R. pp. 363–367.) On May 31, 2019, the National Trust served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. (R. pp. 368–371.)

This appeal timely followed,[3] and in due course, it was briefed and made ready for decision. Following oral argument on October 11, 2022, this Court decided the appeal on February 1, 2023, via the Subject Opinion, affirming the circuit court.

This petition for rehearing timely follows.

[3] (R. pp. 358–371.)

STANDARD OF REVIEW

Although North Charleston originally couched its motion as a motion to dismiss based on a lack of standing, the circuit court considered "the pleadings, affidavits, exhibits, memoranda, and arguments of counsel," before granting the motion. (R. p. 1.) "A trial court may properly grant a motion for summary judgment when '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.'" *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000) (quoting Rule 56(c), SCRCP).

"Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id.* at 378-79, 534 S.E.2d at 692. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Id.* at 379, 534 S.E.2d at 692.

ARGUMENT

I. In affirming the circuit court, this Court overlooked and/or misapprehended a number of material points.

A. This Court erred in affirming the circuit court where the circuit court erred in limiting standing to challenge the Contested Ordinance to a property owner of the annexed land or the Attorney General.

The circuit court committed an error of law in determining that, absent deceitful conduct, the only parties who may challenge a 100% annexation are the owners of the annexed land and the Attorney General. (R. p. 5.) Charleston agrees that the owner of real property being annexed

has standing to challenge any attempt to annex its own property. However, the test for standing includes not only those asserting an infringement of "proprietary interests," but also those asserting an infringement of "statutory rights." The Supreme Court of South Carolina has repeatedly recognized statutory and proprietary rights of municipalities over properties within their jurisdiction, including the right to contest annexations of property within their municipal limits.

"The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing." *Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996); *see also St. Andrews Pub. Serv. Dist. v. City Council*, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002) ("In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights."). The common phraseology arises from case law addressed specifically to the standing of political subdivisions. *See County of Lexington v. Columbia*, 303 S.C. 300, 300, 400 S.E.2d 146, 147 (1991) (recognizing that, in the absence of "an issue of overriding public concern," a political subdivision seeking to challenge a municipal annexation "must allege an infringement of its own interests or statutory rights to establish standing.").

It is axiomatic that a municipality has standing to challenge the annexation of property already lying within such municipality's corporate limits. *See Forest Acres v. Forest Lake*, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (Town of Forest Acres had standing to challenge purported detachment of property without its consent); *Forest Acres v. Seigler*, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953) (permitting challenge to annexation of property within municipality's corporate limits, looking to case law emphasizing that detachment statutes afford "substantial right recognized in plaintiff, as a corporate entity, over its corporate territory");

Tovey v. Charleston, 237 S.C. 475, 479-80, 117 S.E.2d 872, 874 (1961) ("We have held that under our statutes governing extension and reduction of corporate limits, a portion of one municipality may not be annexed to another without submitting the question of said detachment to the voters of the municipality whose area is to be reduced.").

Since 2005, Charleston has had the statutory right to exclusive municipal jurisdiction over the portion of the Acre owned by the National Trust and previously annexed by Charleston (i.e., the Overlapped Area), as well as proprietary functions and interests of governmental dominion and control over this property, to include matters pertaining to taxation, land use, and the like. *See, e.g.,* S.C. Code Ann. § 5-7-30 (listing municipality's statutory rights with respect to property within its boundaries); S.C. Code Ann. § 5-21-110 (right to levy and collect taxes on personal and real property); S.C. Code Ann. § 5-7-80(1) (authority to abate nuisances); S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee); S.C. Const. Ann. Art. VIII, § 15 (outlining constitutional right of municipal consent); S.C. Code Ann. § 5-3-150(1) (statutory right to annex property under 75% Annexation Method); S.C. Code Ann. § 5-3-280 (prescribing procedure under which corporate limits may be reduced).

In affirming the circuit court, this Court dismissed the Overlapped Area as a mere boundary dispute between Charleston and North Charleston. In doing so, it overlooked and/or misapprehended the consequences of that dispute. As an initial matter, that Charleston proved a boundary dispute as a result of the Contested Ordinance is, alone, sufficient to accord standing, as the very nature of the dispute implicates its statutory rights to property within its jurisdiction. Second, the record, in demonstrating the boundary dispute arises from the Overlapped Area

being owned by the National Trust and within Charleston corporate limits, brings to front and center whether the annexation could comply with the requirement of § 5-3-100 that the area annexed be "belong[ed] entirely" by the annexing municipality. In short, the very existence of the boundary dispute created by the ordinance implicates infringement of Charleston's and the National Trust's proprietary interests and statutory rights, cloaking each with standing.

Charleston duly alleged and produced evidence that the Contested Ordinance included property previously annexed to Charleston. Charleston therefore has standing under well-established case law in South Carolina, as, most respectfully, this Court (and the circuit court) should have found.

B. This Court erred in affirming the circuit court where the circuit court erred in granting summary judgment to North Charleston where the record establishes at least a genuine issue of material fact that the Acre includes a portion of the National Trust Property, which was annexed into Charleston in 2005.

According to the circuit court, "North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797." (R. p. 7.) The circuit court thus described the issue for determination as "what land is actually part of that parcel." (R. p. 7.) The circuit court then declared that a "TMS number and map do not supersede a deed." (R. p. 7.) "Thus, the reference in the [Contested Ordinance] to 'TMS 301-00-00-797' is subservient to the deed as well." (R. p. 7.)

The disconnect with this ruling is that the record evidence creates at least a genuine issue of material fact that the Acre Deed, the Acre Plat, and TMS No. 301-00-00-797 include property owned by the National Trust and annexed by Charleston in 2005. In fact, Forsberg's affidavit is the only evidence of "what is included in that parcel." (R. p. 242 ¶¶ 1–2, pp. 244–245.)

A party opposing summary judgment is entitled to have the evidence and all reasonable inferences drawn therefrom viewed in the light most favorable to it. *See David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) ("In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party."). It is well-recognized that even testimony from an *unlicensed* surveyor is admissible on the question of the proper boundary between two properties. *See Williams v. Moore*, 400 S.C. 90, 102, 733 S.E.2d 224, 230 (Ct. App. 2012) ("While Coker was not a licensed land surveyor, the trial court found his training and experience qualified him as an expert as to the boundary line in this case, and we do not see any reason to doubt that qualification."); *cf.* S.C. Code Ann. § 27-1-20 (permitting circuit court to appoint surveyors at nomination of parties in disputes involving title or boundaries).

Forsberg opines, to a reasonable degree of certainty based on his education and experience that "if North Charleston annexed the Acre as described by Plat S17/0224 [the Acre Plat] or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." (R. p. 245 ¶ 9 (emphasis added).) Forsberg refers to the area shown on the Acre Plat as the "Acre" (R. p. 243 ¶ 4.h, p. 269); explains that the Acre Deed conveys the property described on the Acre Plat to North Charleston (R. p. 244 ¶¶ 4.j & I, p. 269–277); and also concludes, to a reasonable degree of certainty based on his education and experience, that "the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property." (R. p. 245 ¶ 8.)

It is undisputed that, if the National Trust Property is part of the Acre, so is the territory previously annexed by Charleston in 2005. (R. p. 124, n. 4). Even the circuit court recognized: "In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several

properties into Charleston's municipal limits, including the National Trust Property, TMS No. 301-00-00-017." (R. p. 2 ¶ 5).

The facts cited by Forsberg could not more clearly bear this out. The National Trust Property is 100 feet wide and hugs the southern right-of-way line of Highway 61, a circumstance that has existed since 1980. (R. p. 243 ¶¶ 4.c & d, pp. 252–257.) The National Trust Property is in the City of Charleston, a circumstance that has existed since 2005. (R. p. 38 ¶ 23, p. 50 ¶ 23.) The Acre Deed incorporates by reference the Acre Plat, which shows the northeastern-most boundary line of the Acre commencing at points 99.69 and 99.7 feet from the southern right-of-way of Highway 61. (R. p. 269, pp. 274–277.) These numbers are what they are, and demonstrate on their face that the property described in the deed to North Charleston includes a portion of National Trust Property, which Property is within the municipal limits of Charleston. (R. p. 245 ¶ 9.)

Instead of considering Forsberg's affidavit, the circuit court apparently reasoned that, because a grantor cannot convey an interest in land greater than what the grantor owns, the Acre Deed could not convey any portion of the National Trust Property to North Charleston, and because the Contested Ordinance recited that the property described therein "belongs entirely" to North Charleston, the Contested Ordinance only annexed land owned by North Charleston, regardless of how the annexed property was actually described. (R. pp. 6–7.)

This reasoning misapplies the general principles of real property law. The rules for interpreting a deed are the same as those for interpreting contracts, and it is the intention of the parties at the time the deed is executed that controls, not after-discovered extrinsic evidence. *See Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987) ("In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes

some well-settled rule of law or public policy."); *Klapman v. Hook*, 206 S.C. 51, 56, 32 S.E.2d 882, 883 (1945) ("The vital question is the intent of the grantor at the time the deed is executed.").

There is no legal or factual support for the circuit court's apparent conclusion that TMS No. 301-00-00-797 included some subset of the property described as being conveyed to North Charleston in the Acre Deed, as shown on the Acre Plat. There is no evidence that Charleston County mapped 301-00-00-797 by something other than the legal description in the Acre Deed, and, even if there were, Forsberg's affidavit explains that the "tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat." (R. p. 244 ¶ 5.)

Forsberg continued: "The legal description for the Acre references Plat S17/0224 [the Acre Plat]." (R. p. 244 ¶ 5.) "As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797." (R. p. 244 ¶ 5.) "[I]f North Charleston annexed the Acre as described on [the Acre Plat] or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." (R. p. 245 ¶ 9.) This at least establishes a genuine issue of material fact as to whether Charleston County mapped TMS No. 301-00-00-797 utilizing the Acre Deed and the Acre Plat or some other parcel.

The circuit court also relied on the rule that a purchaser may not convey more than he owns to support an interpretation of the Acre Deed that the grantor intended to convey something less than what is shown on the Acre Plat. (R. p. 6.) But this rule is not one of interpretation or construction. Rather, it is a rule of priority utilized in deciding boundary disputes and quiet title

actions.[4] The cases cited by the circuit court in favor of the proposition bear this out. *See F.C. Enters. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) (concluding that purchaser at tax sale purchased subject to lease and option because tax deed could convey only what delinquent owner held at the time of tax sale); *Cummings v. Varn*, 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992) (recognizing plaintiffs could not recover against defendant in possession of tract because plaintiffs could not show perfect chain of title); *Griggs v. Griggs*, 199 S.C. 295, 301, 19 S.E.2d 477, 479 (1942) (holding that grantee, who held perfect paper title to premises prior to acquiring conditional deed from grantor, should prevail even against allegations that conditional deed was invalid because grantor had no title to convey under the conditional deed); *Hutto v. Ray*, 192 S.C. 364, 366, 6 S.E.2d 747, 748 (1940) (finding in favor of plaintiffs because grantee of Hutto could take only Hutto's life estate in premises). In the present case, the rule clearly favors the National Trust's claim that it owns a portion of the Acre. But it contributes nothing to the determination of what the grantor intended to convey to North Charleston via the Acre Deed.

Additionally, the circuit court mistakenly relied upon the quitclaim nature of the Acre Deed. Again, this confuses the issue of interpreting a deed with the issue of determining the impact or effect of the deed in light of other claims to the same property. *See Martin v. Ragsdale*, 71 S.C. 67, 76, 50 S.E. 671, 674 (1905) ("The authorities are conflicting as to whether a person can interpose the defense of purchaser for valuable consideration without notice, when

[4] There are many inherent problems with converting this rule into one of interpretation or construction. The most obvious is that the evidence required to determine what the grantor owned at the time of the conveyance would impermissibly go beyond the four corners of the deed to determine what the parties intended. *See Gardner*, 293 S.C. at 25, 358 S.E.2d at 392 ("The intention of the grantor must be found within the four corners of the deed."). There is also no question that, in a lawsuit between the grantor and North Charleston over title to the land described in the Acre Deed, North Charleston would prevail notwithstanding this rule.

he derives his title from one holding under a mere quit claim deed."). It also conflates the quantity of the land described in the deed with the quality of the right, title, or interest being conveyed.

Here, the issue is what land is included in the Acre Deed, the Acre Plat, TMS No. 301-00-00-797, and the Contested Ordinance, not the extent or quality of title North Charleston acquired by virtue of its deed. *See Milton P. Demetre Family Ltd. P'ship v. Beckmann*, 413 S.C. 38, 55, 773 S.E.2d 596, 605 (Ct. App. 2014) ("A quitclaim deed is a lawful means of conveying title."); *Mulherin-Howell v. Cobb*, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) ("A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.").

While North Charleston and the circuit court give much weight to a reference in the Acre Deed to "p/o TMS No. 301-00-00-005," the tax map sequencing (TMS) number assigned by Charleston County to the property owned by Whitfield, this reference is not contained within the legal description of the property, and the explicit incorporation of the Acre Plat to show the "size, shape dimensions, buttings and boundings" of the Acre controls over the general recitation of the TMS number for the purported parent tract. *See* S.C. Code Ann. § 30-5-250 (when a recorded deed refers to a recorded plat, "such reference shall be equivalent to setting forth in extenso in such deed . . . the boundaries, metes, courses or distances of such real estate as may be delineated or shown on any such plat . . . .").

In affirming the circuit court, this Court dismissed overlooked and/or misapprehended the posture of the case, that being a motion for summary judgment. Respondents were only required to demonstrate a scintilla of evidence that the ordinance infringed on their respective proprietary interests or statutory rights, or that the case warranted standing pursuant to the public interest

doctrine. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) ("[W]e hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."). The record is clear that this burden was met.

The record unequivocally establishes the boundaries of the National Trust Property. The record unequivocally establishes that the National Trust Property includes the Overlapped Area. The record unequivocally establishes that the National Trust Property was annexed to Charleston in 2005, including the Overlapped Area. The record unequivocally establishes that the Contested Ordinance includes the parcel identified by TMS No. 301-00-00-797. The record unequivocally establishes that TMS No. 301-00-00-797 includes a portion of the Overlapped Area, which is owned by the National Trust. The totality of these unequivocal facts show that the Contested Ordinance included property that North Charleston did not own and that was already in Charleston's corporate limits. This result, in and of itself, far exceeds the scintilla of evidence standard required to withstand a motion for summary judgment. This result, in and of itself, implicates the statutory rights of Charleston to jurisdiction over properties within its boundaries, required for standing to contest an annexation ordinance.

Charleston proffered more than sufficient evidence to demonstrate that land within its municipal borders was included in the Contested Ordinance, cloaking it with standing to challenge the Contested Ordinance. At the very least, viewing the evidence and all reasonable inferences that may be drawn from it in the light most favorable to Charleston, there exists in the record a genuine issue of material fact on the overlap, rendering the award of summary judgment to North Charleston erroneous, as, most respectfully, this Court (and the circuit court) should have found.

C. This Court erred in affirming the circuit court where the circuit court erred in interpreting the Contested Ordinance to include only property belonging to North Charleston and lying outside Charleston's municipal limits.

The issue before the circuit court was what land was encompassed by the Contested Ordinance, a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Bayle v. S.C. DOT*, 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct. App. 2001). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 122, 542 S.E.2d at 739–40. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* at 122, 542 S.E.2d at 740. "Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.*

It was North Charleston's responsibility to ensure the sufficiency of the legal description of the property being annexed, not Charleston's. *Cf. Bostick v. Beaufort*, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) ("We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property. Ordinance 0-07-89 bestowed authority to annex only the property listed and described in the petitions. Hence, no subsequent action by the City could validate a portion of the ordinance which was a nullity upon origination."); 2 McQuillin *The Law of Municipal Corporations* § 7.5 (3d ed. 2006) ("The description of municipal boundaries or of municipal territory is invalid and ineffective where it is indefinite and uncertain").

The Contested Ordinance affirmatively states the territory annexed includes TMS No. 301-00-00-797, the tax map number assigned to the property surveyed on the Acre Plat. (R. pp. 293–95.) The legal description of the area to be annexed by the Contested Ordinance identifies

the corners of the property to be annexed as based on the "easternmost," "northernmost," "westernmost," and "southernmost" corners of TMS No. 301-00-00-797. (R. p. 294.) The property lines of the annexed area reference the "northeasternmost," "northwesternmost," "southwesternmost," and "southeasternmost" property lines of TMS No. 301-00-00-797. (R. p. 294.) The map attached to the Contested Ordinance identifies the area to be annexed as "301-00-00-797." (R. p. 295.)

North Charleston was thus unequivocal in establishing that North Charleston intended to annex TMS No. 301-00-00-797," which Forsberg explained includes "a small portion of the National Trust Property." (R. p. 245 ¶ 9.) In this respect, even the circuit court held: "North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797. (R. p. 7.)

North Charleston's after-acquired knowledge regarding the state of its title also does not negate that the property description in the Contested Ordinance is the controlling factor of the extent of the land included in the annexed area. Legislation is construed in light of conditions obtaining at the time of enactment, not based on after-acquired knowledge of the governing body. *See Durant v. Bennett*, 54 F.2d 634, 639 (D.S.C. 1931) ("As has been pointed out by the Supreme Court in many cases, a statute must be construed . . . in the light of the condition obtaining at the time the statute was passed."); *see also State ex rel. Attorney Gen. v. Kizer*, 164 S.C. 383, 387, 162 S.E. 444, 449 (1932) (adopting *Durant* as the opinion of the South Carolina Supreme Court).

In affirming the circuit court, this Court overlooked and/or misapprehended the import of the undeniable facts in the record as it pertained to standing and instead focused on the effect of the deed by which North Charleston acquired title to the Acre. The extent or quality of title

conveyed by the deed, however, is a separate and distinct issue from what property was described in, and annexed by, the Contested Ordinance. While North Charleston may have thought it owned the area described by the ordinance, it simply did not. And while it is true that a grantor can only convey title to land in which (s)he has an interest, that premise does not preclude an area of property mistakenly believed to be owned being erroneously included in an annexation petition and ordinance, which is what the record unequivocally reveals to have occurred.

The Court gave credence to the annexation ordinance verbiage that the area annexed was "approximately" an acre. The plain wording of the Contested Ordinance says, "the area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797." (R. p. 294.). Without question, TMS No. 301-00-00-797 includes the Overlapped Area. Moreover, an acre of land contains 43,560 square feet. The dimensions of the area annexed is 43,681 square feet, or approximately an acre, consistent with the verbiage of the ordinance.

The circuit court committed an error of law in interpreting the Contested Ordinance. The Contested Ordinance unequivocally attempted to annex property owned by the National Trust and annexed by Charleston in 2005. As a result, the circuit court erred in finding that Charleston lacked standing to challenge the Contested Ordinance, which infringes upon Charleston's proprietary interests and statutory rights over the portion of the Acre owned by the National Trust. As a result, the circuit court's ruling that Charleston lacks standing to challenge the Contested Ordinance should be reversed, as, most respectfully, this Court should have found.

D. This Court erred in affirming the circuit court where the circuit court erred in ruling that North Charleston did not claim ownership over any portion of the National Trust Property by ignoring North Charleston's repeated allegations that North Charleston owned the entirety of the acre.

The reasoning of the circuit court is further misinformed because it is influenced, in part, on an erroneous factual finding that North Charleston was not claiming ownership to any portion of the National Trust Property. (R. p. 5.) The circuit court also suggested that the issue of title to the Acre was "not a question of fact that this Court is tasked to resolve since the issue was not requested as relief in the pleadings." (R. p. 8.) Such is simply not the case. In fact, the circuit court's analysis of what property is included in the Acre Deed and within TMS No. 301-00-00-797 directly contradicts this conclusion. (R. pp. 6–7.)

The National Trust and Charleston asserted that the National Trust owned a portion of the property shown on the Acre Plat (R. p. 269), described in the Acre Deed (R. pp. 274–77), designated as Charleston County TMS No. 301-00-00-797, and purportedly annexed under the Contested Ordinance. (R. p. 39 ¶¶ 31–32.) The complaint defines the Acre as "real property designated as TMS 301-00-00-797." (R. p. 35 ¶ 4.) In its answer, North Charleston also defines TMS No. 301-00-00-797 as the "Acre." (R. pp. 47–48 ¶ 4.) But North Charleston denies every single allegation in the complaint relating to the National Trust's ownership of a portion of the Acre. (R. pp. 47–48 ¶ 4, p. 49 ¶ 15, p. 51 ¶ 28, p. 52 ¶ 31.)

North Charleston also counterclaimed seeking "a determination of its fee simple title in this action and, further, that the Plaintiffs are forever barred from claiming any right title or interest in North Charleston's property." (R. p. 56 ¶ 63.) In fact, North Charleston's counterclaims accuse the National Trust and Charleston of making "unconscionable claims and pretensions against North Charleston's title, claiming that boundaries to North Charleston's property were other than those established by survey or deed and encroaches onto National

Trust's property." (R. p. 56 ¶ 61 (emphasis added).) North Charleston's prayer for relief similarly placed title at issue in this action by clearly requesting a determination as to ownership of the Acre. (R. p. 57 ¶¶ b & c.) Thus, at least as late as April 17, 2018, when North Charleston filed its answer, North Charleston claimed that it owned the Acre.

North Charleston cannot have it both ways. It cannot claim sole ownership of TMS No. 301-00-00-797 for purposes of quieting title, accuse the National Trust and Charleston of making "unconscionable" assertions against such title, and then disavow ownership of any portion of TMS No. 301-00-00-797 that may overlap with the National Trust Property in an effort to defeat the National Trust's standing argument. *See Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (precluding parties from adopting a position in conflict with one earlier taken in the same litigation).

To the extent North Charleston concedes that the National Trust, not North Charleston, holds title to a portion of the property described in the Acre Deed, shown on the Acre Plat, or designated as TMS No. 301-00-00-797, then the circuit court's decision on standing should be reversed and judgment entered against North Charleston because the Contested Ordinance infringes on the National Trust's proprietary interests, the Contested Ordinance infringes on Charleston's proprietary interests and statutory rights, and the territory annexed did not "belong entirely" to North Charleston.

Here, again, in affirming the circuit court, the Court overlooked and/or misapprehended the import of the undeniable facts in the record as it pertained to standing and instead focused on the effect of the deed by which North Charleston acquired title to the Acre. The extent or quality of title conveyed by the deed, however, is a separate and distinct issue from what property was described in, and annexed by, the Contested Ordinance. While North Charleston may have

thought it owned the area described by the ordinance, it simply did not. And while it is true that a grantor can only convey title to land in which (s)he has an interest, that premise does not preclude an area of property mistakenly believed to be owned being erroneously included in an annexation petition and ordinance, which is what the Record unequivocally reveals to have occurred.

And, again, the Court gave credence to the annexation ordinance verbiage that the area annexed was "approximately" an acre. The plain wording of the Contested Ordinance says it "the area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797." (R. p. 294.). Without question, TMS No. 301-00-00-797 includes the Overlapped Area. Moreover, an acre of land contains 43,560 square feet. The dimensions of the area annexed is 43,681 square feet, or approximately an acre, consistent with the verbiage of the ordinance.

And, again, the record unequivocally establishes the boundaries of the National Trust Property. The record unequivocally establishes that the National Trust Property includes the Overlapped Area. The record unequivocally establishes that the National Trust Property was annexed to Charleston in 2005, including the Overlapped Area. The record unequivocally establishes that the Contested Ordinance includes the parcel identified by TMS No. 301-00-00-797. The record unequivocally establishes that TMS No. 301-00-00-797 includes a portion of the Overlapped Area, which is owned by the National Trust. The totality of these unequivocal facts show that the Contested Ordinance included property that North Charleston did not own and that was already in Charleston's corporate limits. This result, in and of itself, far exceeds the scintilla of evidence standard required to withstand a motion for summary judgment. This result,

in and of itself, implicates the statutory rights of Charleston to jurisdiction over properties within its boundaries, required for standing to contest an annexation ordinance.

In any event, however, North Charleston's allegations not only establish that the issue of ownership of the Acre has been submitted to the Court for resolution, but also emphasize that, even at the time it filed its answer, North Charleston *believed* it owned the Acre, as shown on the Acre Plat, in the Acre Deed, and by reference to TMS No. 301-00-00-797. Thus, it is clear that, when North Charleston attempted to annex the Acre, it intended to annex the Acre as shown on the Acre Plat, as described in the Acre Deed, and by reference to TMS No. 301-00-00-797. Because this territory includes property owned by the National Trust and previously annexed by Charleston, the circuit court erred in finding that Charleston lacked standing to challenge the Contested Ordinance, as, most respectfully, this Court should have found.

E. This Court erred in affirming the circuit court where the circuit court erred in holding that Charleston lacked standing to challenge the contested ordinance in order to protect the integrity of its borders.

Even if the appellate court agrees with the circuit court that, as a matter of law, the Contested Ordinance attempted to annex only territory belonging entirely to North Charleston, such territory is physically separated from the corporate limits of North Charleston by land in Charleston, that being Highway 61 and the National Trust Property. (R. p. 3 ¶ 8.) If not judicially vetted, the Contested Ordinance will establish that one municipality, by acquiring property outside its limits and then annexing it under the device of section 5-3-100, can ignore the borders of another. If not judicially vetted, the Contested Ordinance will establish precedent that a municipality may undertake annexations that jump over, or "leap-frog," the corporate limits of another municipality, as and when convenient.

The public importance exception has been relaxed under discreet, limited circumstances when future guidance is paramount. The facts of this case qualify as such a circumstance. "In numerous recent cases, this Court has found that standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Davis v. Richland Cty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). "The linchpin of the public importance exception is the need for future guidance." *Vicary v. Town of Awendaw*, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018).[5] "An appropriate balance between the competing policy concerns underlying the issue of standing must be realized." Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

"Citizens must be afforded access to the judicial process to address alleged injustices." *Id.* "On the other hand, standing cannot be granted to every individual who has a grievance against a public official." *Id.* "Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits." *Id.* "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

While the "nefarious conduct" alleged against the Town of Awendaw in *Vicary* is not at all present here, this case, like *Vicary*, involves novel issues, inextricably connected to the public need for court resolution for future guidance. These issues will also escape judicial review, absent standing being conferred under the "public importance" exception, and the factual scenario posed by this case is subject to being repeated in other locales across the State. On the

[5] As stated, *Vicary* emphasized that the "linchpin" for "public importance" standing is the extent to which future guidance is necessary. In this respect, the circuit court erroneously interpreted *Vicary* as adopting a "bright-line" test that *only* an allegation of deceitful conduct triggers such standing.

other hand, governments would not be subject to "numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits," if Charleston were granted standing to proceed under the particular circumstances of this case. *See id.*

Charleston, as the municipality whose boundaries are being leaped, is particularly well suited to assert the public importance exception here, ensuring that standing is not granted to "every individual who has a grievance." The Supreme Court of South Carolina has recognized the standing of a municipality to contest cases when another entity attempts to include properties within its jurisdiction, or claimed to be so. *See Forest Acres v. Forest Lake*, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (concluding Town of Forest Acres may maintain action to invalidate purported detachment of its territory via annexation by Forest Lake).

The same must hold true for maintaining the sanctity of a municipality's borders. A municipal border establishes a jurisdictional line that serves as a barrier to expansion by nearby municipalities. It establishes and preserves to a municipality an area for future growth into contiguous properties. If municipal borders can be leap-frogged, they become essentially meaningless. If not inherent in its right of home rule, the statutory scheme of annexation and its judicial interpretation devolve to Charleston the right to maintain the integrity of its borders, to include the right to exclude other municipalities, like North Charleston, from establishing a foothold in areas of growth that its boundaries establish. A sound public policy demands that municipalities have access to the courts to protect their boundary rights, and this Court should so hold.

The circuit court has already issued a ruling denying the ability of one municipality to "leap frog" another under the auspices of the "adjacent to" requirement in section 5-3-100, concluding: "As a matter of law, adjacency under § 5-3-100 of the South Carolina Code is

destroyed when privately-owned property lying within another municipality's corporate limits intervenes between the area to be annexed and the existing limits of the annexing municipality." (R. p. 13.) In other words, whatever the term "adjacent to" means in section 5-3-100, it is destroyed, as a matter of law, by intervening property within another municipality.

There is no case interpreting section 5-3-100 or any State precedent authorizing one municipality to "leap frog" another municipality's boundaries, absent affirmative legislative authority. In the absence of an adjudication of these issues, municipalities will be given no guidance as to when section 5-3-100 applies, especially when, as in the present case, the annexing municipality asserts that the term "adjacent to" means "near" or "in close proximity." It is also easy to see how a municipal "turf war" could ensue if the term "adjacent" is left undefined or so broadly interpreted. A ruling in favor of Charleston on the issue of standing—and on the merits—may effectively end such practice altogether.

As a result, such a ruling would not only serve the need for "future guidance" imperative to application of a "public importance" exception, but also decrease—not increase—the number of potential lawsuits involving similar annexation attempts. Therefore, it appears imperative, of significant public importance, and in furtherance of maintaining sound public policy, that standing be accorded to Charleston to challenge the Contested Ordinance. *See ATC*, 380 S.C. at 199, 669 S.E.2d at 341 ("The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.").

In affirming the circuit court, the court overlooked and/or misapprehended the application of the public interest doctrine. The existence of the Overlapped Area incites more than a demarcation of boundaries. The existence of the Overlapped Area implicates Charleston's

statutory rights in, to and over the Area, the linchpin of annexation standing. That the state did not challenge the annexation ordinance is not dispositive on the issue of whether this case sufficiently rises to a level of public concern. Myriad cases have accorded standing to parties other than the state when matters are of public importance. The prospect of a novel issue arising again and need for future guidance on that issue have been the cornerstone of the analysis. The Court acknowledges the unanswered questioned posed by North Charleston's interpretation and application of § 5-3-100, a situation certainly capable of recurring and requiring guidance for the future. The consequence of North Charleston's interpretation and application of § 5-3-100 opens the door for one municipality leapfrogging the boundaries of another, a situation unprecedented in the annexation jurisprudence of this State, and one that most certainly is capable of recurring and requiring future guidance.

CONCLUSION

For the foregoing reasons, along with any other or further reason(s) set forth in its appellate briefs already on file, the entirety of which it hereby adopts and incorporates herein by reference and reiterates/reasserts in support hereof—as well as any other or further reason(s) set forth by the National Trust in its appellate briefs already on file or in its petition for rehearing, the entirety of which Charleston adopts to the extent not inconsistent with its position in this matter[6]—Charleston asks this Honorable Court to grant the instant petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court's determination that it lacks standing to challenge the Contested Ordinance.

<SIGNED ON THE FOLLOWING PAGE>

[6] *Cf.* Rule 208(b)(6), SCACR ("In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another.").

Respectfully submitted,

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Charleston, South Carolina

March 20, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-00851
Appellate Case No. 2019-000728

National Trust for Historic Preservation in the United States and the City of Charleston,

Respondents/Appellants,

v.

City of North Charleston,

Appellant/Respondent.

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Attorneys for the City of Charleston

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for the City of Charleston, hereby certify that **THE CITY OF CHARLESTON'S PETITION FOR REHEARING** was served on March 20, 2023, on all parties to this matter via emailing (see attached) a copy of the same to the following:

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March 20, 2023

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Subject: National Trust for Historic Preservation v. City of North Charleston (2019-000728) -- The City of Charleston's Petition for Rehearing
Attachments: Nat'l Trust v. N. Chas. (2019-000728) -- Petition for Rehearing.pdf

Attached regarding the above-referenced matter please find **The City of Charleston's Petition for Rehearing**.

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