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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-10-851
Appellant Case No. 19-000728

National Trust for Historic Preservation in the United States and the City of Charleston.....Respondents/Appellants,

v.

City of North Charleston.....Appellant/Respondent.

PETITION FOR REHEARING OF RESPONDENT/APPELLANT NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES

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ATTORNEYS FOR
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TRUST FOR HISTORIC PRESERVATION IN
THE UNITED STATES

INTRODUCTION AND OVERVIEW

Pursuant to Rule 221(a), SCACR, Respondent/Appellant National Trust for Historic Preservation in the United States (the "National Trust") petitions for a rehearing of Opinion No. 5965, dated February 1, 2023, (hereinafter the "Opinion"), copy attached as Exhibit 1. Rehearing is warranted because the Opinion overlooks and misapprehends fundamental legal principles that govern the issues on appeal. This Court's failure to apprehend the legal ramifications of this case and its significance is best manifested in the Court's statement that Respondents/Appellants "failed to demonstrate that North Charleston's annexation of the Acre incites anything more than a boundary dispute between two municipalities." Opinion at 7. It is far more than that.

Unmentioned in the Opinion is that this case involves a patently illegal annexation where one municipality (North Charleston) annexed property that is not only not contiguous to its boundary but also separated from that municipality by two parcels located in another municipality (Charleston). Unbroken legal precedent in this state prohibits a municipality from extending its boundaries over the boundaries of another municipality. Contrary to what the Opinion suggests in the comment quoted above, the boundaries of Charleston are well established and not in dispute in this case. They were definite and uncontested. Likewise, it is definite and uncontested that there are two parcels within the boundaries of Charleston between the boundary of North Charleston and the Acre purportedly annexed by it.

Upholding this annexation upends the entire body of South Carolina jurisprudence on the sovereignty of existing boundaries of municipalities and the bedrock principle that a municipality cannot tread over properties in another municipality to annex a parcel. These are foundational precepts of municipal law in South Carolina. Their intentional violation, as occurred in this case, has never been upheld by our appellate courts.

At stake in this case is far more than a simple "boundary dispute." The future of a National Scenic Highway and a National Historical Landmark are at stake. The record is clear that the joint purpose of Whitfield Construction Company ("Whitfield") and North Charleston for this annexation is to increase sixteen-fold the allowed residential density in this important rural forested area. Whitfield admits it carved out the Acre from its 2214.6-acre parcel (TMS #301-00-00-005) **(R. p. 317)** that it seeks to annex into North Charleston to obtain a permitted density for single-family residential development of two houses per acre (i.e., up to 4427 new houses) from North Charleston because the current zoning of Charleston County allows a density of only one house per eight acres (i.e., up to 276 new house) in this historic area along Highway 61, a *two-lane* road designated as National Scenic Highway, and across Highway 61 from Drayton Hall, a National Historic Landmark. **(R. pp. 347-9, 353-6)**.

In upholding the lower court's determination that the National Trust lacked standing as a matter of law, this Court mistakenly confused the question of ownership with the question of what property was described in the annexation ordinance. The two are entirely separate. The unbroken precedent on annexation in South Carolina is that the area described in the annexation petition or ordinance is controlling as to the property annexed, not whether the annexing party has legal title to the entire area described in the annexation petition or ordinance.

Additionally, in considering the question of the area annexed, this Court relied upon the subjective intent of North Charleston. This Court determined North Charleston's intent was to annex only land it owned regardless of the description in the annexation petition. There is no precedent in South Carolina that the Court may consider extrinsic evidence of the annexing party's intent in determining that the property actually annexed was something other than that described in the annexation petition or ordinance.

The law in South Carolina grants standing to the owner of any portion of the area described in the annexation petition regardless of the size of that portion. The National Trust is the owner of a portion of the real property annexed and, therefore, has standing.

Turning to the public importance of conferring standing on the National Trust and Charleston in this case, the Court mistakenly defaulted to the Attorney General as the bellwether for whether a potentially invalid annexation involves a matter of public importance.[1] Whether a legal issue is of such public importance as to warrant standing is for the court to determine, not the Attorney General. The Attorney General already has standing to challenge any annexation regardless of its legality. St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 564 S.E.2d 647 (2002). Using the inaction of the Attorney General as a proxy against the public importance of an illegal annexation eliminates standing based on public importance in annexation cases. A survey of the leading precedent of our appellate courts on annexation or incorporation by municipalities shows that this state's Attorney General rarely, if ever, lifts a finger in these matters because they involve municipal issues not the affairs of the state. Case in point is Vicary v. Town of Awendaw, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018) in which our state supreme court invoked the public importance exception for standing even though the Attorney General was nowhere in sight despite what the court described as "deceitful conduct" by the annexing municipality. 822 S.E.2d 604.

Finally, the National Trust respectfully submits that this Court overlooked the posture of the case. The matter was before the lower court on cross motions for summary judgment.

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[1] In places in its discussion the Opinion described this basis for standing as the "public interest doctrine." Opinion p. 7. As described by our state supreme court in the decision cited by this Court in the Opinion, this legal principle for standing is known as the "public importance exception." Vicary v. Town of Awendaw, 425 S.C. 350,359, 822 S.E.2d 600, 604 (2018).

Charleston submitted the affidavit of Daniel Forsberg, a licensed engineer and land surveyor, in support of its motion. His affidavit plainly states that the property described in the annexation petition included a portion of the National Trust property. **(R. pp. 242-5).** For this reason alone, summary judgment in favor of North Charleston on standing was improper.

GROUNDS FOR REHEARING

1. **The legal precedent that a property owner can convey title to only property owned by it is not controlling. The question is what was the exact property described in North Charleston's annexation ordinance, not whether North Charleston had legal title to all the property described in the annexation ordinance which clearly it did not.**

The question of whether the National Trust has proprietary standing turns on the description of the "territory" or "area" that was annexed. The territory or area annexed is solely determined by the legal description in the annexation petition or annexation ordinance. Despite what the circuit court and this Court imply, there is no statute or judicial precedent that the description of the area or territory annexed is necessarily limited to the property owned by the property owner(s) submitting the annexation petition or the municipality seeking to annex territory under S.C. Code §5-3-100.[2]

For example, in Ex parte State ex rel. Wilson, 391 S.C. 565, 707 S.E.2d 402 (2011) cited by this Court and the lower court, the Supreme Court specifically noted that the annexation petition included public trust tidelands of the State that were not owned by the annexing petitioner. The Supreme Court did not rule that public trust tidelands were not annexed because the petitioner did not own them. Rather, the Supreme Court held they were indeed annexed because they were

[2] "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 and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete." S.C. Code § 5-3-100.

described as the "area" to be annexed in the annexation petition but that the Attorney General's effort to challenge the annexation failed because he asserted he did not bring the challenge within the allowed statutory period:

> The State, which is the presumptive owner of the annexed marshlands, did not sign the petition. Notwithstanding the absence of the State's consent to the annexation, the annexation ordinance recites that the Town received a petition signed 'by all persons owning real estate' in the annexed area....
>
> ....Where the State holds title to real property in the area to be annexed, it is a 'person[ ] owning real estate' within the meaning of section 5-3-150(3) and its signature is required to accomplish an annexation by 100% petition....
>
> By its plain language, section 5-3-150(3) requires the signatures of 'all persons owning real estate in the area requesting annexation.'...
>
> This annexation did not comply with the requirements of the 100% petition method. The State was the presumptive owner of the annexed marshlands and the Town did not provide the State with prior notice of the annexation or obtain the State's signature on the petition. Nevertheless, the State's challenge of the annexation is time-barred.

Id. at 569-78, 707 S.E.2d at 404-409.

This Court mistakenly states in the Opinion that "...North Charleston did not claim to annex or own any portion of the National Trust Parcel...." Opinion at 4. The Court is incorrect with respect to its assertion that North Charleston did not claim to annex or own any portion of the National Trust Parcel. In describing the territory annexed as TMS # 301-00-00-797, North Charleston in fact did claim to annex a slight portion of the National Trust Parcel as explained more fully in Part 3, infra.[3]

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[3] As indicated in its Counterclaim, North Charleston also contends it has ownership of the portion of the National Trust Parcel included in the One Acre. See, North Charleston Answer and Counterclaim, ¶113 ("North Charleston seeks 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. 338).** However, this dispute over ownership is entirely separate from the question of whether the description of the territory annexed included a portion of the National Trust Parcel.

2. **Consideration of extrinsic evidence of North Charleston's subjective intent is without precedent in annexation law in South Carolina and should not have been relied upon to determine the boundaries of the land annexed were different from those in the legal description in North Charleston's annexation ordinance.**

Section 5-3-100 does not state that the intention of the municipality determines the territory annexed when there is a conflict between that intent and the actual description of the territory annexed. Both this Court and the circuit court looked to this intent to circumvent the undisputed fact that the territory annexed by North Charleston included 62 square feet of the National Trust property that is within the City of Charleston. **(Aff. of Forsberg, ¶ 6, 8, and 9, R. pp. 244-5)**.

The focus is entirely on the description of the territory or area to be annexed rather than ownership. Section 5-3-100 states: "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 and the governing body of the county. S.C. Code § 5-3-100 (emphasis added). What Section 5-3-100 does not state is that regardless of a municipality's description of the territory proposed to be annexed, only that portion it owns will be considered as being annexed under Section 5-3-100, which is the interpretation adopted by this Court and the circuit court.

Likewise, S.C. Code Ann. § 5-3-150(3) governing annexation under the 100% rule that refers to "a petition signed by all persons owning real estate in the ***area requesting annexation***" and to "the agreement of the governing body to accept the petition and annex ***the area***...." S.C. Code Ann. § 5-3-100 (double emphasis added). The statute does not state that regardless of the area described to be annexed, the only area annexed is that area owned by the property owners petitioning for annexation.

Even if extrinsic evidence of intent were allowed to be considered, for which there is no precedent, the record establishes a genuine issue of material fact as to intent that prevents summary judgment.

Nowhere does the annexation ordinance state that the intent of North Charleston is to annex only the property it owns.[4] The closest is the statement that "THE PROPERTY TO BE ANNEXED BELONGS ENTIRELY TO THE CITY OF NORTH CHARLESTON." (**R. p. 293**). However, the property to be annexed is described eleven times in Ordinance #2017-080 as TMS #301-00-00-797(**R.p. 293-4**). As stated in the Affidavit of Daniel Forsburg, a licensed engineer and land surveyor in South Carolina, because the territory annexed was TMS #301-00-00-797, it included 62 square feet of the National Trust's property:

> 5. Charleston County maintains a tax mapping system whereby parcels of land are assigned a number for purposes of tracking ownership and assessment values. 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. The legal description for the Acre references Plat S 17 /0224.
>
> 6. ...As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No The purported width of the National Trust's property is shown as 99.69 feet on the north side and 99. 7 feet on the south side. As a result, 62 square feet of the National Trust Property appears to have been included in the Acre.. 301-00-00-797....
>
> 8. Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property.
>
> 9. Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S 17 /0224 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.

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[4] This Court found significant that the "legal description in the Annexation Ordinance stated North Charleston sought to annex property 'consisting of approximately 1.0 acres.' (emphasis added)." Opinion at 5. The language referenced by the Court, however, is not the legal description. The legal description of the territory annexed is set forth in detail immediately after that statement and describes the boundaries of TMS #301-00-00-797. **(R. 294).**

(R.pp. 244-5).

Because the intent of the annexing property owner or municipality is not admissible to vary the description of the area or territory proposed to be annexed, and because even if it were improperly considered there is a genuine issue of material fact as to that intent, the circuit court erred in granting North Charleston summary judgment on standing, and this Court should reconsider and vacate the Opinion.

3. **The plat of the Acre (R. p. 269) as well as the Affidavit of Forsberg (R.pp. 244-5) established that the National Trust owns a portion of the property within the legal description of the annexation petition sufficient to confer standing on the basis of its proprietary interest.**

There is no dispute that the deed conveying the Acre to North Charleston relied on the plat of the Acre recorded at Book S17, p. 0244 for the legal description of the Acre.

> ALL that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, being shown and designated as "**New Parcel 1, 43,559.59 sq. ft., 1.000 acres**", on that certain plat entitled "SUBDIVISION PLAT SHOWING A NEW PARCEL 1 (1.000 ACRE) BEING A PORTION OF TMS 301-00-00-005, PROPERTY OF TIM WHITFIELD CONSTRUCTION AND DEVELOPMENT LLC., LOCATED NEAR WEST ASHLEY, CHARLESTON COUNTY SOUTH CAROLINA" prepared by Tim Elmer, RLS, LLC, dated October 17, 2016, and recorded on September 22, 2017, in the Charleston County RMC Office in Plat Book S17, Page 0224. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

(R. p.274) (emphasis in original).

This plat of the Acre provides the "size, shape, dimensions, buttings and boundings" of TMS #302-00-00-797, the territory that North Charleston annexed in Ordinance #2017-080. **(R. pp. 293-4)**. The circuit court acknowledged that "the 2009 [P]lat had width variations of a few inches here and there, ***so too did the 2017 plat of the Acre***." **(R.p. 4)**(emphasis added). North Charleston has acknowledged the "four-inch discrepancy" along the northeastern boundary for a length of 208.71 feet. **(Hrg. Tr., R.p. 185) (R. p. 269).** This Court also noted that the plat of the

Acre includes this long sliver of the National Trust property. **Opinion at 6** ("Thus, although there is a four-inch deviation in the proposed plat, we find North Charleston only sought to annex the property within its proprietary rights as the proposed plat relied on the previously recorded Easement Plats in mapping the boundaries.") However, regardless of North Charleston's intent the territory annexed is *described as* TMS #302-00-00-797 with boundaries shown on the Plat recorded at Book S17, Page 0244. Those boundaries include a portion of the National Trust Parcel.

Our courts have never held that a property owner must hold title to a minimum amount of acreage in the area annexed to have proprietary standing to challenge an annexation. The only requirement is that some of the owner's property be described in the annexed area. Here the description of the territory annexed did just that. For that reason, the National Trust has standing. The lower court erred in determining that the National Trust did not create an issue of fact as to its standing and did not have standing as a matter of law.

4. **Even if the National Trust's proprietary interest did not bestow standing on it, which it does, the National Trust and Charleston demonstrated a basis for public importance standing, given North Charleston's gross violation of the laws governing annexation and the need for future guidance on whether a municipality may cross over properties in another municipality to annex property. The public importance exception is not limited to instances involving deceitful conduct as suggested in the Opinion.**

Vicary v. Town of Awendaw, supra, established a new narrow exception for invoking the public importance exception for standing in annexation challenges, but did not change the test for public importance standing. The National Trust asserts that this case meets the standards established in Vicary for "unique facts" and the need for future guidance to invoke the public importance exception, warranting standing for the National Trust and Charleston. Additionally, whether the Attorney General undertakes to challenge an annexation is not the litmus test for whether an annexation involves an issue of public importance.

In Vicary, the Supreme Court found that the Town of Awendaw's use of a letter from the United States Forest Service to show consent to annexations, and its possible use in the future, satisfied the "future guidance" prong of the public importance exception. Vicary at 359-360. Here, in a similar manner, there is nothing stopping North Charleston, or other municipalities, from continuing to use Section 5-3-100, and a legally incorrect definition of adjacency, to continue to annex property that is not separated from it by parcels in another municipality.

This annexation challenge is not a "purely private matter" between the National Trust, the City of Charleston, and North Charleston, but "[rises] to the level of public importance" with the need for future guidance on the requirements of adjacency and contiguity under Section 5-3-100. Id. at 359. **(City of Charleston App. Br., pp. 21-24)**. The requirements of adjacency and contiguity under Section 5-3-100 presented in this case have never been addressed by our Supreme Court.[5] **(Id.)**.

North Charleston tries to negate the need for future guidance by marginalizing Section 5-3-100, labeling it an "obscure statute" with there being "no risk of S.C. Code 5-3-100 perpetually escaping review." North Charleston further asserts that "[s]hould this issue ever crop up again the Attorney General can address it the moment he sees fit." **(North Charleston Resp. Br., pp. 11-13) (emphasis in original)**. North Charleston's minimization of its illegal conduct in this annexation does not eliminate the need for future guidance to resolve the issue before this Court. After all, North Charleston concedes that there is an absence of reported precedent interpreting and applying Section 5-3-100. **(Appellant/Respondent's Brief, p. 13)** ("North Charleston has been unable to find a prior reported opinion during the entire life of the statute!").

[5] The National Trust fully supports the legal position of the City of Charleston, particularly as it relates to the applicability of the public importance exception, as set forth in the City of Charleston's Respondent's brief.

Contrary to North Charleston's assertions, if this annexation stands, what occurred in this case under section 5-3-100 will become the judicially sanctioned loophole for annexation by one municipality across the boundary of another municipality. This decision provides the formula. Suppose a property owner wants to annex into one municipality but is confronted with parcels of land in another municipality intervening between her property and that municipality, as in this case. All the property owner has to do to circumvent the cardinal rule of contiguity is convey some small piece of her acreage to the municipality. The municipality can then invoke Section 5-3-100 to annex the small piece owned by it despite the intervening land of the other municipality. Once this leapfrog annexation is complete, the property owner can annex the remainder of her land because it is contiguous to the small portion that was earlier annexed. The remainder of her land that was not contiguous is now contiguous to the small parcel conveyed to the annexing municipality. This capacity for repetition satisfies the "future guidance" prong of the public importance exception and warrants guidance on the interpretation of Section 5-3-100.

Whether the Attorney General sees fit to challenge an annexation is not the barometer of whether an illegal annexation like this one, as the lower court found,[6] involves matters of public importance. The Attorney General is frankly not interested in these municipal matters. One of the few, if only reported instances where the Attorney General objected to an annexation is Ex parte State ex rel. Wilson, supra, which proves the point. Because there is no process for timely notification to the Attorney General, he showed up late, and the annexation that was otherwise invalid because 100% of the property owners did not join in the petition for annexation was upheld.

[6] "North Charleston did not lawfully annex the one acre parcel under the annexation statute." **(Order, R.pp. 1-2)**.

There is no statute requiring that an annexing municipality notify the Attorney General of annexations at any time, even when it commits an illegal annexation like this one. It is particularly perplexing that this Court and the lower court have embraced North Charleston's argument that the failure of the Attorney General to become involved means the illegal annexation per se has no public importance *when there is* ***nothing in the record*** *to show that the Attorney General was notified of the annexation of the Acre in a timely manner,* much less considered it and consciously chose not to contest it.

In concluding that this case has no public importance implication, both this Court and the lower court overlook the federal statutory mandate to the National Trust to protect and preserve historic places. The National Trust was chartered by the United States Congress in 1949 to advocate on behalf of historic preservation, including places like this National Historic District and Drayton Hall, a National Historic Landmark owned by the National Trust located across Highway 61 from the National Trust Parcel that was purportedly partially annexed by North Charleston. **(54 U.S.C. §§ 312102-312106 (2015); Mem. National Trust in Opposition to Defendant's Mot. to Dismiss, R.pp. 95-96)**. Further, the National Trust is not a "stranger" or "outsider" to the annexation, but is a property owner whose rights have been infringed by the purported annexation of a portion of the National Trust Parcel by North Charleston. See St. Andrews Pub. Serv. Dist. v. City Council, 349, S.C. 602, 564, S.E.2d 647 (2002). Nor is this a frivolous lawsuit—the circuit court held that "North Charleston did not lawfully annex the one acre parcel under the annexation statute." **(Order, R. pp. 1-2, 9-10)**.

This case has "unique facts present" that, as suggested by Justice Hearn in Vicary, merit granting the National Trust and Charleston public importance standing as discussed by the circuit court in its order. **(Order, R.pp. 9-10)**.

CONCLUSION

Based on the foregoing, the National Trust respectfully requests that this Court grant its Petition for Rehearing, vacate the Opinion, and issue a new decision reversing the lower court and holding that the circuit court erred in finding that there was no genuine issue of material fact and the Respondents/Appellants lacked standing as a matter of law.

Respectfully submitted,

March 20, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

City of North Charleston, Appellant/Respondent.

Appellate Case No. 2019-000728

Appeal From Charleston County
Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 5965
Heard October 11, 2022 – Filed February 1, 2023

AFFIRMED

Derk Van Raalte, IV, of City of North Charleston Legal Department, and J. Brady Hair, of Law Office of J. Brady Hair, both of North Charleston, for Appellant/Respondent City of North Charleston.

George Trenholm Walker, of Walker Gressette Freeman & Linton, LLC, of Charleston; and Anne Elizabeth Nelson, of National Trust for Historic Preservation, of Washington, D.C., both for Respondent/Appellant National Trust for Historic Preservation in the United States.

Frances Isaac Cantwell, of City of Charleston Legal Department; Julia Parker Copeland, of Hinchey Murray

& Pagliarini, LLC; and Wilbur E. Johnson and Russell Grainger Hines, both of Clement Rivers, LLP, all of Charleston, all for Respondent/Appellant City of Charleston.

WILLIAMS, C.J.: This cross-appeal involves the municipal annexation by the City of North Charleston (North Charleston) of a one-acre tract of real property. The National Trust for Historic Preservation in the United States (the National Trust) and the City of Charleston (Charleston) (collectively, Respondents) appeal the circuit court's order finding Respondents did not have standing to challenge North Charleston's annexation of the acre. North Charleston also appeals, arguing the circuit court erred in alternatively finding North Charleston did not properly annex the acre pursuant to section 5-3-100 of the South Carolina Code (2004). We affirm.

FACTS/PROCEDURAL HISTORY

In 1967, Georgia-Pacific Investment Corporation (Georgia-Pacific) obtained title to approximately 12,293 acres of real property located in Charleston County. In 1980, Georgia-Pacific conveyed approximately 26.53 acres of that property to the Nature Conservancy. The deed included the following description of the property:

> 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.

The Nature Conservancy immediately conveyed this property to the National Trust (the National Trust Parcel; TMS 301-00-00-017). The deed conveying the National Trust Parcel did not have a corresponding recorded plat. In 2005, Charleston annexed the National Trust Parcel.

In 1989, Georgia-Pacific conveyed to Whitfield Construction Company (Whitfield) 2,294.17 acres (the Whitfield Parcel; TMS 301-00-00-005). In 2009, Whitfield recorded plats illustrating eighteen access easements through the National Trust

Parcel (the Easement Plats), which Georgia-Pacific reserved in the deed it conveyed to the Nature Conservancy.[1]

On September 22, 2017, Whitfield executed a quit claim deed conveying one acre (the Acre; TMS 301-00-00-797) of its larger parcel from Georgia-Pacific to North Charleston. Whitfield recorded a plat of the Acre (the Acre Plat) with the deed on September 22, 2017.[2] The deed described the Acre as part of the Whitfield Parcel.

In October 2017, North Charleston annexed 113 acres (the Runneymede Parcel; TMS 361-00-00-002), without challenge. On December 21, 2017, North Charleston annexed the Acre, pursuant to section 5-3-100, by Ordinance 2017-080 (the Annexation Ordinance). Runneymede and the Acre are separated by Highway 61 and the National Trust Parcel.

In March 2018, Respondents filed a summons and complaint challenging North Charleston's annexation of the Acre, arguing the Acre was not contiguous to North Charleston. North Charleston answered, counterclaimed, and subsequently filed (1) a motion for partial summary judgment, asserting section 5-3-100 does not require contiguity and (2) a motion to dismiss Respondents' complaint for lack of standing. Respondents also filed a motion for summary judgment, arguing the annexation of the Acre was void because (1) the Acre was not contiguous or adjacent to North Charleston and (2) the Acre included a portion of the National Trust Parcel, which was already annexed into Charleston.

The circuit court held a hearing on the motions and issued an order dismissing Respondents' complaint for lack of standing. The court alternatively found that should this court find Respondents had standing to challenge the annexation, North Charleston failed to properly annex the Acre because it was not adjacent to the municipality. All parties filed motions to reconsider pursuant to Rule 59(e), SCRCP, which the circuit court denied. This cross-appeal followed.

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[1] The Nature Conservancy deed stated "the foregoing conveyance is subject to the reservation by Grantor of certain easements over and across the foregoing real property, . . . [s]aid easements shall be limited to eighteen (18) in number, and each separate easement shall be limited to a total of sixty feet (60') in width."

[2] In mapping the dimensions of the Acre Plat, the surveyor relied on the Easement Plats and the original plat recorded with the deed conveying the Whitfield Parcel. Both the Easement Plats and the Acre Plat have width variations regarding the boundary lines between the National Trust and Whitfield parcels.

ISSUES ON APPEAL

I. Did the circuit court err in dismissing Respondents' action because it found Charleston and the National Trust lacked standing to challenge North Charleston's annexation of the Acre?

II. Did the circuit court err in alternatively finding that North Charleston failed to lawfully annex the Acre pursuant to section 5-3-100?

STANDARD OF REVIEW

"A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). "Whether subject matter jurisdiction exists is a question of law, which this [c]ourt is free to decide with no particular deference to the circuit court." *Id.* "The party seeking to establish standing has the burden of proving it." *Vicary v. Town of Awendaw*, 425 S.C. 350, 355, 822 S.E.2d 600, 602 (2018).

LAW/ANALYSIS

I. STANDING

A. Statutory Standing

Respondents argue the circuit court erred in dismissing their claims challenging the annexation for lack of standing because the Acre contained a portion—four inches—of the National Trust Parcel, which Charleston annexed in 2005. Therefore, Respondents assert North Charleston's annexation violated their statutory and proprietary rights. Respondents further maintain the circuit court improperly dismissed their claims because a question of fact existed as to whether the Acre included a portion of the National Trust Parcel. We disagree.

Chapter Three of Title Five of the South Carolina Code addresses a municipality's ability to extend its corporate limits and annex additional areas. Chapter Three contains various methods of annexation that a municipality can employ. Specifically, section 5-3-100 provides:

> 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. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

§ 5-3-100 (emphasis added).

In its order, the circuit court found North Charleston did not claim to annex or own any portion of the National Trust Parcel and any deviations in the legal description or plat did not affect Charleston's or the National Trust's ownership rights. The order stated:

> No matter what the property description or plat to the Acre might say, it is legally impossible for Whitfield to have conveyed to North Charleston title to any of the [National] Trust's land. Since North Charleston acquired its ownership to the Acre through a Quit Claim rather than a Warranty deed, assuming National Trust is correct that its boundary is exactly 100' from Ashley River Road rather than the 99.7' shown on the Acre plat, the result would not be that North Charleston owns any of National Trust's 100' strip property. As a matter of law, National Trust would retain its full undiminished acreage. The claimed 4" error could only reduce the amount of land obtained by North Charleston from a perfect acre to 99.999% of an acre.

The circuit court therefore found Respondents lacked standing to challenge the annexation because North Charleston only intended to annex the property that it owned. Thus, Respondents did not "have the requisite ownership to challenge the annexation."

We agree with the circuit court. Section 5-3-100 is a method for annexation when the municipality *wholly owns* the property to be annexed. *See id.* ("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)). Here, North Charleston annexed the Acre pursuant to section 5-3-100 via the Annexation Ordinance. Thus, although there is a four-inch deviation in the proposed plat, we find North Charleston only sought to annex the property within its proprietary rights as the proposed plat relied on the previously recorded Easement Plats in mapping the boundaries. Further, the legal description in the Annexation Ordinance stated North Charleston sought to annex property "consisting of *approximately* 1.0 acres." (emphasis added). Even if North Charleston believed it owned the contested four inches, it would be of no consequence. *See F.C. Enters., Inc. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) ("The courts of South Carolina have traditionally followed the property rule that a purchaser cannot purchase more than his grantor owns."); *Cummings v. Varn*, 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992) ("No deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so.").

Accordingly, we hold the circuit court properly found Respondents lacked standing to challenge North Charleston's annexation of the Acre. *See Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996) ("The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing."); *Wilson*, 437 S.C. at 341, 878 S.E.2d at 895 ("If a plaintiff lacks standing, he does not have the right to proceed to the merits of his claim against the defendant.").

B. Public Importance Exception

Respondents assert the circuit court erred in finding they did not have standing to challenge the annexation via the public importance exception. We disagree.

"This Court has consistently acknowledged that even without an allegation of particularized injury, 'standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.'" *Wilson*, 437 S.C. at 341, 878 S.E.2d at 895 (quoting *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004)). However, our jurisprudence has also established that public interest standing is rarely utilized within the context of annexation disputes. *See St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) ("[T]he better policy is to limit 'outsider' annexation challenges to those brought by the State 'acting in the public interest.'"). When considering whether a party has standing under the public interest doctrine,

appellate courts must make this determination "*without regard to the merits* of the underlying claim." *Vicary*, 425 S.C. at 358, 822 S.E.2d at 603 (emphasis added).

We find the circuit court did not err in holding Respondents did not have standing under the public interest doctrine. Although we acknowledge our precedent has not yet addressed whether the term "adjacent" within section 5-3-100 requires contiguity, which is specifically required for municipal annexations under section 5-3-150, Respondents have failed to demonstrate that North Charleston's annexation of the Acre incites anything more than a boundary dispute between two municipalities. Further, the absence of a challenge to the annexation by the State is illustrative of the State's position on whether the matter rises to a level of public concern. Respondents have also failed to show any deceitful conduct by North Charleston that would necessitate finding standing under the public interest doctrine. *See Vicary*, 425 S.C. at 358, 822 S.E.2d at 604 ("We do not believe the General Assembly intended to preclude standing where there is a credible allegation that the annexing body engaged in deceitful conduct.").

Based on the foregoing, we find Respondents lack standing to challenge the annexation of the Acre by North Charleston; therefore, further consideration of the matter by this court is foreclosed.[3]

CONCLUSION

Accordingly, the circuit court is

AFFIRMED.

THOMAS, J., and LOCKEMY, A.J., concur.

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[3] In its appellate brief, North Charleston states that should this court affirm the circuit court's dismissal of Respondents' claims, then consideration of its issue on appeal—the validity of the annexation—is unnecessary. We agree. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

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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

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.

PROOF OF SERVICE

I certify that I have served the **Petition for Rehearing of Respondent/Appellant National Trust For Historic Preservation In The United States** by electronic mail, on March 20, 2023, addressed to the attorneys of record:

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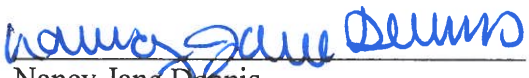

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March 20, 2023

ELECTRONIC MAIL

Honorable Jenny Abbott Kitchings
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P.O. Box 11629
Columbia, SC 29211

Re: National Trust & City of Charleston v. City of North Charleston
Appellate Case No. 2019-000728
WGL File No. : 8081.001

Dear Ms. Kitchings:

Attached please find the Petition for Rehearing of Respondent/Appellant National Trust for Historic Preservations in the United States and Proof of Service. I am sending, via U.S. Mail today, the $50 filing fee.

Thank you for filing the attachments with the Court. With kind regards, I am,

Sincerely yours,

WALKER, GRESSETTE & LINTON, LLC

G. Trenholm Walker

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