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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

City of Hardeeville.....Appellant,

v.

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

and

Jasper County, South Carolina.....Cross Co-Plaintiff,

Verna Garvin, in her official capacity
as Jasper County TreasurerCross Co-Plaintiff,

and

Monica Wilson, in her official capacity
as Jasper County Auditor.....Cross Co-Plaintiff,

v.

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

AMENDED RECORD ON APPEAL – VOLUME 2 OF 2

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER)	CASE No.: 2021-CP-27-00028
)	
CITY OF HARDEEVILLE,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JASPER COUNTY, SOUTH CAROLINA,)	
JASPER COUNTY TREASURER, and)	
JASPER COUNTY AUDITOR,)	
)	
Defendants.)	
)	
<hr/>		
JASPER COUNTY, SOUTH CAROLINA,)	
)	
Cross Co-Plaintiff,)	
)	
VERNA GARVIN, in her official capacity as)	
Jasper County Treasurer,)	
)	
Cross Co-Plaintiff, and)	
)	
MONICA WILSON, in her official capacity as)	
Jasper County Auditor,)	
)	
Cross Co-Plaintiff)	
)	
vs.)	
)	
CITY OF HARDEEVILLE, NICKEL PLATE)	
ROAD, LLC, and BEAUFORT COUNTY,)	
SOUTH CAROLINA,)	
)	
Cross-Defendants)	

**JASPER COUNTY’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

Defendant Jasper County (“Jasper”), by and through its undersigned counsel, respectfully submits this Response in Opposition to Plaintiff’s Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

ARGUMENTS IN RESPONSE

The purpose of this Response is to correct the misstatements of fact and misapplications of law that are set forth in City of Hardeeville’s (“Hardeeville”) Motion for Summary Judgment (“Hardeeville’s Motion”). In responding to Hardeeville’s Motion, Jasper incorporates by reference all facts and legal arguments made in its Memorandum of Law in Support of Jasper’s Motion for Partial Summary Judgment (“Jasper’s Memorandum”).

Notwithstanding Hardeeville’s ardent assertion that numerous issues of material fact exist, Hardeeville conversely argues that no issues of material fact exist for purposes of its own Motion. Hardeeville sets forth six “undisputed” facts without any reference to the pleadings or citation to supporting evidence. Hardeeville not only fails to accurately state the facts, but Hardeeville also incorrectly applies the facts to the governing constitutional and statutory provisions. For the reasons set forth below and those reasons discussed in Jasper’s Memorandum, Hardeeville’s Motion must be denied.

I. The Park Agreement is Valid.

Hardeeville argues that the Park Agreement¹ is not valid. Jasper disagrees, and this Court should too.

The South Carolina Constitution grants counties authority to develop multi-county industrial parks (“MCIPs”) with other contiguous counties. S.C. CONST. art. VIII, § 13(D) (“Counties may jointly develop an [MCIP] with other counties within the geographical boundaries

¹ Any capitalized terms used in this Response (with the exception of capitalized terms used in quoted material from Hardeeville’s Motion) have the same meaning ascribed to those terms in Jasper’s Memorandum of Law in Support of Jasper’s Motion for Partial Summary Judgment.

of one or more of the member counties.”). The Constitution requires that participating counties “reduce the agreement to develop and share expenses and revenues of the park to a written instrument.” *Id.* Section 4-1-170 of the South Carolina Code supplements this constitutional provision, and provides as follows:

By written agreement, counties may develop jointly an [MCIP] with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State. The written agreement entered into by the participating counties must include provisions which:

- (1) address sharing expenses of the park;
- (2) specify by percentage the revenue to be allocated to each county;
- (3) specify the manner in which revenue must be distributed to each of the taxing entities with each of the participating counties.

S.C. Code Ann. 4-1-170(A)(1)–(3). No other provisions are required to be in an MCIP agreement.

See S.C. Code Ann. § 4-1-170; S.C. CONST. art. VIII, § 13(D).

Hardeeville does not dispute requirements (1) and (2)²; thus, only requirement (3) is at issue. The undisputed material facts show that the Park Agreement satisfies requirement (3) because it specifies the manner in which revenue must be distributed to each of the taxing entities within Jasper and Beaufort.

Section 7 of the Initial Park Agreement titled, “**7. Revenue Allocation Within Each County**,” provides as follows: “Revenues received by Jasper County shall be distributed by Jasper County to the political subdivisions of Jasper County (hereinafter referred to as the “Jasper Participating Taxing Entities”) *in accordance with an ordinance adopted by Jasper County.*” [Simmons Aff. Ex. 1-A, at Jasper_000083 (emphasis added)].

² Although not in dispute, for the avoidance of doubt, the MCIP Agreement specifically allocates 100% of park expenses to the “Site Location County” (i.e., Jasper) and 0% of park expenses to the “Partner County” (i.e., Beaufort). [Simmons Aff. Ex. 1-A, at Jasper_000083]. And, the MCIP Agreement specifically allocates 99% of Park Revenues to Jasper and 1% of Park Revenues to Beaufort. [*Id.*].

The “ordinance adopted by Jasper County” referenced here is the Park Ordinance—the ordinance that was adopted by Jasper’s County Council prior to executing the Initial Park Agreement, which made the form of the Initial Park Agreement an attachment, and expressly incorporated the Initial Park Agreement’s terms.³ In other words, the Park Ordinance simply complemented the Initial Park Agreement’s terms—as expressly contemplated by the Initial Park Agreement—and further elaborated how Jasper’s Park Revenues would be distributed to Jasper’s taxing entities. In pertinent part, the Park Ordinance states:

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

[*Id.* at Jasper_000079–80 (emphasis in original)]. The Park Ordinance and the executed Initial Park Agreement (i.e., the collective “Park Agreement”) were filed on the same day with the Jasper County Clerk of Court’s office on April 10, 2000. [*Id.* at Jasper_000078 through Jasper_000086].

Accordingly, the Park Agreement sufficiently addresses “the manner in which park revenues must be distributed to each of the taxing entities within each of the participating counties.” S.C. Code Ann. § 4-1-170(A)(3). Thus, the undisputed material facts show that the Park Agreement, as a matter of law, is valid pursuant to Section 4-1-170. Therefore, Hardeeville’s Motion must be denied.

³ [*Id.* at Jasper_000078 (“The form of the industrial park agreement (the ‘Agreement’) is attached hereto and all terms of the Agreement are hereby incorporated herein.”)]

II. The Annexed Property is exempt from *ad valorem* taxation, and park revenues generated from the Annexed Property must be distributed in accordance with the MCIP Agreement.⁴

Hardeeville argues that it is not bound by the MCIP Agreement because it was not a party to the agreement. Whether or not Hardeeville is a party to the MCIP Agreement is irrelevant. The actual issue is whether the Annexed Property is exempt from *ad valorem* taxation. The answer is: yes.

Both Article VIII, Section 13(D) of the Constitution and Section 4-1-170 provide that *all property* in an MCIP is exempt from *all ad valorem* taxes. *Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 630, 552 S.E.2d 737, 741 (2001). Article VIII, Section 13(D) states that “[t]he area comprising the parks and *all property having a situs therein is exempt from all ad valorem taxation.*” S.C. CONST. art. VIII, § 13(D) (emphasis added). There are no exceptions.

The undisputed material facts show that at the time the MCIP was created, the MCIP did not encompass any Hardeeville property. Hardeeville did not incorporate the Annexed Property into its jurisdictional limits until over six years after the MCIP was created. [Am. Compl. ¶ 38; Am. Cross Claim ¶ 35]. Therefore, by the time Hardeeville incorporated the Annexed Property, the Annexed Property was already constitutionally and statutorily exempt from all *ad valorem* taxation.

Additionally, the revenues generated from the Annexed Property must be distributed in accordance with the MCIP Agreement. This is not optional. Article VIII, Section 13(D) of the South Carolina Constitution and Title 4 of the South Carolina Code make clear that *all* property located in a park is exempt from all *ad valorem* taxation and the park agreement governs how *all*

⁴ The term “MCIP Agreement” has the same meaning as used in Jasper’s Memorandum. That is, the Park Agreement and the Bond Ordinances are, collectively, the “MCIP Agreement.”

park revenues *must* be distributed to the taxing entities. *See* S.C. CONST. art. VIII, § 13(D); S.C. Code Ann. § 4-1-170; *see also* 346 S.C. at 630, 552 S.E.2d at 741.

Hardeeville essentially has buyer's remorse. After annexing property into its jurisdictional limits that was constitutionally and statutorily exempt from *ad valorem* taxation, Hardeeville found out it was never entitled to collect *ad valorem* taxes from the property. If Hardeeville was genuinely concerned with the taxability of the Annexed Property, it could have ascertained this information prior to annexing the property. The Park Agreement is a public record that was filed with the Clerk of Court's office for Jasper County, South Carolina on April 10, 2000. [*See* Simmons Aff. Exs. 1-A & 1-B]. Thus, Hardeeville had legal notice that the Annexed Property was exempt from *ad valorem* taxation. *See, e.g., S.C. Dep't of Transp. v. Horry Cty.*, 391 S.C. 76, 84, 705 S.E.2d 21 (2011) (finding that there was constructive notice when the document was properly recorded).⁵

For these reasons, Hardeeville's argument that it is not a party to the MCIP Agreement is immaterial to this case. The issue is whether the Annexed Property is exempt from *ad valorem* taxation and is governed by the MCIP Agreement. The undisputed material facts show that the Annexed Property was within the geographic boundary of the MCIP at the time the MCIP was created. Thus, as a matter of law, the Annexed Property is exempt from all *ad valorem* taxation and is governed by the MCIP Agreement. Therefore, Hardeeville's Motion must be denied.

⁵ Jasper highlights the fact that Hardeeville is deemed to have had notice of the tax exempt status of the Annexed Property only in response to arguments asserted in Hardeeville's Motion. Whether or not Hardeeville had any notice at all is immaterial to this case. At the time Hardeeville incorporated the Annexed Property into its jurisdictional limits, the Annexed Property was already constitutionally and statutorily exempt from *ad valorem* taxation. Hardeeville's subsequent annexation does not change this.

III. Jasper, the Auditor, and the Treasurer are not estopped from correcting future distributions.

Without citing a single legal authority, Hardeeville argues that “Plaintiff’s millage must continue to be collected and distributed to Plaintiff without any interference by [Defendants]” because “[f]or 12/14 years, each of these defendants . . . permitted Plaintiff to levy and collect its own millage not subject to any re-allocation or distribution according to the MCIP Agreement.” [Pl.’s Mot. Summ J. 6]. In other words, although Hardeeville neither alleged estoppel as a basis for relief in its Amended Complaint nor asserted estoppel as an affirmative defense in its Answer to Amended Cross-Claim, Hardeeville is now arguing that because Jasper, the Auditor, and the Treasurer treated the Annexed Property one way for a certain period of time, they are all estopped from correcting future distributions to comply with the law. This argument is meritless for three reasons: (1) *the law requires that park revenues be distributed in accordance with the governing MCIP agreement*; (2) counties are statutorily authorized to correct any previous misallocations when making future distributions; and (3) Hardeeville cannot establish the required elements for proving estoppel against the government.

First, as explained above, all revenues generated from the MCIP, including those generated from the Annexed Property, must be distributed in accordance with the MCIP Agreement. This is not optional, and it is not something Jasper can waive if Hardeeville is unhappy. *See* S.C. CONST. art. VIII, § 13(D); S.C. Code Ann. § 4-1-170; 346 S.C. at 630, 552 S.E.2d at 741; *see also* Jasper’s Mem. 14–16.

Second, Section 4-1-170 explicitly addresses what happens when a county misallocates MCIP revenues. In pertinent part, the statute provides that “[m]isallocations may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations.” S.C. Code Ann. § 4-1-170(B). Thus, although Jasper cannot obligate Hardeeville to remit all misallocations made in prior years under this statute, Jasper certainly has the statutory

authority to correct future allocations and make distributions in accordance with the terms of the MCIP Agreement.

Third, “[t]o prove estoppel against the government, the relying party must prove: (1) the lack of knowledge and the means of knowledge of the truth of the facts in question; (2) justifiable reliance upon the government’s conduct; and (3) a prejudicial change in position.” *S.C. Dep’t of Transp.*, 391 S.C. at 83, 705 S.E.2d at 25. In this case, the Park Agreement is a properly recorded document that was filed with the Clerk of Court’s office for Jasper County, South Carolina on April 10, 2000. [See Simmons Aff. Exs. 1-A & 1-B]. Thus, Hardeeville had—at the very least—the means of discerning the tax status of the Annexed Property because the Park Agreement was a properly recorded document. *S.C. Dep’t of Transp.*, 391 S.C. at 83–84, 705 S.E.2d at 25.

Furthermore, estoppel will not lie against the government for actions taken by its officers and agents that exceed the scope of their statutory authority. *Ahrens v. State*, 392 S.C. 340, 352, 709 S.E.2d 54, 60 (2011) (quoting *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 87, 221 S.E.2d 773, 776 (1976) (“In determining whether an agent of the [the government] acted within its authority, the law is clear that ‘[a] public officer derives his authority from statutory enactment.”). *Id.* at 353, 709 S.E.2d at 60–61. Hardeeville cannot reap a future windfall based on a past mistake that must be corrected to comply with constitutional and statutory law.

In this case, Section 4-1-170, in no uncertain terms, requires that distributions be made in the manner prescribed by the MCIP Agreement; Section 4-1-170(B) provides statutory authority to correct future distributions; and Hardeeville had the means of acquiring the truth about the tax exempt status of the Annexed Property for six years prior to incorporating it into its jurisdictional limits. Accordingly, as a matter of law, Jasper, the Auditor, and the Treasurer cannot be estopped from correcting future distributions to comply with the law. Therefore, Hardeeville’s Motion must be denied.

CONCLUSION

For these reasons and for the reasons addressed in Jasper's Memorandum, Hardeeville's Motion must be denied.

Respectfully submitted,

s/J. Evan Phillips

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Columbia, South Carolina
October 25, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2021 – CP– 27 – 00028

CITY OF HARDEEVILLE,)
)
Plaintiff,)

vs.)

JASPER COUNTY, SOUTH CAROLINA,)
JASPER COUNTY TREASURER, and)
JASPER COUNTY AUDITOR,)
)
Defendants.)

**MEMORANDUM OF NICKEL
PLATE ROAD, LLC IN
OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT**

AND

JASPER COUNTY, SOUTH CAROLINA,)
)
Cross Co-Plaintiff,)

VERNA GARVIN, in her official capacity)
as Jasper County Treasurer,)
Cross Co-Plaintiff, and)

MONICA WILSON, in her official capacity)
as Jasper County Auditor,)
Cross Co-Plaintiff)

vs.)

CITY OF HARDEEVILLE,)
NICKEL PLATE ROAD, LLC, and)
BEAUFORT COUNTY, SOUTH)
CAROLINA,)
Cross Defendants.)

The Cross-Defendant, Nickel Plate Road, LLC (“Nickel Plate”) has requested an opportunity to respond to the City of Hardeeville’s (“Hardeeville’s”) Motion for Summary

Judgment. Though Nickel Plate is not a party to the first-party action, Nickel Plate is the bondholder of special source revenue bonds which are being repaid by a portion of the fees paid within the Multi-County Industrial Park (the “Park”) at issue in this case. Therefore, the outcome of that action directly affects Nickel Plate’s interests. While the issues raised by Hardeeville are well addressed in Jasper County’s memorandum, Nickel Plate would like to make a few additional points for the Court’s consideration.

In its motion, Hardeeville argues: (1) A city that annexes property is not bound by a multi-county park agreement under S.C. Code Ann. § 4-1-170 to which it was not a party, and (2) The agreement at issue here, the Agreement for Development of Joint County Industrial and Business Park (the “Park Agreement”) does not comply with S.C. Code Ann, § 4-1-170(3) in that it does not “specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.” *Id.* Both of these arguments are misplaced.

I. Hardeeville Is Bound By The Park Agreement.

Hardeeville’s argument that it cannot be bound by a contract to which it is not a party proves too much. The statute makes clear that the allocation of park fees paid within a multi-county park to every taxing authority which overlaps such multi-county park is subject to and bound by the agreement made by the counties - and those taxing authorities are not parties to the agreement either. *See, Horry County School Dist. v. Horry County*, 346 S.C. 621, 552 S.E.2d 737 (2001). In *Horry County*, the Horry County School District was not satisfied with the fact that Horry County could decide how much of the park fees paid within that multi-county park were to be allocated to the school district. The Supreme Court held that “[t]he MCBP scheme allows the county to determine unilaterally what percentage of revenue derived

from the fee in lieu to allocate to schools.” *Id.* at 635, 552 S.E.2d at 744. Thus, where previously, Horry County School District had collected 100% of the *ad valorem* taxes levied by it or on its behalf on property prior to its inclusion in the multi-county park, once that property was included in the multi-county business park, it no longer could. Rather, Horry County School District’s allocation of park fees became subject to the provisions of the multi-county park agreement between Horry County and Marion, Georgetown and Dillon counties, to which Horry County School District was not a party. Therefore, the argument that allocation of park fees to a taxing district cannot be subject to a multi-county park agreement to which it is not a party and did not agree is without merit.

Further, the statute gives a municipality the power to consent if the property to be included in a multi-county industrial park is in a municipality at the time of the creation of the park. S.C. Code Ann. § 4-1-170(C). Therefore, the canon of statutory construction, “expressio unius est exclusio alterius,” or “inclusio unis est exclusio alterius” comes into play. Those expressions hold that “to express or include one thing implies the exclusion of another, or of the alternative.” Black’s Law Dictionary 602 (7th ed. 1999) (quoted in *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 579, 582 (2000)).

That canon is certainly applicable here. A municipality must give its consent to the creation of a multi-county park if, at the time the park is created, property to be included in the park is in the affected municipality. The clear indication is that if none of the property to be included in the park is in the municipality at the time of its creation, then no consent is needed.

II. The Park Agreement Is Valid.

Though Hardeeville did not raise this point in its amended complaint, it takes the position in its motion for summary judgment that the Park Agreement is invalid because it

allegedly does not comply with S.C. Code Ann. § 4-1-170(3) in that the Park Agreement does not “specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.” At oral argument, Hardeeville based its position, in part, upon dicta set forth in *Horry County*, 346 S.C. 621, 552 S.E.2d 737 (2001).

As Hardeeville acknowledges in its memorandum to the Court, the Park Agreement provides in Section 7 that any revenue Jasper County receives pursuant to the Park Agreement will be distributed in accordance with an ordinance adopted by Jasper County. Jasper County had, in fact adopted that ordinance at the time of the execution of the Park Agreement. *See*, Jasper County Mem. in Support, n.3. That ordinance (the “Park Ordinance”) is attached as Exhibit A to the Amended Complaint.

As an initial matter, there is no authority, including the *Horry County* case, indicating that a Park Agreement’s reliance on an ordinance enacted in the applicable counties to satisfy S.C. Code Ann. § 4-1-170(3) is improper. In fact, that is commonly how that requirement is satisfied in multi-county industrial park agreements. It is so standard, in fact, that Hardeeville’s attorney in this case is representing an Upstate county using a multi-county park agreement with very similar language to the Park Agreement in this case which refers to ordinances that are not in the park agreement itself to specify how park fees will be allocated. Exhibit A (Excerpts of materials presented at Public Hearing for Oconee County Ordinance 2021-22, November 5, 2021).¹ The paragraph dealing with revenue allocation is in paragraph 7 in that park agreement, just as it is in the Park Agreement in this case.

¹ The full agenda packet is available at www.oconeesc.com/counsel-home/agendas-and-minutes. This information is admissible pursuant to S.C. R. Evid. 803(8),

In the present case, Section I of the Park Ordinance provides for the creation of the Park by way of an agreement and expressly incorporates the terms of the Agreement to be entered into. With respect to the manner in which revenue would be distributed to the each of the taxing entities within Jasper County, Section IX of the Park Ordinance originally provided as follows:

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

That section of the Park Ordinance expressly states the manner in which Park fees must be distributed to each of the taxing entities within each of the participating counties. Further, it provides that Jasper County may use a portion of the park fees for payment of special source revenue bonds.

As noted in Jasper County's Memo in Support of Its Motion for Partial Summary Judgment, Section IX of the Park Ordinance was amended by the General Bond Ordinance to establish that after the payment of 1% of the park fees to Beaufort county, 40% of the remaining park fees would be designated for the payment of special source revenue bonds, and the remainder would be paid to each of the taxing entities in Jasper County according to each taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes.

Hardeeville does not dispute that the language in Park Ordinance referenced above, both as originally set forth, and as amended, suffices to satisfy S.C. Code Ann. § 4-1-170(3); however, it argues that the language stating how revenues are to be distributed must be within the four corners of a park agreement. That argument is contrary to contract law which incorporates all applicable ordinances both present and future if, as in this case, the parties so agreed. 17A Am.Jur. 2d Contracts § 372 (2004). *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007). Contracts routinely incorporate the terms of other documents by reference, and that is perfectly lawful and binding upon the parties. *Williston on Contracts*, § 30:25.

Hardeeville argues that because § 4-1-170(3) is fulfilled by reference to an ordinance, “a reader would have to hope to find one or more subsequent documents that provided for revenue distribution.” That argument is belied by the fact that Hardeeville attached all applicable ordinances as exhibits to the Complaint in this case. Therefore, the ordinances were apparently not hard to find. Thus, Hardeeville’s argument is based on mere speculation about a hypothetical situation that has no evidentiary support here. Further as noted, with respect to Jasper County, the Park Ordinance stating how Park fees would be distributed and the agreement were executed and filed contemporaneously such that the Park Ordinance was not some distant document unrelated to the Park Agreement.

Therefore, Hardeeville’s argument that the Park Agreement is not valid because it is the revenue allocations to the various taxing entities are in a separate document which is referred to in the Park Agreement must fail.

As a final note, Hardeeville has been unjustly enriched by the receipt of funds to which it is not entitled. While the theory of unjust enrichment is not before court at this time, Nickel Plate wishes to make clear that that point is not conceded.

WHEREFORE, Nickel Plate prays that Hardeeville's motion for summary judgment be denied.

Respectfully submitted,

/s/ Bernie W. Ellis

Bernie W. Ellis (SC Bar #64841)

BURR & FORMAN LLP

Post Office Box 447

Greenville, SC 29602

(864) 271-4940

bellis@burr.com

*Attorney for Cross Co-Defendant Nickel
Plate Road, LLC*

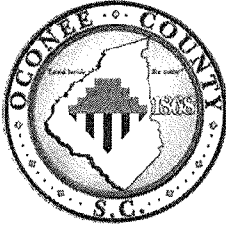
Greenville, South Carolina
November 11, 2021

EXHIBIT A

(Oconee County Agenda Packet)

*Exhibit to Memorandum of Nickel Plate Road, LLC
in Opposition to Plaintiff's Motion for Summary Judgment*

*City of Hardeeville vs. Jasper County, South Carolina, et al. ***and*** Jasper County, South Carolina,
et al. vs. City of Hardeeville, et al.*



UPDATED A G E N D A
OCONEE COUNTY COUNCIL
SPECIAL MEETING / PUBLIC HEARINGS
Friday, November 05, 2021
10:00 a.m.

Council Chambers, Oconee County Administrative Offices
415 South Pine Street, Walhalla, SC

Call to Order

Moment of Silence

Invocation by County Council Chaplain

Pledge of Allegiance to the Flag of the United States of America

Public Hearings for the Following Ordinance

If you would like to be heard during either of the public hearings, please contact Clerk to Council Jennifer C. Adams at jennifercadams@oconeesc.com or 864-718-1023 so that your participation by may be coordinated.

Ordinance 2021-24 AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$1,500,000 FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS IN THE KEOWEE FIRE TAX DISTRICT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.”

Third Reading of the Following Ordinances

Ordinance 2021-24 *[see caption above]*

Second Reading of the Following Ordinances

Ordinance 2021-22 AN ORDINANCE AUTHORIZING (A) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN OCONEE

COUNCIL MEMBERS

John Elliott, Chair, District I

Paul Cain, Vice-Chair, District III

Julian Davis, III, Chair Pro Tem, District IV

Matthew Durham, District II

Glenn Hart, District V

COUNTY, SOUTH CAROLINA (“COUNTY”), AND PROJECT RUBY SLIPPER WITH RESPECT TO CERTAIN ECONOMIC DEVELOPMENT PROPERTY IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF TAXES, INCLUDING THE PROVISION OF CERTAIN SPECIAL SOURCE CREDITS; (B) THE COUNTY TO TRANSFER REAL PROPERTY OWNED BY THE COUNTY TO PROJECT RUBY SLIPPER; (C) THE COUNTY TO CREATE A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK WITH PICKENS COUNTY, SOUTH CAROLINA, AND DESIGNATE THE PROPERTY TO BE OWNED BY PROJECT RUBY SLIPPER AS MULTI-COUNTY PARK PROPERTY; AND (D) OTHER MATTERS RELATED THERETO.

Discussion Regarding Action Items:

**Title: E-One Ladder Fire Truck Department(s): Emergency Services / Keowee Fire Department
Amount: \$ 1,282,209.00**

This Fire Truck is an E-ONE 95’ Rear Mount Platform, with a Cummins X15 605HP Engine, SideStacker Tandem Axle Body, a 500 Gallon Water Tank, Center Mounted Ladder Storage Tunnel, a Waterous CSU 2000 GPM Pump, Advanced Aerial Control System, an Akron StreamMaster II Aerial Tip Monitor and a Breathing Air Platform with One (1) 444CF Cylinder. This apparatus will be built in accordance to NFPA (National Fire Protection Association).

The County is utilizing the H-GAC (Houston-Galveston Area Council of Governments) contract through a cooperative purchasing agreement. H-GAC cooperative purchasing allows government agencies to purchase directly from the manufacturer or authorized dealers. H-GAC contracts are bid and awarded on a national level and purchases may be fulfilled by the manufacturer and / or authorized local or state dealers.

E-One and Allsource Enterprises, LLC. dba Safe Industries were awarded an H-GAC contract under contract number FS12-19.

E-One is the Supplier and Allsource Enterprises, LLC., dba Safe Industries, is the Prime Contractor for E-One. Allsource Enterprises, LLC., dba Safe Industries, will provide any service or warranty repairs required.

It is the staff’s recommendation that Council approve the award of the E-One Ladder Truck to Allsource Enterprises, LLC., dba Safe Industries, of Easley, SC in the amount of \$ 1,282,209.00.

Executive Session

[upon reconvening Council may take a Vote and/or take Action on matters brought up for discussion in Executive Session, if required]

For the following purposes, as allowed for in § 30-4-70(a) of the South Carolina Code of Laws:

None as of the publishing of this Agenda

Adjourn

COUNCIL MEMBERS

John Elliott, Chair, District I Paul Cain, Vice-Chair, District III
Julian Davis, III, Chair Pro Tem, District IV Matthew Durham, District II
Glenn Hart, District V

OCONEE COUNTY, SOUTH CAROLINA

ORDINANCE NO. 2021-24

AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$1,500,000 FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS IN THE KEOWEE FIRE TAX DISTRICT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

ADOPTED: NOVEMBER 16, 2021

SideStacker Tandem Axle Body, a 500 Gallon Water Tank, Center Mounted Ladder Storage Tunnel, a Waterous CSU 2000 GPM Pump, Advanced Aerial Control System, an Akron StreamMaster II Aerial Tip Monitor and a Breathing Air Platform with One 444CF Cylinder, or similar item(s), and related equipment.

SECTION 21. *Authorization for County Officials to Execute Documents.* The Council authorizes the County Administrator, Clerk to County Council and other County Officials to execute and consent to such documents and instruments, including, *e.g.*, purchase-sale agreements, option contracts, lease-purchase agreements, or other similar agreements, as may be necessary to effect the intent of this Ordinance, the issuance of the Bonds, and any documents related to the transfer to, or acquisition from (or both), the Projects.

SECTION 22. *Amendments.* The County Council, at any time and from time to time may enact amending or supplementing ordinances without the consent or concurrence of any registered owner of any Bond so long as the amendment or supplement does not materially and negatively impact any right of any holder of a Bond outstanding at the time of the enactment of the amendment or supplement.

SECTION 23. *Publication of Notice of Adoption of Ordinance.* Pursuant to the provisions of Section 11-27-40 of the Code, the County Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

SECTION 24. *Retention of Bond Counsel and Other Suppliers.* The Council authorizes the County Administrator to retain the law firm of King Kozlarek Law LLC, as its bond counsel, in connection with the issuance of the Bonds.

The Council further authorizes the County Administrator to enter such contractual arrangements with printers and the suppliers of other goods and services necessary to the sale, execution and delivery of the Bond as is necessary and desirable. To the extent feasible, such arrangements shall be made with persons of sound reputation after obtaining two or more bids for such services; however, the County Administrator is authorized to make such arrangements without obtaining bids or quotes where (i) the services to be provided are unique or (ii) it is impractical to obtain bids in order to comply with any time requirements with respect to the issuance and sale of the Bond or (iii) the County has had previous experience with a supplier who has performed reliably and satisfactorily.

SECTION 25. *General Repealer.* All ordinances, rules, regulations, resolutions, and parts thereof, procedural, or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bond are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT (the "*Fee Agreement*") is made and entered into as of _____, 20__ by and between **OCONEE COUNTY, SOUTH CAROLINA** (the "*County*"), a body politic and corporate and a political subdivision of the State of South Carolina (the "*State*"), acting by and through the Oconee County Council (the "*County Council*") as the governing body of the County, and **PROJECT RUBY SLIPPER**, a _____ organized and existing under the laws of the State of _____ (the "*Company*").

RECITALS

1. Title 12, Chapter 44 (the "*FILOT Act*"), Code of Laws of South Carolina, 1976, as amended (the "*Code*"), authorizes the County to (a) induce industries to locate in the State; (b) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property.

2. Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide special source revenue credit ("*Special Source Revenue Credit*") financing secured by and payable solely from revenues of the County derived from payments in lieu of taxes for the purposes set forth in Section 4-29-68 of the Code, namely: the defraying of the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate, and personal property, including but not limited to machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County (collectively, "*Infrastructure*").

3. The Company (as a Sponsor, within the meaning of the FILOT Act) desires to provide for the acquisition and construction of the Project (as defined herein) to constitute a facility in the County for the manufacture of affordable housing and associated products.

4. Based on information supplied solely by the Company, the County Council has evaluated the Project based on relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created or maintained, and the anticipated costs and benefits to the County. Pursuant to Section 12-44-40(I)(1) of the FILOT Act, the County finds that: (a) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project will give rise to no pecuniary liability of the County or any incorporated municipality therein and to no charge against their general credit or taxing powers; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

5. The Project is located, or if not so located as of the date of this Fee Agreement the County intends to use its best efforts to so locate the Project, in a joint county industrial or business park created with an adjoining county in the State pursuant to agreement entered into pursuant to Section 4-1-170 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution.

6. By enactment of an Ordinance on _____, 2021, the County Council has authorized the County to enter into this Fee Agreement with the Company which classifies the Project as Economic Development Property under the FILOT Act and provides for the payment of fees in lieu of taxes and the provision of Special Source Revenue Credits to reimburse the Company for payment of the cost of certain

**ARTICLE VII
MISCELLANEOUS**

Section 7.01 Notices

Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

If to the Company:

Project Ruby Slipper
Attn: _____

With a copy to:

Haynsworth Sinkler Boyd, P.A.
Attn: J. Philip Land, Jr. (pland@hsblawfirm.com)
One North Main Street
2nd Floor
Greenville, South Carolina 29601

If to the County:

Oconee County, South Carolina
415 South Pine Street
Walhalla, SC 29691
Attn. Amanda Brock, County Administrator
Email: abrock@oconeesc.com

With a copy to: (does not constitute notice)	Oconee Economic Alliance 528 US 123 Bypass Suite G Seneca, South Carolina 29678 Attn.: Annie Caggiano, President
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With a copy to: (does not constitute notice)	Oconee County Attorney 415 South Pine Street Walhalla, South Carolina 29691 Attn.: David Root Email: droot@oconeesc.com
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With a copy to: (does not constitute notice)	Kozlarek Law LLC Attn: Michael E. Kozlarek, Esq. Post Office Box 565 Greenville, South Carolina 29602-0565
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STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
COUNTY OF PICKENS)

AGREEMENT FOR DEVELOPMENT OF A
JOINT COUNTY INDUSTRIAL AND
BUSINESS PARK (PROJECT RUBY SLIPPER)

THIS AGREEMENT for the development of a joint county industrial and business park to be located initially only within Oconee County is made and entered into as of December 31, 2021, by and between Oconee County, South Carolina (“Oconee County”) and Pickens County, South Carolina (“Pickens County”).

RECITALS

WHEREAS, Oconee County and Pickens County are contiguous counties which, pursuant to Ordinance No. 2021-22, enacted by Oconee County Council on December [], 2021, and Ordinance No. [], enacted by Pickens County Council on December [], 2021, have each determined that, to promote economic development and thus encourage investment and provide additional employment opportunities within both counties, there should be developed, initially, in Oconee County, only, a joint county industrial and business park (“Park”), to be located upon property more particularly described in Exhibit A; and

WHEREAS, because of the development of the Park, property comprising the Park and all property having a situs therein is exempt from ad valorem taxation to the extent provided in Article VIII, Section 13(D) of the South Carolina Constitution, but the owners or lessees of such property shall pay annual fees in an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for such exemption.

NOW, THEREFORE, in consideration of the mutual agreement, representations, and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Binding Agreement. This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on Oconee County and Pickens County, and their successors and assigns.

2. Authorization. Article VIII, Section 13(D) of the South Carolina Constitution provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a manner in which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any provision of law which measures the relative fiscal capacity of a school district to support its schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of taxable property in all school districts in South Carolina. The Code of Laws of South Carolina, 1976, as amended (“Code”) and particularly, Section 4-1-170 thereof, satisfies the conditions imposed by Article VIII, Section 13(D) of the South Carolina Constitution and provides the statutory vehicle whereby a joint county industrial or business park may be created.

3. Location of the Park.

(A) As of the original execution and delivery of this Agreement, the Park consists of property that is located in Oconee County and which is now or is anticipated to be owned and/or operated by a company known as “Project Ruby Slipper” (“Company”), as more particularly described in Exhibit A. From time to time, the Park may consist of non-contiguous properties within each county. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances of the county councils of

both Oconee County and Pickens County. If any property proposed for inclusion in the Park is located, at the time such inclusion is proposed, within the boundaries of a municipality, then the municipality must give its consent prior to the inclusion of the property in the Park.

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached a revised Exhibit A related to property located in Oconee County, or a revised Exhibit B related to property located in Pickens County, which shall contain a legal or other description of the parcel(s) to be included within the Park within Oconee County or Pickens County, as the case may be, as enlarged or diminished, together with a copy of the ordinances of Oconee County Council and Pickens County Council pursuant to which such enlargement or diminution was authorized.

(C) Prior to the adoption by Oconee County Council and by Pickens County Council of ordinances authorizing the diminution of the boundaries of the Park, separate public hearings shall first be held by Oconee County Council and Pickens County Council. Notice of such public hearings shall be published in newspapers of general circulation in Oconee County and Pickens County, respectively, at least once and not less than 15 days prior to such hearing. Notice of such public hearings shall also be served in the manner of service of process at least 15 days prior to such public hearing upon the owner and, if applicable, the lessee of any property which would be excluded from the Park by virtue of the diminution.

(D) Notwithstanding anything in this paragraph 3 to the contrary, in the event that a tract or site of land located in the Park is purchased and developed by a person or business enterprise whose employees, because of the nature of their employment, do not qualify for the corporate income tax credit provided in Section 12-6-3360 of the Code ("Non-Qualifying Site"), the Host County (defined below) may unilaterally remove by ordinance, the Non-Qualifying Site from the Park, so long as, and to the extent that such removal does not adversely impact any financing or other incentive then in effect.

4. Fee in Lieu of Taxes. To the extent provided in Article VIII, Section 13(D) of the South Carolina Constitution, all property located in the Park is exempt from all ad valorem taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Agreement an amount (referred to as fees in lieu of ad valorem taxes) equivalent to the ad valorem taxes or other in-lieu-of payments that would have been due and payable but for the location of such property within the Park.

5. Allocation of Expenses. Oconee County and Pickens County shall each be responsible for and bear expenses incurred in connection with the property located in that county's portion of the Park, including, but not limited to, those incurred in the administration, development, operation, maintenance, and promotion of the Park, in the following proportions:

If the property is located in the Oconee County portion of the Park:

A.	Oconee County	100%
B.	Pickens County	0%

If the property is located in the Pickens County portion of the Park:

A.	Oconee County	0%
B.	Pickens County	100%

Notwithstanding anything herein to the contrary, to the extent that privately owned property is located in the Park, the owner of such property shall bear, exclusively, any expense associated with such property.

6. Allocation of Revenues. Oconee County and Pickens County shall receive an allocation of all net revenues (after payment of all Park expenses and other deductions from Park revenue necessitated by each agreement between the Host County and a project related to the project located in the Park) generated by the Park through payment of fees in lieu of *ad valorem* taxes in the following proportions:

If the property is located in the Oconee County portion of the Park:

A.	Oconee County	99%
B.	Pickens County	1%

If the property is located in the Pickens County portion of the Park:

A.	Oconee County	1%
B.	Pickens County	99%

With respect to such fees generated from properties located in the Oconee County portion of the Park, that portion of such fees allocated to Pickens County shall thereafter be paid by the Treasurer of Oconee County to the Treasurer of Pickens County within 15 business days following the end of the calendar quarter of receipt for distribution, and such distribution shall be made in accordance with this Agreement. With respect to such fees generated from properties located in the Pickens County portion of the Park, that portion of such fees allocated to Oconee County shall thereafter be paid by the Treasurer of Pickens County to the Treasurer of Oconee County within 15 business days following the end of the calendar quarter of receipt for distribution, and such distribution shall be made in accordance with this Agreement.

7. Revenue Allocation within Each County.

(A) Revenues generated by the Park through the payment of fees in lieu of ad valorem taxes shall be distributed to Oconee County and to Pickens County, according to the proportions established by Section 6 of this Agreement. Revenues allocable to Oconee County by way of fees in lieu of ad valorem taxes generated from properties located in Oconee County shall be distributed within Oconee County in accordance with the applicable governing ordinance of Oconee County in effect from time to time. Revenues received by Pickens County by way of fees in lieu of taxes from property in Oconee County in the Park shall be retained by Pickens County.

(B) Revenues allocable to Oconee County by way of fees in lieu of ad valorem taxes generated from properties located in the Pickens County portion of the Park shall be distributed solely to Oconee County. Revenues allocable to Pickens County by way of fees in lieu of ad valorem taxes generated from properties located in the Oconee County portion of the Park shall be distributed solely to Pickens County.

8. Fees in Lieu of Ad Valorem Taxes Pursuant to Title 4 or Title 12 of the Code. It is hereby agreed that the entry by Oconee County into any one or more fee in lieu of ad valorem tax agreements pursuant to Title 4 or Title 12 of the Code or any successor or comparable statutes ("Negotiated Fee in Lieu of Tax Agreements"), with respect to property located within the Oconee County portion of the Park and the terms of such agreements shall be at the sole discretion of Oconee County. It is further agreed that entry by Pickens County into any one or more Negotiated Fee in Lieu of Tax Agreements with respect to property located within the Pickens County portion of the Park and the terms of such agreements shall be at the sole discretion of Pickens County.

9. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to Oconee County and Pickens County and to each of the taxing entities within the participating counties shall be in accordance with the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Section 6 and Section 7 of this Agreement.

10. Applicable Ordinances and Regulations. Any applicable ordinances and regulations of Oconee County including those concerning zoning, health, and safety, and building code requirements shall apply to the Park properties located in the Oconee County portion of the Park unless any such property is within the boundaries of a municipality in which case, the municipality's applicable ordinances and regulations

shall apply. Any applicable ordinances and regulations of Pickens County including those concerning zoning, health, and safety, and building code requirements shall apply to the Park properties located in the Pickens County portion of the Park unless any such property is within the boundaries of a municipality in which case, the municipality's applicable ordinances and regulations shall apply.

11. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties located in Oconee County is vested with the Sheriff's Office of Oconee County, for matters within the Sheriff's Office's jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties located in Pickens County is vested with the Sheriff's Office of Pickens County, for matters within the Sheriff's Office's jurisdiction. If any of the Park properties located in either Oconee County or Pickens County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is also vested with the law enforcement officials of the municipality for matters within their jurisdiction. Fire, sewer, water, and emergency medical and other similar services will be provided by the service district or other political unit within whose jurisdiction the Park premises are located.

12. Emergency Services. All emergency services in the Park shall be provided by those emergency service providers who provide the respective emergency services in that portion of the Host County.

13. South Carolina Law Controlling. This Agreement has been entered into in the State of South Carolina and shall be governed by and construed in accordance with South Carolina law, including for example, the availability and application of credits as permitted by Section 12-6-3360 of the Code.

14. Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

15. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, and all of which, taken together, shall constitute but one and the same document.

16. Term; Termination. This Agreement shall extend for a term of 10 years from the effective date of this Agreement, or such later date as shall be specified in any amendment. Notwithstanding the foregoing provisions of this Agreement or any other provision in this Agreement to the contrary, this Agreement shall not expire and may not be terminated to the extent that Oconee County or Pickens County has outstanding contractual covenants, commitments, or agreements to any owner or lessee of Park property, including, but not limited to, [Project Ruby Slipper] ("Company"), to provide, or to facilitate the provision of, special source revenue credits, including, but not limited to, those set forth in that certain Fee in Lieu of Tax and Special Source Credit Agreement, by and between Oconee County, South Carolina and the Company, dated as of December [], 2021, as may be amended, modified, or supplemented from time to time (but the benefits of which, as of the date of this Agreement, are anticipated to expire on or before December 31, 2028), or other incentives requiring inclusion of property of such owner or lessee within the boundaries of a joint county industrial or business park created pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code, unless the Host County shall first (i) obtain the written consent of such owner or lessee and, to the extent required (ii) include the property of such owner or lessee as part of another joint county industrial or business park created pursuant to Article III, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code, which inclusion is effective immediately upon termination of this Agreement.

[ONE SIGNATURE PAGE AND TWO EXHIBITS FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and the year first above written.

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Chair of County Council
Oconee County, South Carolina

[SEAL]

Attest:

By: _____
Clerk to County Council
Oconee County, South Carolina

PICKENS COUNTY, SOUTH CAROLINA

By: _____
Chair of County Council
Pickens County, South Carolina

[SEAL]

Attest:

By: _____
Clerk to County Council
Pickens County, South Carolina

EXHIBIT A
OCONEE COUNTY PROPERTY

[DESCRIPTION TO BE INSERTED PRIOR TO ADOPTION]

[REMAINDER OF PAGE INTENTIONALLY BLANK]

ELECTRONICALLY FILED - 2021 Nov 11 4:50 PM - JASPER - COMMON PLEAS - CASE#2021CP2700028

EXHIBIT B
PICKENS COUNTY PROPERTY

NONE

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ELECTRONICALLY FILED - 2021 Nov 11 4:50 PM - JASPER - COMMON PLEAS - CASE#2021CP2700028

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

City of Hardeeville,)
)
Plaintiff,)

Civil Action No.: 2021-CP-27-00028

v.)

**CITY OF HARDEEVILLE’S
MOTION TO RECONSIDER**

Jasper County, South Carolina,)
Jasper County Treasurer, and)
Jasper County Auditor,)

Defendants)

AND

Jasper County, South Carolina,)
)
Cross Co-Plaintiff,)

Verna Garvin, in her official capacity)
as Jasper County Treasurer,)
Cross Co-Plaintiff, and)

Monica Wilson, in her official capacity)
as Jasper County Auditor,)
Cross Co-Plaintiff)

vs.)

City of Hardeeville, Nickle Plate Road,)
LLC, and Beaufort County, South Carolina,)

Cross Defendants.)

Plaintiff and Cross-Defendant City of Hardeeville (“Hardeeville”) respectfully moves this Court for an order reconsidering, altering, or amending,¹ the Court’s Order filed July 13, 2022, in which the Court denied Plaintiff’s Motion for Summary Judgment filed October 15, 2021 (“Hardeeville Motion”) and granted Defendant Jasper County’s (“Jasper”) Motion for Partial Summary Judgment filed July 27, 2021 (“Jasper Motion”). Reserving all rights to supplement this

¹For brevity, throughout, “reconsider.”

Motion further as the Court deems necessary or proper, and to reply to any response that Defendants, Cross Co-Plaintiffs, or Cross-Defendants may file, as an initial matter, Hardeeville incorporates by reference (a) Hardeeville Motion, and (b) Plaintiff's Response to Defendant Jasper County's Motion for Partial Summary Judgment filed October 15, 2021 ("Response to Jasper Motion").

BACKGROUND

1. Jasper filed Jasper Motion on July 27, 2021.
2. Hardeeville filed Hardeeville Motion on October 15.
3. Hardeeville Motion and Jasper Motion were heard before the Court on October 27.
4. After oral presentations by Hardeeville, Jasper, and Cross-Defendant Nickel Plate Road, LLC ("Nickel Plate"), the Court requested that Hardeeville and Jasper each submit proposed orders.
5. On November 11, with permission of the Court, Nickel Plate filed a supplemental Memorandum in Opposition to Hardeeville Motion.
6. On May 5, 2022, the South Carolina Attorney General's Office ("SCAG") issued an opinion letter relating to Greenwood County School District 52 ("AG School District Opinion").
7. On June 2, counsel for Jasper submitted a copy of the AG School District Opinion to the Court and argued that it should be read in support of Jasper's position in this case.
8. On June 3, counsel for Hardeeville submitted a response letter to the Court, explaining why the AG School District Opinion was inapplicable to a dispute between a county and a municipality, but to the extent that it was relevant in part, it should be read in support of Hardeeville's position in this case.
9. The Court requested that counsel for Jasper submit revisions to its proposed order, consistent with the AG School District Opinion.

10. On July 13, 2022, the Court granted Jasper Motion and declined to grant Hardeeville Motion by filing Order of the Court for Defendant Jasper County (“Order”).

ARGUMENT

1. Jasper misstates the legal issues before the Court as whether the multi-county industrial park (“MCIP”) in this case was “proper[ly] developed” and if the MCIP was properly developed, the consequences of that development on property tax status of real property that is located in the park. This formulation wholly mischaracterizes the issues before the Court. Instead, the crux of this matter is the following: for any property located in an MCIP, what are the consequences resulting from the subsequent annexation into a municipality of MCIP property when the counties involved in the MCIP fail to obtain the consent of the municipality to the terms of the MCIP agreement, contemporaneously with, or subsequent to, a statutory municipal annexation process. Put another way, the question before the Court is whether counties involved in an MCIP may simply disregard the annexation by a municipality, or whether South Carolina Code Annotated section 4-1-170, *et seq.* (collectively, “MCIP Statutes”) must be read in harmony with section 5-3-150 and Article VIII, section 13(D) of the South Carolina Constitution, and require involved counties to either (i) obtain the consent of an annexing municipality, by inviting them to become a party to the MCIP agreement and negotiating the terms of the municipality’s distribution of revenue or (ii) recognize that an annexing municipality is not bound by an agreement to which it is not a party.
2. The Court’s Order misstates and misapplies the South Carolina Supreme Court’s decision in *Horry County* by holding that there is no distinction between a municipality’s interest in property and other taxing entities’ property with respect to a county’s discretion over the allocation of park revenues. *Horry County* does not interpret (or even reference) section 4-1-170(C) because *Horry County* did not involve a dispute between a county and a

municipality (the City of Myrtle Beach and Horry County were both Respondents, and our Supreme Court elected to refer to the two entities, collectively, as “the county”). Rather, the substance of our Supreme Court’s ruling in *Horry County* Court related to the interplay between a county and a school district.

3. The Court’s Order fails to address the Defendants’ prior conduct and interpretation. All parties concede that following annexation, which occurred in 2006, Hardeeville began levying, collecting, and retaining 100% of the taxes related to the real property at issue in this case (“Real Property”) lying in Hardeeville’s corporate limits. All parties concede that Hardeeville contracted with the Defendants Jasper County Auditor and Jasper County Treasurer to levy and collect Hardeeville’s taxes and fees against the Real Property and distributed 100% of the collections related to the Real Property to Hardeeville. All parties concede that for 14 years, Defendants have both consented to, and actively participated in, Hardeeville’s collection of millage on the Real Property. The Order fails to address why Defendant’s prior conduct is not fatal to its newly discovered interpretation that Plaintiff and Defendants had been violating the law for more than a decade or explain why Defendants’ conduct and longstanding interpretation are not damning to Defendants’ position.
4. The Court’s Order misinterprets the plain language and requirements section 4-1-170(C) and the requirement that it be read harmoniously with section 13(d) of our Constitution and section 5-3-150. Hardeeville does not contend what the Order asserts: that a county must possess a magic, crystal ball, in order to “predict a municipality’s future annexation of park property.” Order at 16, ¶ 3. Instead, Hardeeville’s position is that the Constitution and statutes unambiguously say what they mean and that *consent* of all parties with an interest in the real property is both required by MCIP Statutes and is the key and overarching component that ties together the relevant statutory schemes. Here, section 4-1-170(C)’s

meaning is clear on its face. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001). If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, this Court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005). Under the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011). As to the Real Property, all parties concede that Hardeeville properly obtained the consent required to annex the Real Property pursuant to section 5-3-150. Further, all parties likewise concede that Defendants have failed, and continue to fail, to obtain Hardeeville's required consent to the MCIP Agreement, as required by the plain language of section 4-1-170(C). The Order thus misstates both Hardeeville's argument and applicable law by seeking to force a novel interpretation on the plain and unambiguous language of section 4-1-170(C).

5. The Court's Order mischaracterizes Hardeeville's position as to the requirements of section 4-1-170(A)(3). Hardeeville's primary contention is that the MCIP Agreement fails to "specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties" because, as all parties concede, the MCIP Agreement makes no provision for the distribution of revenue to Hardeeville, a taxing entity within a participating county. Further, in attempting to capture and distribute Hardeeville's revenue, Jasper is implicitly making Hardeeville a part of the MCIP Agreement without making provision for distribution of revenue to Hardeeville. In attempting to achieve this result by agreement, Jasper would be required by section 4-1-170(A)(3) specifically to provide for the revenue distribution to Hardeeville in the MCIP Agreement. The Order fails to address this contention entirely and mischaracterizes the section 4-1-170(A)(3) issue in this case as, solely, whether the MCIP Agreement was

facially defective at its inception, because it failed to “specify the manner in which revenue must be distributed” as to the original parties to the MCIP Agreement, instead providing that any revenue Jasper receives pursuant to the MCIP Agreement will be distributed “in accordance with an ordinance adopted by Jasper County.” MCIP Agreement, § 7.

6. Jasper mischaracterized key portions of the AG School District Opinion, which mischaracterizations were adopted by Order. The questions posed to the SCAG by Greenwood County School District 52, in requesting an interpretation of MCIP Statutes were as follows.

- a. Whether an agreement creating an MCIP must “specify the manner in which revenues must be distributed to each of the taxing entities, in each of the participating counties.” The SCAG agreed that an agreement creating the MCIP *must* make allocation to all taxing entities, as is plainly required by section 4-1-170(3). All parties to this matter concede that the written agreement, which Jasper County and Beaufort County entered into on December 31, 1999 (“MCIP Agreement”), makes no provision whatsoever for the distribution of revenues to Hardeeville. Thus, the AG School District Opinion supports Hardeeville’s contention that the MCIP Agreement does not comply with the MCIP Statutes and, consequently, does not and cannot bind Hardeeville.
- b. Whether MCIP Statutes provide a list of “appropriate allocation methods” (emphasis added) for distributing revenue to each taxing entity. Jasper re-characterizes the question posed to the SCAG as whether there is only one permissible and equitable allocation method (singular) permitted by the MCIP Statutes. Recasting the question posed to the SCAG in this manner conflates multiple issues in this case: (i) the distinctly different statutory treatment of school districts and municipalities and (ii) questions of equitable revenue distribution with

the validity (or invalidity) of the MCIP Agreement. A plain reading of the MCIP Statutes do not contain any prescriptive revenue allocation requirement for multi-county parks, but a singular focus on equitable allocation methods mischaracterizes the entire statutory scheme. The MCIP Statutes' point of control is the consent of the parties. Consent is the method of determining what is equitable between county and municipality, rather than a legislatively imposed prescriptive formula. The MCIP Statutes provide that "[i]f the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality." Section 4-1-170(C). All parties to this matter concede that (a) the multi-county park in dispute encompasses a portion of Hardeeville's jurisdiction, (b) the MCIP Agreement did not include Hardeeville or make provision for the distribution of revenue to Hardeeville, and (c) Jasper and Beaufort did not, and do not, have Hardeeville's consent. The requirement of municipal consent was not a question posed to the SCAG, as the AG School District Opinion was about a school district in Greenwood; thus, the SCAG's discussion of equitable versus inequitable revenue allocation methodologies is simply inapposite to this case. No proposal for revenue distribution to Hardeeville has been made, nor is any such proposal before the Court.

- c. Whether "state statute provide(s) any remedy for a local government entity within a county to address inequitable allocation of fees collected." Jasper, again, recharacterizes the SCAG's conclusion to focus on the other "local government entity" and "any remedy," rather than the question posed to the SCAG: available responses to an "inequitable allocation." Attempting to apply the AG School District Opinion to this case conflates issues, which are key to a resolution of this case, but which were not presented to the SCAG.

- i. Although the AG School District Opinion states that, for school districts, there is a “problem ‘inherent in the [MCIP] scheme,’” as to municipalities, this problem simply does not exist and would not exist but for the Order. Unlike school districts, which were excluded from the legislative text, MCIP Statutes expressly require consent of municipalities. Gratuitously enlarging and foisting onto all municipalities in South Carolina the problem that our Supreme Court recognized in *Horry County*, as a “problem ‘inherent in the [MCIP] scheme’” when applied to school districts, needlessly creates a problem from which the MCIP Statutes do not suffer. In other words, by conflating school districts and municipalities in its Order and expanding *Horry County* and the AG School District Opinion beyond their actual scope, the Court judicially invents from whole cloth and exponentially multiplies a statutory “problem,” which as to municipalities, neither our Constitution nor the MCIP Statutes create. All parties to this matter concede that Jasper and Beaufort do not have Hardeeville’s consent; therefore, the inherent statutory “problems” related to school districts in the MCIP scheme, can easily be avoided by the plain reading of the MCIP Statutes.
- ii. The SCAG was not asked, and could not be presumed to have answered, globally whether there was any redress or remedy to an aggrieved “other taxing entity” under state law. Removing this context from the SCAG’s statement, as the Order does, makes the AG School District Opinion of significantly greater scope than the SCAG intended.
- iii. The SCAG suggests the potential availability of statutory remedies applies to only taxing entities that “believe they received an inequitable allocation

of fee in lieu revenue *in the agreement creating the [MCIP]* (emphasis added). Hardeeville is not a party to the agreement creating the park at issue in this case. Thus, the AG School District Opinion is inapposite to the current dispute. Further, because the MCIP Agreement makes no provision for Hardeeville to receive any revenue allocation whatsoever, the MCIP Agreement does not comply with “the law” to which the SCAG refers. Therefore, that “law” could not form a basis on which to rely to deny Hardeeville the relief it requested or grant the relief that Jasper requested.

CONCLUSION

For the foregoing reasons, this Court should reconsider the Order as being improvidently granted, rescind the Order, deny Jasper Motion, and grant Hardeeville Motion.

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Respectfully submitted,

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July 25, 2022

Greenville, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER)	CASE No.: 2021-CP-27-00028
)	
CITY OF HARDEEVILLE,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JASPER COUNTY, SOUTH CAROLINA,)	
JASPER COUNTY TREASURER, and)	
JASPER COUNTY AUDITOR,)	
)	
Defendants.)	
)	

AND

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

**JASPER COUNTY’S RESPONSE
TO
CITY OF HARDEEVILLE’S MOTION TO RECONSIDER**

INTRODUCTION

If Hardeeville’s proposed interpretation of its own authority is accepted by the Court, the legal framework of economic development and public finance in South Carolina would be turned upside down—a legal framework that has been consistently interpreted and applied since enacted by the General Assembly. Accepting Hardeeville’s proposed interpretation would also likely open the litigation floodgates among counties, municipalities, and bondholders across this State. For the first time, a municipality could annex multi-county industrial park (“park”) property after the park was created, and completely disregard (1) that the property is constitutionally exempt from *ad valorem* taxation, (2) the constitutional and statutory mandate that the fee-in-lieu of taxes (“park revenues”) generated from the park’s property be distributed in accordance with the park agreement between the counties, and (3) those counties’ repayment obligations to bondholders—bondholders who issued bonds in the first place because repayment was secured by the park revenues.

The simple fact is Hardeeville is upset that it agreed to annex a piece of property with the expectation of receiving *ad valorem* taxes from that property, only to find out it was never entitled to do so. However, buyer’s remorse does not justify Hardeeville’s request that it be allowed to continue acting in violation of the law in perpetuity. For these reasons and those addressed in greater detail below, Hardeeville’s Motion to Reconsider must be denied.

ARGUMENTS IN RESPONSE

I. Hardeeville’s Consent to the Park Agreement was Not Required, and Revenues Generated from the Annexed Property Must Be Distributed in Accordance with the Park Agreement.

Hardeeville argues Jasper was required to obtain Hardeeville’s consent to the Park Agreement after Hardeeville annexed park property. Hardeeville also argues that because Hardeeville did not consent, the distribution of the revenues generated from the Annexed Property

is not bound by the terms of the Park Agreement, and Hardeeville is permitted to levy and collect *ad valorem* taxes on the Annexed Property. The Court correctly rejected Hardeeville's argument based on the plain meanings of Section 4-1-170 and Article VIII, Section 13(D) of the South Carolina Constitution. *See Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 272, 802 S.E.2d 794, 797–98 (2017); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

Section 4-1-170(C) only requires a county to obtain a municipality's consent ***if the park would encompass municipality property at the time the park was created.*** Article VIII, Section 13(D) of the South Carolina Constitution provides that all property located within a park is exempt from all *ad valorem* taxation. And, Section 4-1-170(A) mandates that Park Revenues be distributed in accordance with the terms of the Park Agreement. There are no exceptions to these rules.

Hardeeville failed to identify one statute, case, or other legal authority standing for the proposition that when a municipality annexes park property after the park was created, that annexation gives to the municipality the unfettered right to levy and collect *ad valorem* taxes on property that is otherwise constitutionally exempt from all *ad valorem* taxation. Hardeeville's proposed interpretation contradicts the plain language of the South Carolina Constitution and the South Carolina Code. It would also eviscerate the authority and discretion vested in Jasper (and Beaufort) by the General Assembly if Hardeeville was permitted to annex park property *ex post facto* and hold for itself the entirety of Park Revenues generated from the Annexed Property. That is what Hardeeville is arguing.

To stretch the interpretation of Section 4-1-170 past its plain meaning, Hardeeville argues that the General Assembly must have intended for municipalities to levy and collect *ad valorem* taxes on park property subsequently annexed by the municipality or Section 4-1-170 cannot be read harmoniously with Section 5-3-150. Fortunately, however, the Court need not search for the

conflict Hardeeville claims exist between the Court’s interpretation of Section 4-1-170(C) (i.e., the plain meaning) and the plain meaning of Section 5-3-150—*because there is no actual conflict*.

Section 5-3-150 only speaks to one alternative method of annexation available to municipalities when seeking to annex certain property.¹ And although the statute contemplates the possibility of a municipality’s annexation of park property (along with other classifications of property), it does not provide, either expressly or by implication, that the tax exempt status of park property is in any way affected by that annexation. Rather, the statute provides that if park property is annexed by a municipality, the assessed valuation of that property is not affected. However, a property’s assessed valuation is not unique to the determination of *ad valorem* taxes levied on the property as Hardeeville suggests, because, for example, the assessed valuation is also used to determine park revenues (i.e., the fee-in-lieu of taxes) generated from park property. Put simply, Section 5-3-150 does not support Hardeeville’s argument and is irrelevant to the issues at hand.

Furthermore, in what appears to be an attempt to garner unwarranted sympathy, Hardeeville argues that if the Annexed Property is subject to the terms of the Park Agreement, “Jasper is implicitly making Hardeeville a part of the [Park] Agreement *without making provision for distribution of revenue to Hardeeville*.” Pl.’s Mot. Recons. 5 (emphasis added). Hardeeville goes so far as to say that “[a]ll parties to this matter concede that the written agreement . . . makes no provision whatsoever for the distribution of revenues to Hardeeville.” *Id.* at 6.² This is not true.

The Court’s Order correctly recognized that the Park Agreement requires that the remainder of Park Revenues (after distribution to Beaufort and the bondholders) “*must be distributed pro rata to applicable taxing entities within Jasper County, including the City of*

¹ Section 5-3-150 is entitled “Alternate methods where petition signed by all or seventy-five percent of landowners.”

² Hardeeville also asserts that the Court’s Order “fails to address this contention entirely.” Pl.’s Mot. Recons. 5. This is not true. *See* Order 19, n.5 (analyzing the May 5, 2022 South Carolina Attorney General’s opinion and recognizing the limitation on a county’s discretion in allocating park revenues is limited by the requirement that “*each taxing entity within a park must receive at least some allocation of the park revenues*”) (emphasis added).

Hardeeville.” Order 24 (emphasis added).³ Thus, the distribution of Park Revenues pursuant to the Park Agreement necessarily includes a distribution to Hardeeville for Park Revenues generated from the Annexed Property. It may not be the amount Hardeeville would prefer to receive, but that is an issue for the General Assembly, not this Court. *Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 636, 552 S.E.2d 737, 744 (2001) (“[T]his Court does not sit as a super-legislature. Granting the relief the district requests would involve re-writing § 4-1-170, under the guise of statutory construction, to require revenue from MCBP fees to be allocated in the same proportions as if the property were subject to *ad valorem* taxes. Such action is the sole prerogative of the Legislature.”).

Finally, Hardeeville nitpicks at the explanation of the May 5, 2022 South Carolina Attorney General opinion in the Court’s Order to continue arguing that municipalities should be treated differently than other taxing entities. Again, however, Hardeeville is unable to present one source of law to support its argument that a municipality is permitted to annex park property after the park was created, and then levy and collect *ad valorem* taxes on that property. The statutes do treat municipalities differently in one, and only one, respect: if municipal property is within a proposed park’s boundaries ***at the time the park is created***, the participating counties are required to get that municipality’s consent before creating the park. S.C. Code Ann. § 4-1-170(C). That situation did not occur in this case, and that is the only situation where the statutes make any distinction for municipal property. All the other “differences” Hardeeville argues municipalities enjoy under the governing (and relevant) statutes are made up.

For these reasons and those addressed in in Jasper’s Memorandum of Law in Support of Motion for Partial Summary Judgment at pages 12–17, Jasper’s Response in Opposition to Plaintiff’s Motion for Summary Judgment at pages 5–6, and the Court’s Order at pages 15–21,

³ See also Order 9 (“The Park Agreement then distributes the remainder of Park Revenues to each of the taxing entities within Jasper (***which would include Hardeeville when it later annexed the Annexed Property*** as described in Section IV below.”) (emphasis added).

Hardeeville's consent to the Park Agreement was not required, and all Park Revenues, including those generated from the Annexed Property, must be distributed in accordance with the Park Agreement.

II. The Jasper Defendants' Prior Conduct Was Not Relevant to Jasper's Motion for Partial Summary Judgment.

Hardeeville argues the Jasper Defendants' prior conduct of levying and collecting the *ad valorem* taxes on the Annexed Property is fatal to Jasper's position. *See* Pl.'s Mot. Recons. 4. However, the Jasper Defendants' prior conduct is not relevant to the issues which were presented to the Court for determination in Jasper's Motion for Partial Summary Judgment.

First, the constitutional and statutory mandate that all Park Revenues must be distributed in accordance with the Park Agreement is not optional. *See* S.C. CONST. art. VIII, § 13(D); S.C. Code Ann. § 4-1-170; *see also* *Horry Cty. Sch. Dist.* 346 S.C. at 630, 552 S.E.2d at 741. Second, counties are expressly given the right to correct future distributions when misallocations are discovered. S.C. Code Ann. § 4-1-170(B) ("Misallocations may be corrected by adjusting later distributions. . . .").

And, third, Hardeeville's estoppel argument fails because Hardeeville is deemed to have had notice of the tax exempt status of the Annexed Property at the time of Hardeeville's annexation. Estoppel will only lie against the government if the asserting party can prove, among other things, "the lack of knowledge and the means of knowledge of the truth of the facts in question." *E.g., S.C. Dep't of Transp. v. Horry Cty.*, 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011). The record established before the Court is that the Park Agreement was properly recorded with the Clerk of Court's office for Jasper County, South Carolina on April 10, 2000. *See* Jasper's Resp. Opp. Pl.'s Mot. Summ. J. 8 (citing *Simmons Aff. Exs. 1-A & 1-B*). Thus, Hardeeville has not and cannot establish that it lacked knowledge, and Hardeeville's estoppel argument, therefore, fails as a matter of law. *S.C. Dep't of Transp.*, 391 S.C. at 84, 705 S.E.2d at 25 (stating that "the deed

creating the easement was properly recorded; thus, Appellants had constructive notice of the easement, regardless of their legally unfounded argument that finding the deed in question would be like ‘finding a needle in haystack”); *see also Blinkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 74, 558 S.E.2d 902, 910 (Ct. App. 2001) (stating that “mere silence or acquiescence will not operate to work an estoppel where the other party has constructive notice of public records which disclose the true facts”).

For these reasons and those addressed in Jasper’s Response in Opposition to Plaintiff’s Motion for Summary Judgment at pages 7–8, the Jasper Defendants’ prior conduct of levying and collecting the *ad valorem* taxes on the Annexed Property does not prevent the correction of future distributions—corrections necessary to ensure that future distributions comply with the law.

Respectfully submitted,

s/J. Evan Phillips

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*Attorneys for Defendant and Cross Co-
 Plaintiff Jasper County*

Columbia, South Carolina
 August 5, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

City of Hardeeville,)
)
Plaintiff,)
v.)
)
Jasper County, South Carolina,)
Jasper County Treasurer, and)
Jasper County Auditor,)
)
Defendants)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-27-00028

**CITY OF HARDEEVILLE’S REPLY TO
JASPER COUNTY’S RESPONSE TO
CITY OF HARDEEVILLE’S
MOTION TO RECONSIDER**

AND

Jasper County, South Carolina,)
)
Cross Co-Plaintiff,)
)
Verna Garvin, in her official capacity)
as Jasper County Treasurer,)
Cross Co-Plaintiff, and)
)
Monica Wilson, in her official capacity)
as Jasper County Auditor,)
Cross Co-Plaintiff)
)
vs.)
)
City of Hardeeville, Nickle Plate Road,)
LLC, and Beaufort County, South Carolina,)
)
Cross Defendants.)
_____)

Plaintiff and Cross-Defendant City of Hardeeville (“Hardeeville”) respectfully replies to Defendant Jasper County’s (“Jasper”) Response filed August 4, 2022 (“Jasper Response”), to Hardeeville’s Motion to Reconsider, filed July 25, 2022 (“Hardeeville Motion”). Reserving all rights to supplement this Reply further as the Court deems necessary or proper, and to reply to any response that Cross Co-Plaintiffs or Cross-Defendants may file, as an initial matter, Hardeeville incorporates by reference (a) Plaintiff’s Motion for Summary Judgment filed October 15, 2021

(“Hardeeville MSJ”) and (b) Hardeeville Motion.

Jasper Response asserts that municipalities will “turn upside down” the legal framework of public finance in South Carolina. Jasper’s hyperbole, without legal or factual support, contends that municipalities throughout the State will, if the Order is reconsidered, begin to manipulate at least 75% of the landowners located in an MCIP into seeking to annex land into an adjacent municipality. Jasper’s argument strains the Court’s credulity and Jasper’s credibility. However, even if Jasper’s consequential reasoning were accurate, the Court should disregard such policy concerns, as the maxim of the law is “*fiat justitia ruat cælum*, let justice be done whatever be the consequence.” Lord Mansfield in *Somerset v. Stewart*, 98 ER 499 (1772).

Jasper Response mischaracterizes Hardeeville as having “buyer’s remorse.” As described in general terms above, more than 75% of the landowners of the annexed property requested Hardeeville annex the property. In exchange for providing the municipal services that the annexed owners desired, State law permits Hardeeville to levy taxes and/or fees.

Jasper Response criticizes Hardeeville for failing to cite a controlling case, which states that a portion of an MCIP subsequently annexed by a municipality, pursuant to section 5-3-150 must pay *ad valorem* taxes until or unless the municipality voluntarily agrees to the terms of an MCIP agreement. Of course, Jasper fails to cite a case that stands for the contrary proposition. That failure, of course, is excusable because (a) no case exists that supports Jasper’s position and because (b) section 5-3-150 specifically addresses what happens when a municipality annexes property that has been described as part of an MCIP.

Jasper Response repeatedly misstates section 4-1-170(C). Section 4-1-170(C) does not require the counties to receive a municipality’s consent only if the MCIP encompasses a municipality “*at the time the park was created*” (emphasis in original). Response at 3, ¶ 2 and at 5, ¶ 2. Rather, the initial phrase of subsection (C), which describes whether a portion of the MCIP includes “all of a portion of a municipality,” has no temporal limitation. That is, if at *any point in time* a portion of

an MCIP were to encompass all or a portion of a municipality, then before the MCIP can be valid against the municipality, a municipality's consent must be obtained. Jasper's incorrect quotations foist additional language into the initial phrase that is not present in the statutory text.

Jasper Response concedes the MCIP Agreement makes no provision for the distribution of revenue to Hardeeville. All parties agree that Hardeeville is not a party to the MCIP Agreement. The Order from which Hardeeville seeks relief states that the MCIP Agreement provides that revenue must be "distributed pro rata to applicable taxing entities . . . including Hardeeville." But, this provision of the Order is factually untrue, as admitted by Jasper itself. The MCIP Agreement does not contain the word "Hardeeville." Further, Jasper misstates Hardeeville's position by arguing that the amount to be distributed to Hardeeville is "not [] the amount Hardeeville would prefer to receive." Jasper Response at 5, ¶ 1. To the contrary, neither Hardeeville nor this Court has any idea how much revenue Defendants are proposing that Hardeeville will receive. Jasper has refused to participate in discovery in this dispute, and Jasper failed to provide any response regarding the potential financial impact to Hardeeville (that is, what revenue might Hardeeville be losing) in response to Hardeeville's Freedom of Information Act Request submitted to Jasper on December 23, 2020.¹ Further, Hardeeville is not a consenting party to the MCIP Agreement, which would establish a distribution by consent, and Defendants have not proposed any allocation of revenue to Hardeeville as part of this litigation. Rather, the Court's Order by *fiat* purports to provide a distribution when no authority for that ruling exists and no specific manner is provided as required by State law.

Jasper Response further argues that Hardeeville should be deemed to have "notice of the tax exempt status of the Annexed Property at the time of Hardeeville's annexation." This response is

¹ **"Freedom of Information Act Request**

To the County, the County Treasurer, and the County Auditor, please provide all materials related to any arrangement involving the NP Park, the bond(s), the bond ordinance(s), **the County's purported distribution of revenue**, or any other aspect of the arrangements involving either the NP Park or any County obligations related to the NP Park" (emphasis added).

misleading at best, and disingenuous at worst. As Jasper is aware, an MCIP does not appear in any real property records indexed by grantors or grantees, nor is it indexed as a judgement, nor can title insurance be obtained over such issue. To determine whether property was designated as part of an MCIP, a city would be required to make a request according to the South Carolina Code Annotated section 30-4-10, *et. seq.* (collectively, “FOIA”) or undertake a review of every county ordinance enacted (in each mcip-county) since the enactment of Act No. 139 in 1989 (“MCIP Act”) --- the proverbial search for a needle in a haystack. As noted above, even were a municipality to send a FOIA request, the recipient county might fail timely to respond or might incorrectly responded. Regardless, under Jasper’s theory of interpretation, any municipal diligence would be irrelevant because Jasper asserts that a municipality is bound regardless of whether the municipality should have, could have, or would have known of any MCIP status.

Further, Jasper Response, purporting to respond to issues created by Defendants’ prior conduct, is not responsive. Jasper offers the circular proposition that Defendants’ prior conduct in participating in Hardeeville’s taxation should not be relevant, because Jasper says it should not be relevant. Jasper then attempts to counter the assertion that Defendants’ prior conduct is relevant by, counterfactually, as discussed above, contending that Hardeeville is estopped by Hardeeville’s purported knowledge. Jasper misstates the situation: the best evidence of the correct interpretation of the relevant authority in this case is Defendants’ conduct, prior to litigation, during the last 14 years when Defendants actively participated in the levy, collection, and distribution (solely to Hardeeville) of Hardeeville’s millage.

CONCLUSION

For the foregoing and the reasons stated in Hardeeville Motion, this Court should reconsider the Order as being improvidently granted, rescind the Order, deny Jasper Motion, and grant Hardeeville MSJ.

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Respectfully submitted,

KING KOZLAREK LAW LLC

s/ Michael E. Kozlarek

Michael E. Kozlarek (S.C. Bar No. 69330)

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John Marshall Mosser (S.C. Bar No. 71929)

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Telephone: (864) 527-5972

Facsimile: (864) 670-5246

Counsel for Plaintiff City of Hardeeville

August 10, 2022

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

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

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2021-CP-27-00028

**PLAINTIFF’S FIRST SET OF
INTERROGATORIES TO
JASPER COUNTY**

AND

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

TO: ATTORNEY FOR JASPER COUNTY, SOUTH CAROLINA

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff, City of Hardeeville (“Plaintiff”), by and through their undersigned counsel, hereby serve the following Interrogatories on Defendant Jasper County, South Carolina (“County”) to be answered within

thirty days from service hereof. You are instructed to supplement your responses up to and through the time of hearing to the extent required by the applicable rules.

DEFINITIONS

When used in these Interrogatories, the terms set forth below shall have the meanings described.

A. **“Refer,” “referring,” “relate,” “relating,” “concern,” “concerning,” and “reflecting”** separately and individually mean directly or indirectly mentioning, describing, pertaining to, involving in any way, being connected with, reflecting upon, or embodying, or in any manner alluding to a stated subject matter.

B. **“Communicate” or “communication”** means every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information whether orally or by document or whether face-to-face, by telephone, mail, electronic (email) messaging, personal delivery, or otherwise.

C. **“County”** as used herein shall be deemed synonymous with the Jasper County, South Carolina, its divisions, subdivisions, or any constituent or subordinate part, and shall be deemed to include any and all attorneys, agents, investigators, servants, employees, experts, consultants, representatives, whether appointed by the County or someone acting on the County’s behalf.

D. **“Identify,”**

- (i) When used in reference to persons or the members of a class, means to state the name, title, last known business address and telephone number of each person or class member.
- (ii) When used in reference to a company or corporation, means to state the full name of the entity and its address and telephone number.

- (iii) When used in reference to a document, means to state the type of document (*i.e.*, letter, memorandum, contract, telegram, etc.) or some other means of identifying it, its date, author or authors, addressee or addressees, if any, and its present location or custodian. If any such document is no longer in your possession or subject to your control, “identify” also means to state what disposition was made of the document and the date of such disposition.
- (iv) When used in reference to a communication, means to state the date of the communication, state the means of communication (*e.g.*, letter, facsimile, telephone conversation, meeting in person, email message), identify the participants in the communication, and describe the substance of the communication.

E. “**You,**” or “**Your,**” as used herein shall be deemed synonymous with Defendant Jasper County, South Carolina Company, its divisions, subdivisions, or any constituent or subordinate part, and shall be deemed to include any and all attorneys, agents, investigators, servants, employees, experts, consultants, and representatives, whether appointed by the County or someone acting on the County’s behalf.

F. The terms “**and**” and “**or**” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

G. References to the singular include the plural, and references to the plural include the singular.

H. The past verb tense includes the present verb tense, and the present verb tense includes the past verb tense.

INTERROGATORIES

1. Give the names and addresses of persons known to the County or its counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of these statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the County that relate to the claim or defense in the case.

3. List the names and addresses of any expert witnesses whom the County proposes to use as a witness at the trial of the case. For each such expert, list:

a. All materials upon which your expert relied in any way in investigating the facts of the case or forming his/her opinions in the case;

b. All persons or entities who have communicated with your expert witnesses in any way, either orally, electronically, or otherwise in writing; and

All persons or entities who have worked with your named expert in any way on the case.

4. For each person known to the County or its counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by that witness, or provide a copy of any written or recorded statements taken from that witness.

5. Identify each and every claim or litigation, relating to issues similar to those being litigated in the present case, in which you have been involved in the past ten (10) years.

6. State each and every fact that supports the following allegation in Paragraph 16 of your Answer: “. . .at the time of the creation of this Park, all of the Park was in unincorporated Jasper County, no ordinance or resolution or any type of consent from the City relating to the Park, the Property to be included in the Park, the Park Agreement, nor the bond ordinances and distributions of revenue was necessary or required, as all of these matters occurred before the annexation.”

7. State each and every fact that supports the following allegation in Paragraph 17 of your Answer: “. . .at the time of the creation of this Park, all of the Park was in unincorporated Jasper County, and there is no need or requirement to include a City in a Park Agreement for property not located in the municipal boundaries at the time of creation of the Park.”

8. State all facts that support the allegations of Paragraph 18 of your Answer that “Defendants are informed and believe that the actions of the City annexing an area of the Park after the fact does not impose any municipal authority over revenues and distributions. . . .”

9. State all facts that support your allegations in Paragraph 25 of your Answer that “the excerpted language is a mere recitation of statutory language stating the required findings by the governing board. . .and upon information and belief, are intended to clarify the bonds being issued are special source revenue bonds, not general obligation bonds.”

10. State each and every fact that supports the allegations in Paragraph 30 of your Answer that “the intent of the amendment is clearly to provide for a distribution methodology denoting the percentages to be paid to Beaufort County and for debt service on special source revenue bonds and is directed at the fee-in-lieu of ad valorem, taxes”

11. State all facts that support the allegations of Paragraph 36 of your Answer that “the City had not annexed any property located within the park at the time of the enactment of the referenced county ordinances and including the City as a party was neither required nor would it have been appropriate.”

12. State all facts that support the allegations of Paragraph 37 of your Answer that “consent of the City for a multi-county industrial business park outside municipal boundaries was not required, and Defendants believe that by the act of annexing property within an existing multi-county park . . . the City is bound by the terms governing the Park and no consent post-annexation is required.”

13. State all facts that support the allegations of Paragraph 41 of your Answer that “a partial, out-of-context sentence does not indicate the purpose of ‘the letter’ was to further explain the current situation and the remedy the Treasurer would be pursuing.”

14. State all facts that support the allegations of Paragraph 41 of the Answer that “neither does it (sic) recognize the individual statutory responsibilities of the Treasurer to correct errors.” This request includes, but is not limited to, a request to State all facts that demonstrate the “responsibilities of the Treasurer to correct errors.”

15. State all facts that support the allegations of Paragraph 42 of your Answer that “. . . a partial, out-of-context sentence does not indicate that the amounts listed were the reconciliation of the past three years indicated tax billing errors had been discovered . . .”

16. State all facts that support the allegations of Paragraph 42 of your Answer that “neither does it recognize the individual statutory responsibilities or responsibilities under the Park and bond ordinances of the Treasurer and Auditor to correct errors and billings . . .” This request includes, but is not limited to, a request to State all facts that demonstrate the “responsibilities of the Treasurer and Auditor to correct errors and billings.”

17. State all facts that support the allegations of Paragraph 44 of your Answer.

18. State all facts that support the allegations of Paragraph 46 of your Answer that “the Treasurer and Auditor were obtaining independent legal guidance.”

19. State all facts that support the allegations of Paragraph 46 of your Answer that “prior to the filing of the instant Complaint, Defendant’s attorneys had attempted to enter into discussions with Plaintiff’s attorneys. . . .”

20. State all facts that support the allegations of Paragraph 47 of your Answer.

21. State all facts that support the allegations of Paragraph 50 of your Answer.

22. State all facts that support the allegations of Paragraph 55 of your Answer that “Defendants are merely taking what they are informed and believe are the appropriate measure to comply with applicable statutes, ordinances and agreements affecting the Park. . . .”

23. State all facts that support the allegations of Paragraph 58 of your Answer that “there is no requirement that the City annex any property in an existing multi-county park” and that “the City has already participated in other multi-county parks where it has provided economic incentives reducing the amount of revenue the City obtains from the distributions of fee-in-lieu-of-taxes in those parks.”

24. State all facts that support the allegations of Paragraph 60 of your Answer that Defendants “have duties and responsibilities under the Park and bond ordinances to others not made parties to this action, who could claim a default against Defendant Jasper County.”

25. State all facts that support the allegations of Paragraph 61 of your Answer.

26. State all facts that support the allegations of Paragraph 6 of your Amended Cross-Claim that Beaufort County has “an interest in the subject matter of [the Cross-claim] as the Partner County [under the Nickel Plate MCIP].”

27. State all facts that support the allegations of Paragraph 39 of your Amended Cross-Claim.

28. State all facts that support the allegations of Paragraph 40 of your Amended Cross-Claim that “the city is under the mistaken belief that approval of the City is needed for the City ad valorem taxes to become fee-in-lieu payments in a multi-county industrial or business park.”

29. State all facts that support the allegations of Paragraph 41 of your Amended Cross-Claim.

30. State all facts that support the allegations of Paragraph 43 of your Amended Cross-Claim.

31. State all facts that support the allegations of Paragraph 44 of your Answer and Amended Cross-Claim that “[i]n 2020, in an internal accounting by Cross-Co-Plaintiffs, the distribution omission of the aforementioned 1% and 40% of Hardeeville municipal taxes was discovered. . . .”


32. State all facts that support the allegations of Paragraph 45-48 of your Amended Cross-Claim regarding alleged overpayments and underpayments.

33. State all facts that support the allegations of Paragraph 50 of your Amended Cross-Claim.

34. State all facts that support the allegations of Paragraph 51 and 52 of your Amended Cross-Claim regarding the source of the Treasurer's and Auditor's beliefs about the described responsibilities and obligations.

35. State all facts that support the allegations of Paragraph 59(c) of your Amended Cross-Claim referring to "the number of years in the past for which adjustments in distributions must be made."

KOZLAREK LAW LLC



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Attorneys for City of Hardeeville

Greenville, South Carolina
August 9, 2021

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

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2021-CP-27-00028

CERTIFICATE OF SERVICE

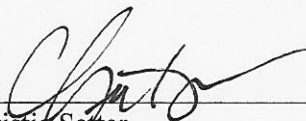
I certify that a copy of the foregoing *Plaintiff's First Set of Interrogatories to Jasper County* has been served on the following counsel of record on August 9, 2021, via electronic mail to each counsel's individual AIS mail address as follows:

Walter H. Cartin
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*Attorneys for Defendant and Co-Plaintiff
 Jasper County*

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*Attorneys for Cross Defendant
 Beaufort County*

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*Attorneys for Defendants and Co-Plaintiffs
 Treasurer and Auditor*

Bernie Ellis
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 Greenville, SC 29601
*Attorneys for Cross Defendant Nickel Plate Road,
 LLC*



 Christie Satter
 Paralegal to Michael E. Kozlarek & Kim Wooten

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

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

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2021-CP-27-00028

**PLAINTIFF’S FIRST SET OF
REQUESTS FOR PRODUCTION
TO JASPER COUNTY**

AND

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

TO: ATTORNEY FOR JASPER COUNTY, SOUTH CAROLINA

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff, City of Hardeeville (“Plaintiff”), by and through their undersigned counsel, hereby serve the following Requests for Production on Defendant Jasper County, South Carolina (“County”) to be answered

within thirty days from service hereof. You are instructed to supplement your responses up to and through the hearing to the extent required by the applicable rules.

DEFINITIONS AND INSTRUCTIONS

When used in these Requests for Production, the terms set forth below shall have the meanings described.

A. To the extent that County objects to any of the following requests for production, state specifically that part of each request to which an objection is raised and each ground for such objection.

B. To the extent that you withhold any documents covered by a request to produce herein under a claim of privilege, provide a log listing all of such documents, identified by date, maker/sender, recipient, manner presented, and the basis of the privilege claimed with regard to the document requested.

C. **“Refer,” “referring,” “relate,” “relating,” “concern,” “concerning,” and “reflecting”** separately and individually mean directly or indirectly mentioning, describing, pertaining to, involving in any way, being connected with, reflecting upon, or embodying, or in any manner alluding to a stated subject matter.

D. **“Communicate” or “communication”** means every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information whether orally or by document or whether face-to-face, by telephone, mail, electronic (email) messaging, personal delivery, or otherwise.

E. **“Documents”** as used herein means all original writings of any nature whatsoever and all non-identical copies thereof in your possession, custody and control, regardless of where located, and regardless of whether printed or reproduced by any process, or written or produced by hand, or stored in any form of mechanical or electronic information retrieval system, and whether or not

claimed to be privileged or otherwise excludable from discovery, and including, but is not limited to, contracts, text messages, agreements, records, tape recordings, correspondence, memoranda, e-mails, drafts, communications, reports, studies, summaries, compilations, abstracts, minutes or records of all meetings including directors, shareholders, and executive officer meetings, notes, agenda, bulletins, notices, announcements, statements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, papers, books, accounts, letters, photographs, objects, transcripts of oral statements, court papers or any other tangible thing.

F. **“County”** as used herein shall be deemed synonymous with the Jasper County, South Carolina, its divisions, subdivisions, or any constituent or subordinate part, and shall be deemed to include any and all attorneys, agents, investigators, servants, employees, experts, consultants, representatives, whether appointed by the County or someone acting on the County’s behalf.

G. **“Identify,”**

- (i) When used in reference to persons or the members of a class, means to state the name, title, last known business address and telephone number of each person or class member.
- (ii) When used in reference to a company or corporation, means to state the full name of the entity and its address and telephone number.
- (iii) When used in reference to a document, means to state the type of document (*i.e.*, letter, memorandum, contract, telegram, etc.) or some other means of identifying it, its date, author or authors, addressee or addressees, if any, and its present location or custodian. If any such document is no longer in your possession or subject to your control, “identify” also means to state what disposition was made of the document and the date of such disposition.

- (iv) When used in reference to a communication, means to state the date of the communication, state the means of communication (*e.g.*, letter, facsimile, telephone conversation, meeting in person, email message), identify the participants in the communication, and describe the substance of the communication.

H. **You,**” or **Your,**” as used herein shall be deemed synonymous with Jasper County, South Carolina, its divisions, subdivisions, or any constituent or subordinate part, and shall be deemed to include any and all attorneys, agents, investigators, servants, employees, experts, consultants, and representatives, whether appointed by the County or someone acting on the County’s behalf.

I. The terms **“and”** and **“or”** shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

J. References to the singular include the plural, and references to the plural include the singular.

K. The past verb tense includes the present verb tense, and the present verb tense includes the past verb tense.

REQUESTS FOR PRODUCTION

1. Produce all documents referenced or relied upon by the County or its counsel when answering the Interrogatories.

2. Produce all documents in the possession, custody or control for each person identified in your Interrogatory answers, including, but not limited to, all correspondence with the County.

3. Produce any and all documents, including, but not limited to, email correspondence, letter correspondence, meeting minutes, presentations, submissions, materials, addenda, exhibits, or other supporting documents or back-up data, related to the County’s General Bond Ordinance

enacted on or about April 16, 2001, including, but not limited to, any and all documents or communications exchanged by or among the County or the County's counsel and the Plaintiff, or the Plaintiff's counsel.

4. Produce any and all documents, including, but not limited to, email correspondence, letter correspondence, meeting minutes, presentations, submissions, materials, addenda, exhibits, or other supporting documents or back-up data, related to the County's First Supplemental Bond Ordinance enacted on or about April 16, 2001, including, but not limited to, any and all documents or communications exchanged by or among the County or the County's counsel and the Plaintiff, or the Plaintiff's counsel.

5. Produce any and all documents, including, but not limited to, email correspondence, letter correspondence, meeting minutes, presentations, submissions, materials, addenda, exhibits, or other supporting documents or back-up data, related to the County's Second Supplemental Bond Ordinance enacted on or about October 20, 2003, including, but not limited to, any and all documents or communications exchanged by or among the County or the County's counsel and the Plaintiff, or the Plaintiff's counsel.

6. Produce any and all documents, including, but not limited to, email correspondence, letter correspondence, meeting minutes, presentations, submissions, materials, addenda, exhibits, or other supporting documents or back-up data, related to the County's Park Agreement with Beaufort County effective on or about December 31, 1999, including, but not limited to, any and all documents or communications exchanged by or among the County or the County's counsel, Beaufort County or Beaufort County's counsel, and/or the Plaintiff, or the Plaintiff's counsel.

7. Produce any and all documents, including, but not limited to, email correspondence, letter correspondence, meeting minutes, presentations, submissions, materials, addenda, exhibits, or

other supporting documents or back-up data, related to the County's Ordinance enacted on or about February 7, 2000, including, but not limited to, any and all documents or communications exchanged by or among the County or the County's counsel, Beaufort County or Beaufort County's counsel, and/or the Plaintiff, or the Plaintiff's counsel.

8. Produce all documents that support the allegations of Paragraph 16 of your Answer.

9. Produce all documents that support the allegations of Paragraph 17 of your Answer.

10. Produce all documents that support the allegations of Paragraph 18 of your Answer.

11. Produce all documents that support your allegations in Paragraph 25 of your Answer that "the excerpted language is a mere recitation of statutory language stating the required findings by the governing board...and upon information and belief, are intended to clarify the bonds being issued are special source revenue bonds, not general obligation bonds."

12. Produce all documents that support the allegations of Paragraph 29 of your Answer.

13. Produce all documents that support the allegations of Paragraph 30 of your Answer that ". . .the intent of the amendment is clearly to provide for a distribution methodology denoting the percentage to be paid to Beaufort County and for debt service on special source revenue bonds and is directed at the fee-in-lieu of *ad valorem* taxes; as a matter of law there are no *ad valorem* taxes collected in a multi-county park."

14. Produce all documents that support the allegations of Paragraph 36 of your Answer that "the City had not annexed any properly located within the park at the time of the enactment of the referenced county ordinances and including the City as a party was neither required nor would it have been appropriate."

15. Produce all documents that support the allegations of Paragraph 37 of your Answer that "consent of the City for a multi-county industrial business park outside municipal boundaries was not required, and Defendants believe that by the act of annexing property within an existing multi-

county park . . . the City is bound by the terms governing the Park and no consent post-annexation is required.”

16. Produce all documents that support the allegations of Paragraph 41 of the Answer that “a partial, out-of-context sentence does not indicate the purpose of ‘the letter’ was to further explain the current situation and the remedy the Treasurer would be pursuing.”

17. Produce all documents that support the allegations of Paragraph 41 of the Answer that “neither does it (sic) recognize the individual statutory responsibilities of the Treasurer to correct errors.” This request includes, but is not limited to, a request to produce all documents that demonstrate the “responsibilities of the Treasurer to correct errors.”

18. Produce all documents that support the allegations of Paragraph 42 of your Answer that “. . . a partial, out-of-context sentence does not indicate that the amounts listed were the reconciliation of the past three years indicated tax billing errors had been discovered . . .”

19. Produce all documents that support the allegations of Paragraph 42 of your Answer that “neither does it recognize the individual statutory responsibilities or responsibilities under the Park and bond ordinances of the Treasurer and Auditor to correct errors and billings . . .” This request includes, but is not limited to, a request to produce all documents that demonstrate the “responsibilities of the Treasurer and Auditor to correct errors and billings.”

20. Produce all documents that support the allegations of Paragraph 44 of your Answer.

21. Produce all documents that support the allegations of Paragraph 46 of your Answer that “the Treasurer and Auditor were obtaining independent legal guidance.”

22. Produce all documents that support the allegations of Paragraph 46 of your Answer that “prior to the filing of the instant Complaint, Defendant’s attorneys had attempted to enter into discussions with Plaintiff’s attorneys. . . .”

23. Produce all documents that support the allegations of Paragraph 47 of your Answer.

24. Produce all documents that support the allegations of Paragraph 50 of your Answer.

25. Produce all documents that support the allegations of Paragraph 55 of your Answer that “Defendants are merely taking what they are informed and believe are the appropriate measure to comply with applicable statutes, ordinances and agreements affecting the Park. . .”

26. Produce all documents that support the allegations of Paragraph 58 of your Answer that “there is no requirement that the City annex any property in an existing multi-county park” and that “the City has already participated in other multi-county parks where it has provided economic incentives reducing the amount of revenue the City obtains from the distributions of fee-in-lieu-of-taxes in those parks.”

27. Produce all documents that support the allegations of Paragraph 60 of your Answer that Defendants “have duties and responsibilities under the Park and bond ordinances to others not made parties to this action, who could claim a default against Defendant Jasper County.”

28. Produce all documents that support the allegations of Paragraph 61 of your Answer.

29. Produce all documents that support the allegations of Paragraph 6 of your Amended Cross-Claim that Beaufort County has “an interest in the subject matter of [the Cross-claim] as the Partner County [under the Nickel Plate MCIP].”

30. Produce all documents that support the allegations of Paragraph 39 of your Amended Cross-Claim.

31. Produce all documents that support the allegations of Paragraph 40 of your Amended Cross-Claim that “the city is under the mistaken belief that approval of the City is needed for the City ad valorem taxes to become fee-in-lieu payments in a multi-county industrial or business park.”

32. Produce all documents that support the allegations of Paragraph 41 of your Amended Cross-Claim.

33. Produce all documents that support the allegations of Paragraph 43 of your Amended Cross-Claim.

34. Produce all documents that support the allegations of Paragraph 44 of your Answer and Amended Cross-Claim that “[i]n 2020, in an internal accounting by Cross-Co-Plaintiffs, the distribution omission of the aforementioned 1% and 40% of Hardeeville municipal taxes was discovered. . .”

35. Produce all documents that support the allegations of Paragraph 45-48 of your Amended Cross-Claim regarding alleged overpayments and underpayments.

36. Produce all documents that support the allegations of Paragraph 50 of your Amended Cross-Claim.

37. Produce all documents that support the allegations of Paragraph 51 and 52 of your Amended Cross-Claim regarding the source of the Treasurer’s and Auditor’s beliefs about the described responsibilities and obligations.

38. Produce all documents that support the allegations of Paragraph 59(c) of your Amended Cross-Claim referring to “the number of years in the past for which adjustments in distributions must be made.”

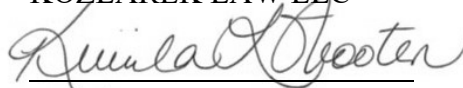
39. Produce all documents the County intends to use as exhibits at the hearing of this matter.

40. Produce all documents that support the allegations of your Motion for Summary Judgment filed in this case.

41. Produce a curriculum vitae or other similar document, if available for each expert witness the County listed in response to the County’s Interrogatories.

42. Produce all documents received by subpoena from any other person or entity during the course of this litigation.

KOZLAREK LAW LLC



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Attorneys for City of Hardeeville

Greenville, South Carolina

August 9, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 CITY OF HARDEEVILLE,)
)
 Plaintiff,)
)
 vs.)
)
 JASPER COUNTY, SOUTH CAROLINA,)
 JASPER COUNTY TREASURER, and)
 JASPER COUNTY AUDITOR,)
)
 Defendants.)
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IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2021-CP-27-00028

CERTIFICATE OF SERVICE

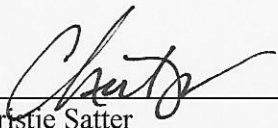
I certify that a copy of the foregoing *Plaintiff's First Set of Requests for Production to Jasper County* has been served on the following counsel of record on August 9, 2021, via electronic mail to each counsel's individual AIS mail address as follows:

Walter H. Cartin
waltcartin@parkerpoe.com
 J. Evan Phillips
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF JASPER

-----x

CITY OF HARDEEVILLE,)

)

Plaintiff,)

)

vs.)

Transcript of Record
2021-CP-27-00028

JASPER COUNTY, et al.)

)

Defendants.)

-----x

February 10, 2021
Virtual Courtroom

B E F O R E:

The Honorable Bentley Price, Presiding Judge

A P P E A R A N C E S:

Michael E. Kozlarek, Esq.
Attorney for the Plaintiff

David Tedder, Esq.
Attorney for the Defendant

ALSO PRESENT:

Mary Lohr (On behalf of Jasper County Treasurer)

Bernie Ellis (On behalf of Bonds)

Transcribed by Bobbi Fisher, RPR, CET, for DCRP,

Digital Courtroom Recorder Project

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I N D E X

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E X H I B I T S

(None.)

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 11:02 a.m.)

3 THE COURT: The next one is Hardeeville versus Jasper
4 County's permanent injunction hearing.5 MR. KOZLAREK: Good morning, Your Honor. Michael
6 Kozlarek for the City of Hardeeville. I know there are other
7 folks who may be participating that may want to introduce
8 themselves at this point.

9 THE COURT: All right.

10 MS. LOHR: Your Honor, this is Mary Lohr. I'm here today
11 on behalf of the Jasper County Treasurer and Auditor.

12 MR. TEDDER: David Tedder, Jasper County Attorney.

13 THE COURT: All right. Your reception isn't good. We're
14 not able to hear you, Mr. Tedder.15 MR. TEDDER: Sir, I'm going to change (indiscernible).
16 Bear with me one second. I'll (indiscernible).17 MR. ELLIS: Your Honor, while Mr. Tedder is out, I'm
18 Bernie Ellis, and I'm here on behalf of Nickel Plate. We are
19 not necessarily a part of this motion, but we have been added
20 as a cross-defendant in Mr. Tedder's counter-claim and
21 cross-claim.22 MR. KOZLAREK: I apologize, Your Honor. I have not seen
23 that yet, so I'm not familiar with the other parties that may
24 or may not be involved.

25 MR. TEDDER: Your Honor, David Tedder here. Is this a

1 better connection?

2 THE COURT: Yes, sir. I can hear you now.

3 MR. TEDDER: Thank you. Again, Jasper County attorney.

4 I believe Mr. -- Mr. Bernie Ellis, who represents Nickel
5 Plate Road, LLC, who is the bond holder on this, is also here.
6 And I am not certain whether Brittany Ward, who is a staff
7 attorney from Beaufort County, is on this call or not. But
8 they're interested parties that we have alerted to the
9 litigation about.

10 And if I might, Mr. Kozlarek, there was pleadings filed
11 last night electronically to the Court -- an answer and
12 counterclaim, a memorandum in this. I do not know if -- I
13 says it was electronically served on you, but I don't know
14 that it was.

15 THE COURT: Mr. Kozlarek, do you have a copy of it?

16 MR. KOZLAREK: No, Your Honor, I don't. I have not seen
17 that those have been accepted by the clerk's office, so I
18 apologize; if that has come through, I have not seen it.
19 Obviously, we have been on since 10:00, so if it's popped up
20 since then, I apologize.

21 THE COURT: All right.

22 MR. KOZLAREK: But I think we can move forward at this
23 point with the hearing. Hopefully, it will be less
24 contentious than some of the other earlier ones.

25 THE COURT: All right. I'll be happy to hear from you.

1 MR. KOZLAREK: Thank you, Your Honor. What I'm going to
2 try to do -- and, again, I hope this will be -- I hope this
3 will be something we can almost do by consent, but as I
4 mentioned during the TRO hearing last week, this is a dispute
5 about tax collection and distribution between the City of
6 Hardeeville, the County, the County Auditor, and the County
7 Treasurer for Jasper.

8 There's a lot of underlying documentation, which is
9 referenced in the complaint, involving the creation of
10 multi-county park and agreements with Beaufort County, bond
11 documents and ordinances that involve Jasper County and a
12 bondholder. And the short answer is, Hardeeville is not a
13 party to any of that. And so, for purposes of our hearing
14 today, the only thing that Hardeeville is really looking for
15 is essentially a continuation with a slight modification of
16 the temporary restraining order that the Court entered a few
17 days ago.

18 I had a very good conversation with Ms. Lohr who
19 represents, as she mentioned, the auditor or the treasurer.
20 As a result of that conversation, what I'm going to do, rather
21 than present a full argument, unless there is some pushback,
22 is suggest what I think may be a resolution based on that
23 conversation and then allow representation for the County
24 Auditor and Treasurer and for the County to decide whether
25 that would be an appropriate remedy or if we need to have, you

1 know, book, chapter, and verse on what the documents say and
2 the standard for entering an injunction which, again, I don't
3 think is necessary.

4 What I understand is going to happen -- and, again, I
5 have not seen this -- is that the auditor and the treasurer
6 were going to plead the amount in dispute into the court under
7 Rule 67. Hardeeville has no objection to that. So, again, I
8 think that is a reasonable resolution. The only objection
9 that Hardeeville would have is that there be a specific dollar
10 amount associated with that, and the concern is this may carry
11 over multiple tax years, and, therefore, whatever the current
12 amount in dispute is will certainly go up if this goes for
13 another tax year or a second tax year or, God forbid, a third
14 tax year.

15 And so the Rule 67, to the extent that it doesn't
16 actually cover future pleadings into the court of dollars,
17 that would be included in an order. I understand that there
18 were some concern over the breadth of the temporary
19 restraining order as to restricting the Auditor, particularly
20 the Treasurer, with distribution of other funds. That was
21 certainly not Hardeeville's intent. The only concern that
22 Hardeeville has is the distribution of its money based on its
23 tax levy.

24 So, again, to the extent that there is some concern over
25 that, Hardeeville has no concern about limiting any

1 injunction, whether consent or otherwise, to simply that
2 amount of money that the auditor or the treasurer would
3 collect based on Hardeeville's millage on the annex property.

4 And the last thing -- and this is why I don't think just
5 a Rule 67 pleading of revenue into the court is sufficient is
6 there was some discussion in the letters or at least the
7 November 9th letter from the County that the auditor and
8 treasurer would be making changes to prior bills and
9 potentially future bills. And so the only other thing that
10 Hardeeville is looking for is, again, a continuation of the
11 temporary restraining order as to ensuring that any tax levy
12 that Hardeeville would have in the normal course of its taxing
13 business; that is, when bills go out from the County Auditor
14 in, say, September, October, or sometimes November, that that
15 be whatever the normal Hardeeville millage would include so
16 that Hardeeville has the ability to set its millage. That
17 millage would be included on the bill. That bill would be
18 sent out. And then whatever the treasurer collected based on
19 that would, again, be sequestered under Rule 67, essentially,
20 with the Court.

21 I, frankly, think that covers it. Obviously, the other
22 parties may disagree with any injunction, but I think the
23 standard is fairly clear here. There is no disagreement that
24 Hardeeville is not a party to any of the documents that give
25 rise to the multi-county park, give rise to pledges of revenue

1 under the multi-county park, or in any way permit the
2 distribution of Hardeeville's revenue to someone other than
3 Hardeeville.

4 And so having, whether it's by injunction or by Rule 67
5 or by a combination of the two in place to protect that
6 revenue while this dispute is ongoing and also allow
7 Hardeeville the opportunity to continue to levy and collect in
8 the normal course, even though those collections would be held
9 by the Court, I think is not only a reasonable resolution but
10 is appropriate under the circumstances.

11 And, again, I'm happy to answer questions.

12 THE COURT: All right. Ms. Lohr, did y'all have that
13 conversation?

14 MS. LOHR: We did have that conversation, Your Honor.
15 You know, I expressed to Michael that I thought that the -- an
16 injunction wasn't appropriate and that the scope of the
17 injunction or the restraining order was too broad, and we did
18 address those specific issues.

19 We are -- you know, I don't think this case is
20 appropriate for an injunction. You know, there is a legal
21 remedy that's in place, so it doesn't meet the criteria for an
22 injunction.

23 And in an effort to belie some of these concerns, you
24 know, my clients just want to do what the Court tells them.
25 There's a substantial question of law involved in this, and my

1 client just wants -- my clients just want to do what the Court
2 tells them is the appropriate thing to do in an effort to make
3 sure all the parties realize that, you know, that those funds
4 are being kept safe. That's why we wanted to pay them under
5 Rule 67 in the court.

6 There are some significant issues with the bond that I
7 think David Tetter can address better to the Court. I am
8 recently involved in this, and I'm not a bond lawyer by any
9 stretch of the imagination. I do a lot of law enforcement
10 defense, but I do defend county treasurers and auditors and
11 have done it for quite a while. But there are some concerns
12 with the bond that I think Mr. Tetter can address better for
13 you.

14 But I don't think that this is an issue where an
15 injunction is appropriate. I think the pleading of those
16 funds into the Court should satisfy -- the collections are
17 going to be the same. It's just who gets the money, as far as
18 I understand, will be the outcome that the Court has to
19 decide.

20 So, if you don't mind, I'd turn that question over to
21 Mr. Tetter.

22 THE COURT: All right.

23 MR. TEDDER: May it please the Court, Your Honor. Thank
24 you. Starting off on this, we, being Jasper County, are the
25 administrators of the bond and have duties to the bondholders

1 as a fiduciary and trustees to make things -- make sure things
2 progress appropriately. When this discrepancy in
3 distributions came up -- not billings but distributions came
4 up -- we contacted the City to tell them. And, in fact, were
5 filing (indiscernible) lawsuit. We have tried diligently to
6 consult with the City's attorneys to try and enter into an
7 agreement on what to do with the money because we had a
8 payment technically due February 1st under the terms of the
9 bond. I had been in touch with the attorneys for the
10 bondholders to try and see if we could reach a forbearance
11 agreement while we work this out, but instead, we received a
12 temporary restraining order motion without notice and sent a
13 letter on Tuesday to the City and to the Court saying that the
14 Treasurer, in consulting with us, wasn't going to contribute
15 any money. So we were a little surprised when we got an
16 executed TRO on Friday with a hearing set for today.

17 We were opposed to a preliminary injunction, but I'm
18 going to cut to the chase. We can enter into a Rule 67
19 consent order that addresses all of these concerns. We
20 have -- I have spoken with Bernie Ellis, who is representing
21 the bondholder, and they provided consent in writing to me
22 last night that they would consent to a Rule 67 motion where
23 the funds would be deposited in court with respect to the
24 funds owed to Nickel Plate, which you put in the frame work,
25 multi-county park was created in 2000. The City annexed it in

1 2006 after all these bond orders were in place, so there was
2 no need for any consent. But the bond orders provide that 40
3 percent of the net revenue for the fees in lieu go to Nickel
4 Plate. That 40 percent is what really is an issue because the
5 other percentage has gone to Hardeeville -- would go to
6 Hardeeville in due course. So that's the scope of the dispute
7 is over what Nickel Plate may have graciously agreed to
8 forbear that.

9 But, however, the temporary restraining order, the way
10 it's written, prevents us from distributing anything from
11 these properties to anybody, whether it be Jasper County, the
12 Jasper County school district, or Beaufort County, of monies
13 collected under the school district and county levees.

14 So what I'm going to suggest is that we -- the TRO be
15 dissolved and that we be given ten days to reach a consent
16 order under Rule 67, which is mutually agreeable to the
17 parties, which would include the bondholders for Beaufort
18 County, the Treasurer and the Auditor of Jasper County and
19 Hardeeville, yet accomplishes this much along the terms of
20 Mr. Kozlarek just stated, and that if we can't reach proper
21 language, that the Court imposes its own language to
22 accomplish that. But I think we can get there. We just need
23 some time to write an order, and I don't think it will take
24 ten days but we're opposed to a preliminary injunction because
25 we cannot meet the three standards. There's no irreparable

1 harm. We have agreed that we're holding money. No
2 distributions are going to be made. There's plenty of time to
3 hear this.

4 And this is a recurring fund. There are ten more years
5 left on the bond, so there's ample opportunity for
6 redistributions among the parties in future years under an
7 accounting action or any other number of actions out there.

8 I'm not going to get down in the weeds. Our memorandum
9 that we submitted hopefully can be distributed to the parties
10 and address all that, but that may be water under the bridge,
11 if we can agree on a consent order under Rule 67 to let the
12 Court know we did file a cross-claim last night which named
13 the other -- what we believe to be the necessary parties,
14 being Nickel Plate Road, LLC, the bondholder, and Beaufort
15 County, which is entitled to receive 1 percent of all the
16 collections under the multi-county park under the multi-county
17 park agreement and ordinances.

18 THE COURT: Other than the dissolution of the TRO,
19 Mr. Kozlarek, do you have any issues with Mr. Tedder's
20 proposal? You're muted.

21 MR. KOZLAREK: Thank you, Your Honor, for that. I do.
22 Very briefly, I hope, in response, let me just read from the
23 general bond ordinance that the County adopted in 2001. What
24 it actually says is that, "Jasper County hereby directs that,
25 of the fee in lieu of ad valorem taxes pursuant to the

1 agreement," which is the multi-county park agreement,
2 "actually received -- actually received by Jasper County for
3 park premises, 1 percent goes to Beaufort." And it says, "Of
4 the remainder of such fees" and it reads on to read such, but
5 we all know what that means, it's talking about the fees that
6 are actually received. The threshold question in this case is
7 whether those fees from Hardeeville should be actually
8 received by Jasper. And that is the principal disagreement we
9 have in this case. Hardeeville is not a party to that bond.
10 It is not a party to the multi-county park arrangement. It is
11 not a party to any of the ordinances or other documents that
12 are involved in this case.

13 So when Hardeeville received a letter on November 9th,
14 after apparently a year of discussions between the Auditor,
15 the Treasurer, the County and the bondholder, of which the
16 City was not even aware until that letter telling the City
17 that the Auditor and the Treasurer and the County had
18 independently come up with, quote, a remedy that they are
19 going to impose on the City, I think it is precisely the
20 nature of the case where an injunction is appropriate,
21 particularly where you have got other governmental entities
22 discussing City of Hardeeville public funds with a third party
23 to whom Hardeeville owes no duty, contractual or otherwise.
24 In essence, the promise from the parties on this hearing today
25 is that "trust us, we're going to do what we say we do,"

1 which, according to the letters, is "take your money and give
2 it to somebody else." I certainly have no problem with the
3 Rule 67 and pleading the current funds into the court. The
4 issue is, during the next tax cycle, what happens. We're
5 going to be right back in front of Court arguing that those
6 funds also needs to be pled with no assurance that that will
7 happen, and the only assurance we have had so far are two
8 letters from the County suggesting that those funds would be
9 going somewhere else.

10 So I am -- again, I am more than happy to consent to the
11 Rule 67, but I don't think the removal of the TRO in place of
12 nothing is the appropriate response here. Case law in South
13 Carolina is imminently clear that protection of property,
14 including money, is an appropriate means -- or is an
15 appropriate case for an injunction to be granted. And, again,
16 that's in our motion. And I apologize that I have not seen
17 the response -- that there's a memo response, but I don't
18 think it's appropriate to simply assume that that money is
19 Jasper County's or a bondholder's or anyone else's because
20 that is the principal dispute here and what goes forward
21 through the next tax cycle or the next tax cycle.

22 MR. TEDDER: Your Honor, if I may.

23 THE COURT: Sure.

24 MR. TEDDER: The bondholder -- and I don't want to speak
25 for them but in the email that I received last night where

1 they agreed to consent to Rule 67 clearly speaks to the future
2 tax cycles, which are more than a year or at least a year
3 away. They are okay to -- with respect to funds currently
4 owed to Nickel Plate as well as to funds owed to Nickel Plate
5 going forward until ownership of those funds is
6 (indiscernible). So crafting the language of the Rule 67, to
7 include not just the current collections, which, as I am
8 informed yesterday from the treasurer, the amount in dispute
9 that would be paid to Nickel Plate is 40 percent of the
10 remaining 99. It's \$119,093.49 out of total collections much
11 higher than that.

12 But I didn't want to get into arguing the merits of this.
13 The Constitution says, once you create a multi-county park,
14 there are no ad valorem taxes. The Supreme Court has
15 interpreted that statute and the implementing statute in the
16 Horry County School District versus Horry County case, and all
17 the funds coming into a multi-county park are committed to the
18 sole discretion of the county in which the park is located for
19 distribution under the statutes out there.

20 So this red herring of they didn't consent to it, they
21 couldn't consent to it because it was created six years before
22 that, and their argument is basically a municipal ordinance
23 six years later, they can put a capital (ph) arm tax on top of
24 a multi-county park irrespective of what the Constitution and
25 statutes to say, to me, clearly shows no likelihood of success

1 on the merits. There are clearly remedies at law, and there's
2 an alternative mechanism.

3 And I would submit for Your Honor's consideration Scratch
4 Golf case out of Myrtle Beach where the Supreme Court
5 overturned the preliminary injunction because the developer
6 was accused of being ready to leave the (indiscernible)
7 proceeds of a sale, leaving the homeowners or golf owners in
8 the lurch, and, of course, that's not appropriate for
9 preliminary injunction. (Indiscernible) writ of attachment.

10 So I think that there's no reason to litigate this thing
11 if we could draft an order and give it the time to draft the
12 order. Mrs. Lohr, on behalf of the treasurer and the auditor,
13 have presented to the Court as an officer of the Court that
14 they said they're not going to distribute it. I believe
15 Mr. Ellis, if he wants to be heard, would consent on behalf of
16 his client that he's not going to receive it under these terms
17 until a further order of the Court.

18 So the question of preliminary injunction, when we're
19 talking about governments, we're supposed to be protecting our
20 citizens, and Hardeeville citizens are Jasper County citizens,
21 and we also have duties to the bondholders and everyone to
22 make sure that's taken care of. We told them in the letter
23 that we weren't going to distribute any money in conjunction
24 with Mrs. Lohr. I think that ought to satisfy the Court that,
25 as an officer of the Court representing our client, we're not

1 going to distribute the money.

2 MR. KOZLAREK: Your Honor, I apologize; I have got to
3 respond. And I do apologize because we are in the weeds at
4 this point. What Mr. Tedder just said is that the Treasurer
5 created the calculation to where 1 percent went to Beaufort
6 and 40 percent of the 99 percent would be held by the Court.
7 That presumes the correctness of Hardeeville's involvement in
8 the multi-county park arrangement, which is precisely why an
9 injunction is necessary. Because even by the Treasurer's
10 calculation, Mr. Tedder's representation to the Court, they
11 have already decided the money is theirs, and that money
12 belongs to Beaufort under an arrangement to which Hardeeville
13 is not a party.

14 We have already heard through Mr. Tedder from a
15 bondholder, who has no relationship with Hardeeville
16 whatsoever, and so their consent -- no disrespect to Mr. Ellis
17 or his client -- really don't matter to Hardeeville because
18 they're not a proper party to the action. And, again, I have
19 not seen a complaint against them to bring them in. And so I
20 think that is beyond the scope of even the discussion this
21 morning.

22 What we are dealing with is a governmental entity that
23 has threatened to take and distribute another government's
24 funds and then promise not to do that, but, by the way, that 1
25 percent belongs to Beaufort, so we're going to distribute that

1 anyway, which is precisely what we are trying to stop.

2 With respect to the multi-county park and the
3 constitutionality, we are not making a constitutional
4 challenge to the multi-county park arrangement. But I will
5 point out, Mr. Tedder makes the argument that, once a
6 multi-county park is created, no taxes can be collected, that
7 they are fees. However, again, I refer the Court to Section
8 5.2 of the General Bond Ordinance, which specifically
9 continues to collect ad valorem taxes that existed prior to
10 the creation of a park.

11 Now, granted, that does not speak to what happens after a
12 park is created, but it certainly belies the argument that all
13 of the revenue that comes off that park, even according to the
14 County's own bond ordinance, has been converted to
15 multi-county park fees as opposed to ad valorem taxes. So it
16 precisely leaves open the question, and, frankly, there is
17 nothing in state law that says otherwise, that when the
18 property is annexed by municipality, that may or may not be
19 subject to a multi-county park, that its millage applies, just
20 like it would otherwise.

21 And they can point to no statute, they can point to no
22 constitutional provision, and they can point to no agreement
23 in which Hardeeville has agreed to anything other than that.
24 But yet they are prepared -- and Mr. Tedder made that
25 representation this morning -- they are prepared to give

1 1 percent of Hardeeville's money to somebody else while this
2 dispute is pending.

3 MR. TEDDER: If I could, Your Honor, I did not intend to
4 make that representation. I was intending to include Beaufort
5 County's fund in that sequestration of funds.

6 THE COURT: All right. Anything further? Mr. Ellis,
7 would you like to comment or no?

8 MS. ELLIS: Your Honor, the only comment I would make is
9 that the -- what we're willing to agree to, and I assume if
10 the Court will allow the parties ten days to submit a proposed
11 consent order, we could take this up.

12 The agreement I will be willing to make is what I
13 represented to Mr. Tedder, which is the portion of the funds
14 claimed by Hardeeville -- by the town of Hardeeville, who
15 would be allowed to be sequestered. If there are funds that
16 are not disputed that are owed to the bondholder, we would
17 want those to be paid.

18 THE COURT: All right. All right. Anything further?

19 MR. TEDDER: If I could, I do want to correct one, I
20 believe, misinterpretation of the section of the bond
21 ordinance -- a general bond ordinance was quoted. That is a
22 recitation of a statutory clause. It says, "To the extent
23 prior to the creation of the park, there has been a pledge --
24 a general obligation debt, a fee of ad valorem taxes." Once
25 is park is created and the tax is converted to a fee in lieu,

1 so much as is necessary to satisfy those general obligations
2 of debt will be paid from the fees in lieu, not from ad
3 valorem taxes.

4 THE COURT: All right. What I'm going to do at this
5 point in time is -- and I agree to some extent that you're
6 officers of the court and y'all agree that you're not going to
7 do certain things, but I'm going to dissolve the TRO at this
8 point and give you ten days from today's date to enter into a
9 consent order. If not, then just notify the Court that you
10 were unable to consent, and I will issue my order. All right?

11 MR. KOZLAREK: Thank you, Your Honor.

12 MR. TEDDER: Thank you, Your Honor.

13 THE COURT: All right. Y'all have a great day.

14 (At 11:28 a.m., the above hearing concluded.)
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CERTIFICATE OF TRANSCRIBER

CASE/NO.: City of Hardeeville v. Jasper County, et al
2021-CP-27-00028

DATE OF PROCEEDING: February 10, 2021

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

Bobbi J. Fisher, RPR, CET
NCRA Registered Professional Reporter (RPR)
AAERT Certified Electronic Transcriber No. CET-1148
Prepared: March 8, 2021

-STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2021-CP-27-00028

COUNTY OF GREENVILLE
-----)

City of Hardeville)

Plaintiff,)

vs.)

Jasper County, et al.)

Defendants.)

TRANSCRIPT OF MOTIONS

October 27, 2021
Ridgeland, South Carolina

B E F O R E: The Honorable H. Steven DeBerry, IV
Judge Presiding

REPORTED BY: Kymberlee M. Williams, CSR/RPR
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P R O C E E D I N G S

* * *

THE COURT: This is Case Number 2021-CP-27-00028. It's the City of Hardeville v. Jasper County. It's the defense's motion for summary judgment; is that right?

MR. KOZLAREK: That's correct, Your Honor.

THE COURT: Who is here for the parties?

MR. CARTIN: Walt Cartin, Your Honor, with Parker Poe law firm.

THE COURT: Okay. And --

MR. KOZLAREK: Michael Kozlarek for the City of Hardeville. Judge, there are also two other motions, one which is on the calendar. It's the defendant's motion for protection from discovery. Although it's not on the calendar, we filed our motion for summary judgment for the City, and we would love to have that heard today at the same time.

MR. CARTIN: I'm happy with that.

THE COURT: Which do we need to hear first? The protection from discovery or how does that fall into this?

MR. CARTIN: Your Honor, I think I can handle that at the very end of my Motion for Summary Judgment, and this all sort of ties into that.

THE COURT: Okay. All right.

1 MR. CARTIN: Your Honor, I had a -- I don't think we
2 have any PowerPoint in here, so I brought copies of a
3 handout --

4 THE COURT: Okay.

5 MR. CARTIN: -- so if you need to go through this.

6 THE COURT: All right.

7 MR. CARTIN: It's not intended to be evidence or
8 anything like that, but just --

9 THE COURT: I understand.

10 MR. CARTIN: -- I hoped would be helpful

11 THE COURT: Thank you.

12 MR. CARTIN: May it please the Court, Your Honor?

13 THE COURT: Sure, go ahead.

14 MR. CARTIN: My name is Walt Cartin, I'm here with Mr.
15 Andy Fulghum today. Mr. Fulghum is the Chief Executive
16 Officer of Jasper County. It's not typical that he would
17 attend a hearing like this, but this particular matter has
18 such great significance that he wanted to be here today to
19 participate.

20 The basic question before the Court is, will Jasper
21 County's 20-year-old park, multi-county industrial business
22 park, that's been to used to issue tens of millions of
23 dollars for the special source revenue bonds over the
24 years, over the last 20 years, be allowed to continue to
25 operate as is intended by South Carolina law?

1 Now, to answer this question we've got to wade into
2 the somewhat murky depths of economic development, and --
3 and the Public Finding Acts law; so there are two concepts
4 before I really get into this that I want to lay out for
5 the Court. And the first is the concept of a multi-county
6 industrial business park, I just gonna call it a park, for
7 the purposes of -- of this hearing. It's not a park in the
8 traditional sense that you think you're taking your kids
9 to, or it's not a natural forest, it is a concept rather.
10 It is a creature of the Constitution and of the Statutes
11 that allows two or more counties to enter into an
12 agreement, whereby they designate certain property, as part
13 of this park. And once property is in that park, it is set
14 aside, it's different, it's exempt from asking for more
15 taxes. All revenues derived from that park now become
16 what's called a fee in lieu of tax, and so there's a
17 different treatment of those revenues.

18 The second in somewhat of a related concept is the
19 special purpose revenue bonds. A special source revenue
20 bond is a bond of a debt instrument that's issued and is
21 paid for by revenues taken from that fee in lieu of tax
22 devoted to that parcel, so the special source -- the
23 special source revenue bonds depend on having property
24 inside a business park.

1 So, Your Honor, if you turn to the first page of your
2 handout, we asked in our Memorandum of Law, which was filed
3 with the Court earlier this week with a variety of legal
4 findings. But what I'm really summarizing the primary
5 issue before the Court is, does Jasper County have a valid
6 and enforceable park agreement?

7 We believe the answer to that is yes, and because of
8 that, we believe that there are additional findings that
9 follow logically, as a matter of law; and those are that
10 all property located in that park is exempt from ad valorem
11 taxation. Hardeville's efforts to impose tax on the parcel
12 are improper.

13 The second is that revenue generated from the multi-
14 county park is - is appropriately designated to pay for the
15 special source revenue bonds, which were enacted by a
16 General Ordinance, and let me go through the timeline, so
17 that it will be a little more clear.

18 THE COURT: So who -- who are the partners, and who's
19 the other County?

20 MR. CARTIN: The County's Beaufort County, a Mr. --

21 MR. KOZLAREK: Right here.

22 MR. CARTIN: Your Honor -- So -- and then once we
23 determined that the revenue bonds are appropriately tied to
24 that property, it follows that the allocation of revenue

1 between bond holders and the other taxing entities, of
2 which Hardeville is one, it flows from that document.

3 Your Honor, if we look at the timeline and turn to the
4 next slide, you're gonna see this timeline a couple of
5 times, because I think it's very important for the purposes
6 of this hearing to understand the lengthy history that's at
7 play here. The park that's at issue in this case was
8 originally created in 2000, particularly, in February of
9 2000. It was created by Jasper and Beaufort County through
10 the typical manner, at the time.

11 Both would enact a park ordinance that would attach to
12 it a multi-county industrial park agreement, and once those
13 ordinances had three readings, they would be able to sign a
14 multi-county park agreement, all of which happened in early
15 2000. There was a revenue bond issued -- a general bond
16 ordinance in 2001, another bond issuance in 2003.

17 It's not until 2006, six years after the creation of
18 the park that Hardeville annexed this property into the
19 City limits of the park -- into the City limits of
20 Hardeville. So we've got park property that's now within
21 the City limits of Hardeville. At that time the City of
22 Hardeville was assessing and collecting its own taxes, so
23 it started sending a tax bill to the property owner, which
24 the property owner paid. For two years that occurred that
25 way.

1 In 2008, pursuant to an inter-governmental services
2 agreement, the County took over that function, and simply
3 took over all the tax bills that were going out, started
4 sending them out themselves. It wasn't until 2020 until
5 the County, as part of the internal audit, learned that
6 Hardeville was getting all of its millage attributable to
7 the park property.

8 What should have happened is that, approximately 40
9 percent of that revenue should have gone to the bond
10 holders, who are represented here today by Mr. Bernie Ellis
11 from Burr Forman.

12 So we had discussions with the City of Hardeville,
13 those, ultimately, broke down. Hardeville filed suits
14 seeking declaratory judgment, as to what's the status of
15 the park agreement. Can we levy taxes on it? That I'm
16 sure Mr. Kozlarek will have a different formulation of that
17 issue.

18 Jasper County answered and counterclaimed and sought a
19 similar declaratory judgment and some other cause of
20 action, but not before the Court today; but, primarily,
21 asking the Court to construe what do all these documents
22 mean together, and what's the effect then, with regard to
23 the taxation of the property? So that's the general
24 timeline that brings us here today.

1 So, again, Your Honor, back to the main question, do
2 we have a valid multi-county park agreement? I believe we
3 do. There's only two requirements, Your Honor. This is
4 the next slide to that there. Two requirements to create a
5 a multi-county park. You've got to have two or more
6 counties that are contiguous. Beaufort and Jasper County
7 are parties to this, and they're contiguous.

8 And then you have to have a written agreement between
9 the participating counties that has three things. It
10 addresses sharing expenses of the park, it addresses --
11 specifies by percentage the revenue that will be allocated
12 to each county that's in the park, and then you've got to
13 say how the revenue is going to be divvied out to the other
14 taxing entities in the District.

15 It's not an attributable sum, you know, a special
16 source revenue bond. And, Your Honor, our park agreement
17 does that if you go to the next page. This is a copy and
18 excerpt from the initial Park Agreement back in 2000.

19 Section 5 of the park agreement, it allocates the park
20 expenses. It, basically, says that the property is in
21 Jasper County, they bear 100 percent of the expenses,
22 Beaufort County bears zero, and vice versa, if the
23 property's located in Beaufort.

24 Section 6 of the park agreement allocates park
25 revenues. It says if the property is in Jasper County,

1 Jasper gets 99 percent of the revenue, Beaufort gets one
2 percent, and vice versa.

3 Section 7 of the park agreement, the revenue
4 allocation within the County, it says that this will be
5 addressed by Jasper County in an ordinance adopted by
6 Jasper County.

7 Prior to this agreement that we just -- the -- the
8 excerpt here being signed, that park ordinance existed. If
9 you go to the next page, we'll look at what that park
10 ordinance said. This is Jasper County Ordinance 2000-1,
11 and it lays out very precisely the manner in which revenue
12 Jasper County's 99 percent of the revenue is to be
13 allocated to each of the taxing entities.

14 And it basically says that they'll get the same
15 percentage of money as in proportion to the millage they
16 levied, so if, you know, if a -- an entity levied ten
17 percent of the total millage, they get ten percent of the -
18 - of the revenue that's attributable to them.

19 Again, April 10th, 2000, park agreement is signed,
20 these park ordinances exist, there's a valid and
21 enforceable multi-county industrial park agreement existing
22 at that time.

23 Your Honor, if you go over to slide eight, I'm going
24 to fast forward to 2001, and, consequently, the park
25 ordinance, the park agreements were all filed and recorded

1 in the Register of Deeds Office, they were a matter of
2 public record.

3 MR. KOZLAREK: And I apologize, I don't normally do
4 this. Just as a matter of making sure that there's no
5 issue for my objecting to this, I have a problem with the
6 Affidavit that was filed. I -- I don't know -- obviously,
7 I don't want to interrupt Mr. Cartin any further, but I
8 don't want the Court to think that I am permitting that to
9 move forward and somehow it will waive my objection for the
10 Court's reliance on those exhibits.

11 THE COURT: And that would have been what was filed in
12 2001?

13 MR. KOZLAREK: No, Your Honor, there was an Affidavit
14 filed, I believe it was Friday --

15 THE COURT: Okay.

16 MR. KOZLAREK: -- with the Records Custodian, and that
17 is the reference to these exhibits that - that Mr. Cartin
18 was making at the bottom of the -- at the bottom.

19 THE COURT: I'm not sure what the objection is.

20 MR. KOZLAREK: Your Honor, I'm happy to make that
21 objection now, but I -- I really didn't want to interrupt.
22 I just didn't want the Court to think I waived some --

23 THE COURT: All right, well fair enough.

24 MR. CARTIN: April 16, 2001, Your Honor, a General
25 Bond Ordinance Number 01-04, was amended to allow the

1 issuance of special source revenue bonds. As part of that,
2 the Park Ordinance, Ordinance 2000-1 was also amended to
3 determine how, now that we have special source revenue
4 bonds, the revenue would be allocated to the taxing
5 entities within Jasper County.

6 And it basically says 40 percent of Jasper County's
7 revenue goes to the bond holders right off the top, the
8 rest of it is distributed in the proportion to which they
9 have millage.

10 So that -- and that's the formula that we believe
11 applies today. All of this, again, is a matter of public
12 record, these are ordinances that are all on file. We're -
13 - we're now merely 20 years past the time to challenge
14 those ordinances, so I -- I don't know what to say about
15 the existence of these ordinances, all of which are public
16 record, but I guess we'll hear about that.

17 Back to our timeline, just to recap, so far we're only
18 to 2001. In 2003 another round of bonds are issued.
19 Again, it's not until 2006 that Hardeville is even anywhere
20 in the picture. Now, Hardeville has argued that -- that we
21 should have somehow gotten their consent to the park
22 agreement, or I -- I honestly can't tell what they're
23 arguing, but that -- that they should have somehow been
24 involved. And I wish to ask the Court, how on earth could
25 we possibly know that Hardeville six years in the future is

1 going to annex property within it, so I just -- that
2 argument is one that falls on deaf ears in the case here.

3 And just to make a statutory reference, Your Honor,
4 this is on slide ten, Section 4-1170C says, "If the
5 industrial or business park encompasses all or a portion of
6 a municipality, the Counties must obtain consent of the
7 municipality prior to the creation of the multi-county
8 industrial park."

9 So it's a different situation if we were putting
10 property in a park that was already a party to those
11 limits, yes, we absolutely have to get their -- their
12 permission, and they have to be a part of that; but prior
13 to that -- six years prior to that, there's no way we can
14 possibly contemplate this.

15 Again, Your Honor, from 2006 to 2008 Hardeville
16 assessed and collected its own taxes. We took over in 2008
17 again, in 2020, after an internal audit was performed.
18 Jasper County determined that there was an error that had
19 been made, that we needed to correct this. Apparently,
20 Hardeville argues we can't correct this now, which I don't
21 necessarily agree with.

22 So if there's a valid and enforceable multi-county
23 park agreement, which we've shown that there is, we meet
24 all the requirements to create one. There are some
25 findings for that result.

1 Number one, when there is a multi-county park, the
2 Constitution of South Carolina says that that property in
3 that park is set apart, it is exempt from having ad valorem
4 taxation. Title IV has similar language, and then the
5 Supreme Court in a Horry County School District case made a
6 similar finding; that all property is exempt from ad
7 valorem taxation.

8 Our position is that Hardeville's attempt to assess
9 and collect its own taxes for its full millage on this
10 property is the imposition of a ad valorem taxation after-
11 the-fact.

12 Now I know they have arguments that they intend to
13 make. I'll be curious to see those. I haven't seen them
14 laid out anywhere so far, but I just don't see how that can
15 get things -- to get over the Constitution of South
16 Carolina and the Supreme Court's findings there.

17 Is it exempt from ad valorem taxation? We have a
18 valid enforceable park agreement. The park agreement has
19 to control the distribution of those fee - the fee and loop
20 payments. They are subject to it, whether they like it or
21 not. If Hardeville had cared about the taxability of this
22 property back in 2006, they very well could have done some
23 sort of due diligence, or -- or whatever they wanted to do
24 to investigate this.

1 All of this was discoverable, it was part of the
2 public record, but now after-the-fact, it cannot be said to
3 have some sort of a right to assess revenue, it conflicts
4 with the Constitution.

5 And, finally, Your Honor, the one percent -- the
6 allocation that we believe -- and, again, all of this is
7 laid out in our Memorandum of Law in probably more detail
8 than the Court wants, but, essentially, one percent of all
9 the -- the park revenue should go to Beaufort County, 99
10 percent of the remainder is allocated to Jasper County. Of
11 that 99 percent, 40 percent goes to the bond holders, and
12 the rest distributed to all the taxing entities, including
13 Hardeville in proportion to the millage that's levied on
14 the property.

15 So we're not trying to deny that they get revenue from
16 this property, but they only get it in proportion to the
17 other revenue.

18 Your Honor, our Motion for a Protective Order, which
19 is related to this -- we have always believed that this is,
20 essentially, a question of law for the Court to answer.

21 This is a -- we're looking at ordinances, they're 20-
22 years-old in some instances. We're looking at statutes and
23 the Constitution. I don't know what fact issue can exist,
24 but we received, approximately, 40 or 50 Requests for
25 Production, basically, most of which just recited lines

1 from our Answer and said, "Look, give me all the evidence
2 that has to do with this."

3 Many of these things are just matters of law. They're
4 assertions of what the statutes say and what they mean,
5 because, again, this is a matter that's ripe for Summary
6 Judgment. They claim there's a fact issue, but then they
7 turn right around and ask for Summary Judgment on the same
8 issue, essentially. So we simply requested that we pause
9 the discovery until we can get this determined.

10 There are other claims that are associated, that are
11 not necessarily issues of statute -- statutory
12 interpretation, there's some unjust enrichment claims, but
13 -- but those can be handled after we have this basic
14 ruling, which both parties seem to agree we need. The rest
15 of that can certainly -- discovery can proceed on that.
16 We're not trying to hide anything from them. There's
17 nothing to hide, these are all ordinances, matters of
18 public record, so that's essentially why we've asked to
19 pause discovery until we get a ruling on these Motions for
20 Summary Judgment. And I'll --

21 THE COURT: All right.

22 MR. CARTIN: -- be happy to answer any questions or --

23 THE COURT: May I hear from Mr. Kozlarek?

24 MR. KOZLAREK: Thank you, Your Honor. I'm gonna
25 comment briefly on the Motion for Protection and also the

1 Affidavit, and then I'm going to explain why the Jasper
2 County multi-county park agreement with Beaufort County is
3 not legal and valid.

4 The first thing is in Jasper's Motion to Protect them
5 from discovery, it says "That the information that's been
6 requested by the discovery request," and this is paragraph
7 seven, "is not relevant to Jasper's motion."

8 And that's in their -- that's in their motion. The
9 discovery request that we went through -- and this is just
10 briefly from the Request for Production, "Request number
11 three, all documents supporting the County's general bond
12 agreements.

13 Number four, all documents related to the first
14 supplemental bond ordinance.

15 Number five, all documents related to the second
16 supplemental bond ordinance.

17 Number six, the County's park agreement.

18 Number seven, the County's ordinance that was enacted
19 on February 7th," which, according to them, is 2000-1.

20 Amazingly, despite the fact that these are supposedly
21 not relevant documents, those are exactly the same
22 documents that appeared attached to the Affidavit that they
23 filed with the Court on Friday.

24 So the first issue is that I have with the Motion for
25 Protection is it's not fair to claim that it's not relevant

1 to not participate in the discovery process and turn around
2 and file the exact same documents they refused to turn over
3 months ago, by filing the Motion for Protection.

4 The second thing is the Affidavit is untimely. Rule 6
5 requires that any Affidavit that is going to be used in
6 support of a motion be filed with the motion. The Motion
7 for Summary Judgment was filed several months ago. That
8 Affidavit was filed on Friday, so I have a problem with the
9 time limit.

10 Now, let's look at the Affidavit itself, and the
11 documents that it contains, and I believe -- you -- do you
12 want to hand that up, or do you want me to? I mean I've
13 got the documents, but I figured.

14 MR. CARTIN: Yeah.

15 MR. KOZLAREK: Sure.

16 MR. CARTIN: I've got the whole motion.

17 MR. KOZLAREK: I knew you would.

18 MR. CARTIN: Huh?

19 MR. KOZLAREK: I knew you would.

20 THE COURT: All right.

21 MR. KOZLAREK: I've got one to hand up to the Court,
22 but I'm also going to hand these out, but everything that
23 I've got, other than statutes, are in there. Again,
24 because this was filed in untimely, I really only dug into

1 the first exhibit, so let -- if the Court will -- let's
2 look at Exhibit --

3 THE COURT: There's what? If we can, can I first hear
4 your summary judgment first, and then we'll get back to
5 this?

6 MR. KOZLAREK: Absolutely, Your Honor.

7 THE COURT: Okay.

8 MR. KOZLAREK: So why has the park agreement failed?
9 In order for Jasper County to actually succeed at summary
10 judgment, they've got to prove both factually that the park
11 agreement has everything that's supposed to be in it. They
12 have to prove factually that the park agreement was
13 approved, as is required by State law. And they've got to
14 prove legally that with both of those things in place, that
15 the Constitution and statutes of this State preclude the
16 City of Hardeville, legally, from receiving revenue that's
17 imposed on this property that we're talking about.

18 If either of those fail, if they're factually unable
19 to establish that the park agreement is valid or they're
20 legally unable to establish that it's valid or that the
21 Constitution and statutes when read together permit this
22 outcome, then the City wins, because the City only has to
23 suggest that the park is not valid.

1 The City doesn't have to prove the existence of the
2 park, that burden rests with Jasper County. So let's look
3 at the agreement itself.

4 THE COURT: Well if there's -- if there's a question
5 of fact, as to whether or not the agreement was created,
6 then how is anything ripe for summary judgment?

7 MR. KOZLAREK: Well, I don't think there is a
8 question.

9 THE COURT: Okay.

10 MR. KOZLAREK: I actually think that for purposes of
11 our summary judgment motion, we need not establish any
12 facts. We simply need to establish that they haven't
13 proven theirs.

14 The burden is on the party who is attempting to
15 establish an exemption from taxation, which is what this
16 is. As you heard Jasper County argue, what their argument
17 is under the Constitution is that by putting property in a
18 multi-county park, we're designating it, as being multi-
19 county park property. That that means it's exempt from
20 taxation. Anyone claiming an exemption from taxation bears
21 the burden of putting themselves squarely within the
22 exemption, that is black letter State Supreme Court law.

23 So what we end up having is a little bit of a weird
24 situation, because even though we're moving for summary
25 judgment, it's the exemption claimant who bears the burden

1 of establishing the facts necessary to prove that the park
2 is valid, both factually and legally. And that is why I
3 wanted to go through some of the Affidavit, because it
4 bears on --

5 THE COURT: So it's your -- it's kind of your position
6 then that if I deny the Motion for Summary Judgment, then I
7 should grant yours?

8 MR. KOZLAREK: Correct.

9 THE COURT: I understand.

10 MR. KOZLAREK: It probably would have been, excuse me,
11 simpler for me to have just said that.

12 THE COURT: All right.

13 MR. KOZLAREK: So the park agreement -- what I've
14 handed up to the Court is a copy of what is attached as
15 Exhibit 1A and is referenced in the handout that Mr. Cartin
16 gave. And the reason why I am attempting to use their
17 materials is I think fairly obvious, because we all agree -
18 - I disagree and think there are fact questions about the
19 Affidavit, and I think it's untimely, but let the Court go
20 over that.

21 Assume these are correct, assume these are accurate, I
22 want to use their materials. What Jasper County argues is
23 that the park agreement must contain a distribution of
24 revenue, but that's not actually what the statute says.
25 I've handed up 4-1-170. 4-1-170 actually says that the

1 agreement, and this is A3 I believe, Your Honor, that the
2 agreement must, "specify the manner in which park agreement
3 -- in which park revenues are to be distributed," it must
4 specify the manner. It does not say that it can
5 contemplate the manner, that it can refer to some other
6 document, where you might find the manner.

7 The General Assembly was very clear when it said,
8 "It's got to be specific." What's interesting is if you
9 look at the two other sections that were referenced,
10 Section 5 and Section 6 and compare it that's in the --

11 THE COURT: Wait, where are you?

12 MR. KOZLAREK: In the multi- --

13 THE COURT: Is this -- is this the Ordinance?

14 MR. KOZLAREK: That is the Ordinance, yes, Your Honor.

15 THE COURT: Okay, I can't see that well.

16 MR. KOZLAREK: I'm sorry.

17 THE COURT: That's all right.

18 What page are you on there?

19 MR. KOZLAREK: The agreement, it's Jasper 083.

20 THE COURT: That's in this agreement?

21 MR. KOZLAREK: I assume it's in yours. I also handed
22 it up to --

23 MR. CARTIN: Your Honor, there's an index --

24 MR. KOZLAREK: Right.

1 MR. CARTIN: -- in here. We should have the Affidavit
2 of Wanda Hendricks (phonetic), it's Number 4, tab number
3 four.

4 THE COURT: All right. Okay, go ahead.

5 MR. KOZLAREK: And it is Jasper 083, and it should be
6 Sections 5, 6, 7, 8, 9, 10.

7 THE COURT: I've gotcha.

8 MR. KOZLAREK: Thank you, Your Honor.

9 THE COURT: All right, thank you.

10 MR. KOZLAREK: The argument that Jasper County makes
11 is that if you look at Section 7, it refers to some other
12 ordinance for where a reader of this document would have to
13 go to find the revenue distribution; but what Section 41170
14 says is "That it must specify the manner in the document."

15 Now, let's compare Sections 5 and 6 with Section 7.
16 Five and 6 clearly specify the manner in which revenue is
17 going to be distributed. It's got actual percentages
18 listed. If you read Section 7, what it says is "Such
19 revenue shall be distributed within Beaufort County to the
20 political subdivisions in Beaufort County, in accordance
21 with an ordinance to be adopted."

22 There is no specific ordinance referenced, and for all
23 we know, that ordinance was never adopted or at some point
24 in the future was repealed, rescinded, amended, changed.
25 Similar language exists with respect to Jasper County.

1 So Jasper County's argument is that when the General
2 Assembly required that a multi-county park agreement
3 specify the manner in which revenue was going to be
4 distributed, that the General Assembly intended for a
5 reader of this document, the Court, for example, to go find
6 every single ordinance in Jasper County and Beaufort County
7 that might talk about the revenue distribution.

8 And by the way, it's not specifically mentioned.
9 There is no specific ordinance mentioned in this document.
10 If the Court were to actually look at 4-1-170 and 175, and
11 I'm gonna come to the Annexation Statute 5-3-150. There
12 are specific references, that is how you incorporate
13 something by reference. There are references to specific
14 constitutional provisions. There are references to
15 specific statutory provisions.

16 Here, what this says is go look, good luck, hope you
17 can find it. Now, imagine that this multi-county park
18 agreement -- I think there's one mistake with five parties.
19 A reader would have to go to each of those five counties
20 and research every single adopted ordinance and resolution,
21 to determine what the revenue distribution was. And
22 there's nothing in this record before the Court, and this
23 is why I wanted to focus on the Affidavit, there's nothing
24 in the record before this Court that says that the
25 documents that they provided are the final documents. For

1 all we know, there is some other revenue distribution
2 scheme out there.

3 Jasper admits they've had at least three ordinances
4 that deal with this, three, that they've told us about, but
5 were not allowed into discovery. The problem is we don't
6 need it, they've got to -- they bear the burden of proving
7 that the multi-county park arrangement is valid. There's
8 no specific mention of revenue distribution.

9 The second thing, if the Court were to look at the
10 Horry County case, and I -- and I ask that the Court would,
11 in the Horry County case, the Supreme Court -- I apologize
12 for this, and I apologize, Your Honor, I'm gonna direct the
13 Court to the actual language. It is page six of nine,
14 about the middle of the page on the left-hand side, and it
15 is in the materials packet.

16 THE COURT: I'm not sure what -- you're gonna have to
17 point me better than that.

18 MR. KOZLAREK: I'm sorry, Your Honor, it -- it's in
19 the small packet, and if you don't find it, it's --

20 THE COURT: All right.

21 MR. KOZLAREK: -- in these materials, yes, Your Honor.
22 It's the Horry County case. It's towards the back, Your
23 Honor. That would be it. Six of nine, about middle of the
24 page on the left-hand side, the paragraph beginning,
25 "Although."

1 The Horry County case was a dispute between the County
2 and two other multi-county -- two other multi-county park
3 partners, although they were not parties to the case, the
4 City of Myrtle Beach and the Horry County School District.
5 Horry County School District raised all manner of issues,
6 with respect to multi-county parks and revenue
7 distribution, many of which are immaterial for this
8 discussion. But what's interesting is not that the Supreme
9 Court in this paragraph went into some discussion of dicta.
10 They do that regularly.

11 What they did, however, is they, specifically, called
12 out the fact that they were addressing an issue that was
13 not before the Court. What they said is "We note an
14 inadequacy in the agreement itself, this issue is not
15 before us. We address it only to advise the parties of our
16 concern."

17 The Supreme Court gave an advisory opinion. What did
18 they say? Section 4-1-170, Sub. 3, which is what we're
19 arguing about, that requires the specific manner of revenue
20 distribution, requires the agreement to specify the manner
21 in which the revenue must be distributed to each of that
22 taxing entities within each of the participating counties.

23 The agreement here allocates 50 percent to Horry
24 County, with no basis for deter- -- for determining which
25 proportion goes to debt service, and what proportion goes

1 to school operations. Nothing that Jasper County has
2 provided, including any of these amending ordinances that
3 they mentioned to you, provide for a revenue split between
4 operational and millage.

5 So even if the Court is willing to accept that the
6 General Assembly intended for a reader of this document to
7 search every ordinance in Jasper County and every ordinance
8 in Beaufort County to find a revenue distribution, the only
9 ordinances that have been presented do not show the revenue
10 split between debt service and operational millage that
11 might be applicable to the City, the School District, Fire
12 District, the County itself.

13 The Supreme Court said in 2001 in this opinion, that
14 means the agreement -- I want to -- I want to make sure I
15 say the right word, is inadequate, and the parties need to
16 fix it. Not surprisingly, this agreement was drafted,
17 approved and executed in 1990 -- effective in 1999 and
18 signed in 2000, before this case came out. Yet, as Jasper
19 County was so nice to provide a timeline, before a number
20 of the amending ordinances were approved, which means, as a
21 matter of public record, that Court opinion was in the
22 public eye, and Jasper County with Beaufort County, could
23 have collectively fixed their agreement, but they did not.
24 They didn't make any change that would provide for this
25 revenue distribution, the agreement fails.

1 Let's talk about the Constitution and the Statutes
2 very briefly. Article 8, Section 13 of the Constitution,
3 and I've also handed that up, it's South Carolina
4 Constitution, Annotated Article 8, Section 13, Subsection
5 D. It says, "The participating County shall reduce the
6 agreement to develop and share expenses and revenues of the
7 park to a written instrument, which is binding on all
8 participating counties."

9 I invite the Court to read the rest of Article 8,
10 Section 13, so that there's no surprise. Cities are not
11 mentioned in Sub. D, they're not, they don't appear there.
12 There is some discussion of School Districts and how School
13 District valuation is handled in a multi-county park
14 arrangement, but there is no mention whatsoever of the
15 cities.

16 Why is that? The Constitution has got to be read in
17 the context in which it was approved. This is a contract
18 with the voters. All property in South Carolina is in a
19 county, right? Each parcel appears in some county in the
20 State, each parcel appears in some School District in the
21 State, but not all parcels appear in a city.

22 So there was no reason for the General Assembly to
23 include some concern about a city, when dealing with
24 property that may or may not be in a city; but what the
25 General Assembly did do is create Section 4-1-170C, which

1 requires the consent of a city, if a county is going to
2 include city property in a multi-county park.

3 Now, what Jasper has argued is this is a failure of
4 timing. That, essentially, because the property was placed
5 in a multi-county park before the city annexed, 4-1-170C
6 doesn't apply.

7 Although I'm not sure I agree with that, the problem
8 with that argument is that the General Assembly is presumed
9 to have enacted a constitutional statute. If the ability
10 of a county to direct revenue to place property in a multi-
11 county park is constitutionally given solely to the county,
12 that is if the voters said only counties have the right to
13 monkey with the revenue, then the General Assembly could
14 never have enacted Subsection C, because the General
15 Assembly couldn't have required consent from a party that
16 the Constitution didn't permit to have set it.

17 There's no way for those two to be read concurrently.
18 The other is 4-1-175, which, specifically, provides -- and
19 -- and the Court doesn't need to look, I've - I've given it
20 to the Court, but, specifically, provides for revenue
21 distribution to cities under Article 8, Section 13. Well,
22 there's no mention of cities under -- in Article 8, Section
23 13, Sub. D, there's none. There's no mention of that
24 multi-county park constitutional provision of cities, but

1 the General Assembly wouldn't have enacted Section 175,
2 references back not to 170, but back to the Constitution.

3 So the General Assembly's own interpretation of
4 Article 8, Section 13, seems to indicate that either it's
5 silent as to cities, or that somehow cities aren't included
6 in that provision.

7 And then, finally, let's talk about -- well, not quite
8 finally, let's talk about annexation. Jasper County argued
9 that because there were some ordinances of public record,
10 and I am going to come back to the Affidavit, because I
11 have some significant concerns about it; but assuming that
12 what was of public record is, in fact, a true and accurate
13 copy of what happened, they argue that because these things
14 were a matter of public record, that the City should have
15 known better. That's what they're arguing. The City
16 should have known better, the City could have figured it
17 out. I believe due diligence or diligence was the word
18 that I heard.

19 But if the Court were to look at 5-3-150, which is the
20 method of annexation that was used in this case, which, by
21 the way, has been reenacted over and over again by the
22 General Assembly. Towards the end of the section dealing
23 with the announcement of the public -- at the public
24 hearing, it requires the City, among other things, to
25 announce what services will be provided, and the taxes and

1 fees required for these services. There is no mention of
2 any carve out for multi-county park, there is no mention of
3 any restrictions, there is no mention - there's no mention
4 of checking with the County, there's no mention of that.
5 Perhaps you could overlook that, if the General Assembly
6 had not enacted Subsection 5, which says, "For purposes of
7 this section, any real property included within a multi-
8 county park under Section 4-1-170, is considered to have
9 the same assessed valuation that it would have, if the
10 multi-county park didn't exist.

11 So the General Assembly, in providing, specifically,
12 for annexation of property after it's in a multi-county
13 park, does, yet, not at the same time, restrict the ability
14 of the City to announce and impose the taxes and fees that
15 it needs to provide for the public service.

16 What it did do, notwithstanding under the -- any other
17 provision of law, if the property in a multi-county park is
18 titled in the State of South Carolina, then the State has
19 to consent. It doesn't say anything about the counties,
20 and it doesn't say a subdivision.

21 So the problem is when the Court looks at all of
22 what's going on, the Constitution itself, which only says
23 counties, not municipalities, the various statutes, 4-1-
24 170, 4-1-175, and the Annexation Statute itself, 5-3-150,
25 they have to be read in concert, they have to be read with

1 the understanding what the General Assembly would not have
2 enacted an unconstitutional law.

3 Finally, the argument was made that these ordinances
4 were around for 20 years, and so, you know, shame on
5 Hardeville. The problem with that is the Jasper County
6 Auditor, the Jasper County Treasurer, and Jasper County
7 itself for 12 years, not only knew about the fact that the
8 property had been annexed, but actually levied, collected
9 and distributed the revenue directly to Hardeville.

10 There is no better understanding of what those parties
11 thought than at the moment they started doing it, because
12 it wasn't that far back in history that they had just
13 placed the property in the multi-county park.

14 According to the timeline, it was only a few years
15 earlier, when they issued a second series of bonds. If
16 there had been an issue, if there had been a concern, if
17 there had been some understanding that state law and multi-
18 county park agreement provided for the result that they
19 seek now, it seems that 12 or 14 years ago would have been
20 when it was raised, not after the parties had continued to
21 operate, as if it wasn't the City of Hardeville's millage
22 being applied to the multi-county park agreement.

23 Implicit in what Jasper County's arguments are, are
24 the findings that the Auditor and the Treasurer breached
25 their fiduciary duty, violated state law for more than a

1 decade, that the bond holder and Beaufort County were
2 completely asleep at the switch for at least 12 years,
3 under all of those bond ordinances, and the bond itself,
4 and I'm happy to provide the sections, there are record
5 requirements, there are audit provisions. Any of those
6 parties, as a matter of public record, could have
7 determined, "Hey, wait a minute, why are we sending money
8 to the City of Hardeville? That's our money, that should
9 go to the bond holder."

10 The vague referenced to other allegations or other
11 causes of action, there are no causes of action from the
12 bond holder against Jasper County. They've not sued them
13 for breach of contract. They've not sued them for any
14 violation of the bond covenants. There's no cause of
15 action against the County Treasurer or the County Auditor.
16 To my knowledge, their actual bonds, and I don't mean the
17 debt instruments, their surety bonds have not been called
18 for a violation of their office malfeasance or some -- none
19 of that's happened. Why? Because the interpretation is
20 what it was 14 years ago. This money belongs to the City of
21 Hardeville, they're not part of the multi-county park
22 agreement, and we should all continue to do what we were
23 doing before.

24 So let me sum up by saying this, and I appreciate the
25 Court's indulgence, the Court need only make one finding.

1 The Court doesn't have to construe the Constitution. The
2 Court doesn't have to construe the statutory language among
3 itself or in concert with the Constitution, all the Court
4 has to do is look at the face of that document, the multi-
5 county park agreement, and determine whether the General
6 Assembly intended for it to have a specific manner of
7 distribution; and, if it did, and that is not in the
8 document, or as the Supreme Court said, it isn't specific
9 enough, wherever you may find it, then the agreement fails,
10 as to the City of Hardeville.

11 If the other parties here want to create a multi-
12 county park and move on as if nothing happened or want to
13 continue to operate as they had for 14 years after the City
14 annexed the property under some sort of defector quasi-
15 contract, they certainly can do that.

16 Hardeville has no issue with that, but what they
17 cannot do is operate under an invalid agreement, either
18 factually or legally.

19 Very, very briefly, the problems I have with the
20 Affidavit -- and I say this with a lot of trepidation --
21 I'm not suggesting that the Records Custodian has done
22 anything inappropriate, I just want that to be clear,
23 before anybody thinks that I'm calling somebody out.

24 The difficulty is the custodian of those records has
25 said that what is attached as Exhibit 1A, is Ordinance

1 Number 2001. What is actually attached is what appears to
2 be Ordinance Number 2001 with a fully executed multi-county
3 park agreement, which is not referenced in Ordinance Number
4 2001, what is referenced is a form of that agreement, and
5 what appears to be Beaufort County Ordinance Number 2012,
6 which is not referenced at all in the Jasper County
7 Ordinance.

8 The other issue --other two issues, they are clocked
9 in by the Clerk of Court as three separate documents, which
10 raises questions about how they could have been one
11 instrument, and they also have different footers; which I
12 realize seems maybe nitpicky, but what's odd is the
13 Beaufort County Ordinance and the signature page for Jasper
14 County have the same footer, but it's a different footer
15 than the signature page for Beaufort County, and there
16 appears to be no footer on the Ordinance.

17 And, to me, that raises issues about are those
18 actually the documents? And, again, normally, I would not
19 nitpick this but this is a central argument to Jasper
20 County's proving that this, in fact, is what was approved.
21 And just on the face of the document there are such
22 internal consistencies, and this is just the one piece that
23 I've had a chance to look at, frankly, that raises an issue
24 for me given when it was filed and what's contained, and

1 the fact that what it's called and what it actually is are
2 not consistent. Thank you, Your Honor.

3 THE COURT: All right. Mr. Cartin?

4 MR. CARTIN: I will let the other parties go.

5 THE COURT: No, sure, go ahead.

6 MR. ELLIS: Your Honor, I just want to ask a question.

7 I represent the bond holder.

8 THE COURT: Give me your name, please.

9 COURT REPORTER: Yes.

10 MR. ELLIS: My name's Bernie Ellis.

11 THE COURT: Okay.

12 MR. ELLIS: I'm with Burr & Forman --

13 THE COURT: Okay.

14 MR. ELLIS: -- out of Greenville, and I wanted to ask,

15 Your Honor, since the motion that Mr. Kozlarek -- his

16 motion to argue for summary judgment on the ground that the

17 park agreement is invalid is actually not on the roster for

18 today. I would like to have the opportunity, if we could,

19 and I don't -- I'm not for sure we would, but could we

20 submit a memo? We have like 15 days to submit a memo

21 possibly addressing the issue or the validity of the

22 ordinance, because we -- we're the bond holder. We're the

23 one who controls the money. I would like to to address

24 that also, since he brought up the fact that the bond

25 holder has not raised a counterclaim against Jasper County.

1 I would like to note that that's not of the question that
2 that's going to happen, because of the right to amend.

3 So I would like also to be able to address that issue
4 as well.

5 THE COURT: I don't have any problem with that.

6 MR. ELLIS: Fine, Your Honor, thank you.

7 THE COURT: Okay.

8 MR. CARTIN: All right, Your Honor, just very quickly,
9 I can see the excitement on your face as I rise to respond
10 to that.

11 THE COURT: No, I understand.

12 MR. KOZLAREK: First off, I lost him before you ever
13 stood up.

14 MR. CARTIN: First off, the alleged lateness of the
15 Affidavit, it's a responsive Affidavit under rules, it's
16 going to be served two days prior to the hearing, and it
17 was served far more than two days prior to the hearing,
18 which was Friday.

19 We didn't try to hide the ball there. I am shocked
20 and amazed at some of these issues because none of them are
21 pled. This whole -- they're asserting an exemption, none
22 of that is pled anywhere in the complaint. It's not pled
23 in their motion. All of this is new information to me.

24 Frankly, until I read their response to our Motion for
25 Summary Judgment, I didn't think a Records Custodian

1 Affidavit was even necessary because that is the first
2 place they ever controverted that there may be something
3 wrong with our process. Never heard that before once in
4 this litigation thus far.

5 We've had a lot of conversations about this. So our
6 filing of the Affidavit was simply an attempt to take the
7 records that are on file, as a matter of public record, and
8 to provide them. And, Your Honor, half of these documents
9 they already had attached to their complaint, so the
10 allegation that we're hiding the ball or something is
11 absolutely a smoke screen.

12 And I just -- I've been trying to figure out why
13 Hardeville doesn't want an answer on this and they sought a
14 declaratory judgment asking the Court to answer this
15 question, what's the tax status of this property, who's
16 entitled to this revenue, and we have given answer to that.

17 I want to go through some of the specific statements
18 he made. First, at 44-1-170, it says, "The park agreement
19 must specify the manner in which revenue must be
20 distributed to each of the taxing entities within each of
21 the participating counties."

22 He asserted there that that means specify within the
23 four corners of a document labeled, park agreement, the
24 manner in which revenue is supposed to be distributed.

1 That's not in the statute, it's not in the Constitution,
2 it's in none of the case law.

3 All this has -- it says it has to specify the manner
4 in which revenue will be distributed. The manner in which
5 it's going to be determined, is pursuant to an ordinance, a
6 duly adopted ordinance. There's no -- I mean that's the
7 other issue here, these are all laws.

8 I don't have to provide a document at all outside an
9 ordinance, it is a matter that can be included in a brief.
10 It's like saying you didn't give me discovery in all the --
11 all the case law you cited, or the statutes that you cited,
12 that's what it's tantamount to, especially a 20-year-old
13 ordinance; but, in any event, back to the -- the 4-1-170,
14 the Supreme Court in construing that didn't make the
15 holding nearly as breathtakingly broad, well. A, it was a
16 dicta. It wasn't a holding at all, but it was basically
17 dicta that addressed a very specific issue that the Court,
18 apparently, found with the agreements in the Horry County
19 case, which are not before the Court.

20 We don't know what those agreements say. We don't
21 know if they were ordinances, we don't know if there was a
22 -- a 50-page agreement that says, "Multi-County Park
23 Agreement," who knows?

24 So it's impossible to apply that case here, but what I
25 will say is that the language of the amended ordinance

1 2000-1 says that says "Entities in Jasper County will get
2 revenue, which may be inadequate," excuse me, let me start
3 over again.

4 "The entities in Jasper County which led the ad
5 valorum property tax in any of the areas comprised with the
6 park will get revenue at the same percentage as equal to
7 the taxing entities percentage of the millage rate being
8 levied in the then current tax year or property tax
9 purposes."

10 Well, there's certainly a portion of their millage
11 attributable to operate, and, certainly, a portion of their
12 millage attributable to debt service, there's no mystery
13 here. They know how -- they know the overall percentage
14 they get, and they can specify and figure out exactly what
15 that goes to.

16 So I think they're over-construing the Horry County
17 case. As a matter of public policy, I just want to step
18 back for a second, and say that a ruling for Hardeville
19 upends the entire scheme of the economic developments in
20 South Carolina. I don't think I'm being overly dramatic
21 when I say that, because here -- here's what it basically
22 says, is that counties are now, in order to prevent the
23 situation here, are gonna have to have to enter into a --
24 into a multi-county park agreement that addresses what
25 every -- every potential entity in the -- in the County

1 that could possibly annex property into the area? I don't
2 know. Or let's say a County does this, a County negotiates
3 with a business to come in and put property in a park and
4 operate there, that business bills out a pro forma, it
5 negotiates a fee with the County, it enters into a multi-
6 county park agreement, and a neighboring municipality
7 annexes that property into it.

8 Now what happens? Does that completely obviate the
9 deal that the County and the -- and the party just struck?
10 Mr. Kozlarek went through great detail through the
11 statutes, arguing that only, you know, that -- that,
12 essentially, Hardeville should have been, what, consulted
13 when it annexed property in? I mean I -- how on earth does
14 this practically even work? So I would ask Your Honor to
15 think about the public policy implication here.

16 THE COURT: See, I'm thinking that Mr. Kozlarek's
17 argument is the Court needs to decide whether or not the
18 the multi-park agreement is valid or not; and if it was
19 valid, then when they -- or whoever might annex the
20 property that's included in the multi-county park, then
21 would have to abide by the agreement, right?

22 MR. KOZLAREK: That's exactly right, Your Honor, yeah.

23 THE COURT: So I mean -- so making that different
24 because if there are, you know, invalid multi-county --
25 county park agreements, that then happen later to be

1 annexed into some municipality, that wouldn't change
2 anything.

3 MR. CARTIN: It seems excessive.

4 THE COURT: Is that right or wrong?

5 MR. CARTIN: Except in one circumstance, Your Honor.

6 If they had negotiated a fee, they could cap the millage
7 and get a credit. It would sort of -- if somebody annexed
8 it in there, it would obviate that credit because it could
9 potentially add more on there.

10 Now, if they're argument is that the County -- that
11 the municipalities that annex property in a park are bound
12 by the park agreement, we're okay with that, and that's --

13 THE COURT: Is that right?

14 MR. CARTIN: -- basically what all our agreement is.

15 MR. KOZLAREK: Your Honor, we have two arguments. The
16 first one is that the multi-county park agreement is
17 invalid.

18 The second is that reading the Constitution of the
19 various statutes, that the City is not bound by the multi-
20 county park arrangement, based on annexation.

21 Again, the annexation statute specifically
22 contemplates cities annexing property into a multi-county
23 park that are already in a multi-county park, into the
24 jurisdiction and the ability of the city to assess taxes
25 and fees, based on the full value of that property.

1 THE COURT: Okay.

2 MR. CARTIN: Right, and our argument is none of this
3 -- none of the overall statutory schemes in how the
4 development works, if they're allowed to operate outside
5 that exemption from having ad valorem taxation, which we
6 argue it is.

7 THE COURT: I understand.

8 MR. CARTIN: I can go into detail for another half
9 hour, Your Honor.

10 THE COURT: I understand.

11 MR. CARTIN: I'm not going to do that, because I know
12 that there were several people waiting out in the hall for
13 us. Is there anything we have not addressed, Your Honor,
14 that you'd like me to address?

15 THE COURT: I don't think so. I mean there's
16 certainly going to be a lot of -- you know, I need to get
17 through all of this material and try to come up with the
18 right decision, obviously.

19 Is there anything else that y'all need for me to
20 consider?

21 MR. KOZLAREK: Your Honor if I may very briefly.

22 THE COURT: Sure.

23 MR. KOZLAREK: Very quickly under Rule 6, Mr. Cartin
24 is correct, if this were compliant, then it would be
25 timely. I have no objection to that. The problem is it

1 was used in their motion to start with. What ended up was
2 actually a summary of their Motion for Summary Judgment and
3 the Affidavits were relied upon, excuse me, the Affidavit
4 was relied on as part of that motion.

5 THE COURT: Uh-huh.

6 MR. KOZLAREK: If the Court wants to consider it in
7 reply, I have no objection; but as far as the substantive
8 basis for their motion, it should not be considered by the
9 Court.

10 THE COURT: All right.

11 MR. KOZLAREK: We have had a number of conversations,
12 but what we've not had is discovery. So if the parties had
13 participated in discovery, then some of these fact issues
14 probably would have come out through the discovery process,
15 both the written discovery process and depositions; but
16 because the lawyers have had friendly conversation, that
17 doesn't change the questions that we may have about the
18 fact issues.

19 What Section 4-1-170 is -- it does not say that the
20 method needs to be determined. What it says is the
21 specific method must be in the document. The actual
22 language says, "The agreement must contain the specific
23 manner," manner, not how you determine it, but the manner.

24 Mr. Cartin's representation about the Horry County
25 case is not entirely accurate. The Court actually goes

1 through and recites, "That within Horry County, the
2 agreement provides for the allocation of revenue as
3 follows: 50 percent to the School District, 25 percent to
4 Horry County, and 24 percent to the retirement of debt."

5 So the Court was very specific about what was included
6 in the park agreement, and yet still took the opportunity
7 to point out to the parties that their park agreement was
8 invalid but didn't rule on it because the issue wasn't
9 raised.

10 That issue is raised here, unquestionably. And the
11 last public policy argument, I've avoided that, because I'm
12 not sure that that makes a whole lot of difference for
13 purposes of the Court, but because it was raised, I'll
14 respond.

15 The public policy at issue here is the ability of a
16 city to annex property freely. And in this case at the
17 specific request of 100 percent of the owners -- one owner
18 of that property -- in the extreme example two counties
19 could get together, and one of those counties could put all
20 of the property around every city inside a multi-county
21 industrial park; there's nothing that prohibits that under
22 state law.

23 According to Jasper County, it's purely within the
24 County's discretion, as to whether or not that property
25 goes in a multi-county park. At that point it would be

1 practically impossible for a city to annex property,
2 because the county would say, "Thank you very much, we're
3 now gonna add your millage to the millage we're already
4 collecting, and we're gonna distribute it to ourselves and
5 there's nothing you can do about it."

6 That is the result that Jasper County's request for
7 their decision would reach. Anybody who had a multi-county
8 park agreement could stifle the ability of a city to annex
9 property, and then properly provide the services, because
10 they wouldn't get the tax revenue.

11 They wouldn't have an option; it would be purely up to
12 the county. That is not -- that cannot be what the voters
13 voted for or the General Assembly thought was going to
14 happen, when it enacted all of these statutes,
15 specifically, in light of the annexation statute that
16 permits and contemplates the annexation of multi-county
17 park property.

18 MR. CARTIN: Your Honor, just one final thing and
19 I'll --

20 THE COURT: Sure.

21 MR. CARTIN: That's exactly what the Supreme Court of
22 South Carolina said could happen. In fact, Justice
23 Pleconis in his dissent in the Horry County case said a
24 county, in creating multi-county parks could take all of

1 the revenue for itself and leave none for the other taxing
2 entities.

3 That's exactly what the Supreme Court said here, and I
4 -- that's not necessarily what we're arguing, but it's
5 justified, so I don't see that as a public policy, or even
6 at all, that -- that is what the law says can happen.

7 MR. KOZLAREK: In the Horry County case the City of
8 Myrtle Beach was a party to the multi-county park
9 agreement, so that issue was not raised or ruled on by the
10 Court and was not called out even as dicta. It's
11 completely absent from the discussion because the City was
12 already there, the City had already consented, none of that
13 was a problem.

14 THE COURT: All right, I appreciate it. I don't like
15 to do this. I'll be honest with you. I mean, I really
16 don't like this, but I am going to ask for proposed Orders,
17 just so I can --

18 MR. KOZLAREK: Understood.

19 THE COURT: -- narrow this down a little bit.

20 MR. CARTIN: Your Honor, what we have -- can we get a
21 copy of the transcript before --

22 MR. KOZLAREK: And also if we're allowing the bond
23 holder to provide supplement materials --

24 THE COURT: Sure, I understand. I'm not in a hurry to
25 make a ruling, I just want to try to --

1 MR. CARTIN: Absolutely, Your Honor. Maybe 30 days
2 from the date we get the transcript?

3 THE COURT: Sure, I think that seems fair.

4 MR. CARTIN: I think it's feasible.

5 THE COURT: Okay. So we'll just -- I'll be studying
6 up in the meantime and look forward to receiving what you
7 all have filed and so forth.

8 Anything further?

9 MR. KOZLAREK: No, Your Honor, not from us.

10 MR. CARTIN: I think we've taken enough of the Court's
11 time.

12 THE COURT: No, no. That's okay. Have a good
13 afternoon.

14 MR. CARTIN: Thank you, Your Honor, have a good day.

15 THE COURT: All right, thank You all.

16 (Whereupon, the hearing was concluded at 12:10 p.m.)
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21

22 **CERTIFICATE OF REPORTER**

23
24 I, Kimberlee M. Williams, Certified Shorthand
25 Reporter/Registered Professional Reporter for the 14th Judicial

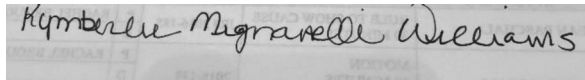
1 Circuit for the State of South Carolina, do hereby certify that the
2 foregoing is a true, accurate, and complete Transcript of Record of
3 the proceedings had, evidence introduced in the trial of the
4 captioned case, relative to appeal, in the Court of Common Pleas
5 Court for Jasper County, South Carolina, on the 27th day of
6 October, 2021.

7 I do further certify that I am neither of kin, counsel, or
8 interest to any party hereto.

9

10 This, the 17st day of December, 2021.

11

12  Kimberlee Mignarelli Williams



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June 2, 2022

VIA ELECTRONIC MAIL & U.S. MAIL

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Re: City of Hardeeville vs. Jasper County, South Carolina, Jasper County Treasurer, and Jasper County Auditor; and Jasper County, South Carolina, et al. vs. City Hardeeville et al.; Case No.: 2021-CP-27-00028

Dear Judge DeBerry:

As you are considering Jasper County's and the City of Hardeeville's respective motions for summary judgment, we wanted to make you aware of a May 5, 2022 letter issued by the South Carolina Attorney General's Office, which is attached as Exhibit A. Although the letter does not address every question the Court must consider before ruling on the parties' respective motions, it does provide a straight-forward, high-level analysis of S.C. Code Ann. § 4-1-170 *et seq.* (the "Act"), as well as a review of the South Carolina Supreme Court's application of the Act in *Horry County School District vs. Horry County*, 346 S.C. 621, 552 S.E.2d 737 (2001).

The Attorney General's letter was issued in response to the following four questions:

- (1) Is there a requirement that revenue from the fee in lieu of taxes from an MCIP under the Act be distributed in the same proportion that it would be if the property were taxable?
- (2) Is a county required to specify how the revenue should be allocated, and, if so, what are the appropriate allocation methods?
- (3) Under the Act, are the fees generated in lieu of ad valorem taxes from all property within an MCIP required to be reallocated to all the taxing entities within the county, or may some fees only be allocated to certain taxing entities?

- (4) Does any South Carolina statute provide any remedy for a local governmental entity within a county to redress inequitable allocation of fees collected in lieu of ad valorem taxes?

A summary of the Attorney General's answers to these four questions is as follows:

- (1) Based on the Supreme Court's decision in *Horry County*, a county is not required to distribute the fee in lieu revenue in the same proportion as it would if the property were taxable.
- (2) S.C. Code Ann. § 4-1-170(3) requires the MCIP agreement to "specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties," but the Supreme Court did not specify a particular methodology that must be used. Therefore, counties are not required to employ a specific methodology to allocate fee in lieu revenue.
- (3) Because the *Horry County* Court found that S.C. Code Ann. § 4-1-170(3) requires allocation to each of the taxing entities within the county, the taxing entities within an MCIP must receive *some* allocation of the fee in lieu revenue.
- (4) "[T]he law does not provide for remedy for school districts *or other taxing entities* who believe they received an inequitable allocation of fee in lieu of revenue in the agreement creating a [MCIP]." (emphasis added).

We hope that you find this summary and the attached May 5, 2022 letter from the Attorney General's Office helpful in making your decision. We look forward to receiving the Court's decision soon.

With best regards, I am

Sincerely,



Walter H. Cartin

WHC

cc: Michael E. Kozlarek (*via email only*)
Thomas Keaveny (*via email only*)
Bernie Ellis (*via email only*)
Thomas A. Bendle, Jr. (*via email only*)

Exhibit A



ALAN WILSON
ATTORNEY GENERAL

May 5, 2022

J. Alexander Sherard, Esq.
White & Story LLC
Post Office Box 7036
Columbia, South Carolina 29204

Dear Mr. Sherard:

We received your letter requesting an opinion of this Office on behalf of Greenwood School District 52 (the "District"). We understand your firm, White & Story LLC, serves as general counsel to the District and the District's Board of Trustees desires an opinion regarding the Greenwood County's allocation of fee in lieu of tax revenue from a joint county industrial and business park ("JCIBP") to the District. You present four specific questions as follows:

1. Is there a requirement that revenue from the fee in lieu of taxes from a JCIBP under S.C. Code Ann. 4-1-170 et seq. be distributed in the same proportion that it would be if the property were taxable?
2. Is a county required to specify how the revenue should be allocated? If so, what are the appropriate allocation methods (e.g., percentage-based, pro-rata, etc.)?
3. Under §4-1-170 et seq., are the fees generated in lieu of ad valorem taxes from all properties within a JCIBP required to be reallocated to all the tax entities within the County, or may some fees only be allocated to certain tax entities?
4. Does state statute provide any remedy for a local government entity within a county to redress inequitable allocation of fees collected in lieu of ad valorem taxes?

Law/Analysis

Section 13(D) of article VIII of the South Carolina Constitution (2009) permits the creation of joint industrial or business parks. This provision exempts property contained within the park from ad valorem taxes, but requires property owners pay a fee equivalent to the property taxes that would have been collected, commonly referred to as a "fee in lieu." S.C. Const. art. VIII, § 13(D). Pursuant to this provision, prior to the establishment of such joint industrial or business parks, the General Assembly must "first provide by law for the manner in which the value of the property in the park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any

J. Alexander Sherard, Esq.
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May 5, 2022

schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of the taxable property in all school districts of this State.” Id. In response, the General Assembly adopted section 4-1-170 of the South Carolina Code (2021), which you reference in your letter. This provision states as follows:

(A) By written agreement, counties may develop jointly an industrial or business park with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State. The written agreement entered into by the participating counties must include provisions which:

- (1) address sharing expenses of the park;
- (2) specify by percentage the revenue to be allocated to each county;
- (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.

(B) For the purpose of bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3), allocation of the assessed value of property within the park to the participating counties and to each of the taxing entities within the participating counties must be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties. Misallocations may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of Section 4-29-68(E).

(C) If the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality prior to the creation of the multi-county industrial park.

S.C. Code Ann. § 4-1-170.

In 2001, the South Carolina Supreme Court considered whether section 4-1-170 gave a county complete discretion as to how to allocate the fee in lieu revenue received in relation to a multi-county business park (“MCBP”). Horry Cty. Sch. Dist. v. Horry Cty., 346 S.C. 621, 626, 552 S.E.2d 737, 739 (2001). In that case, the agreement between Horry County and several adjacent counties creating the MCBP allocated the fee in lieu revenue without regard to the millage imposed by the various taxing entities, allocating less to the Horry County School District than it would have received in property tax. Id. at 625, 552 S.E.2d at 739. The Horry County School District sued Horry County claiming Horry County should have allocated fee in lieu revenue in accordance

with the millage the various taxing entities would have received absent the MCBP. The Supreme Court considered section 4-1-170 and section 4-29-67 of the South Carolina Code (2021), pertaining to industrial development projects, which provides in pertinent part:

(L)(1) For a project not located in an industrial development park as defined in Section 4-1-170, distribution of the fee in lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable but without regard to exemptions otherwise available to a project pursuant to Section 12-37-220 for that year.

(2) For a project located in an industrial development park as defined in Section 4-1-170, distribution of the fee in lieu of taxes on the project must be made in the manner provided for by the agreement establishing the industrial development park.

(emphasis added). The Supreme Court concluded:

Reading these statutes together, there is clearly no requirement that revenue from the fee in lieu of taxes from an MCBP be distributed in the same proportion that it would be if the property were taxable. First, Article VIII, § 13(D) and § 4-1-170 exempt property in MCBPs from ad valorem taxation and permit the county to enter agreements specifying how MCBP revenue will be distributed. Second, § 4-1-170(2) specifically allocates that revenue to the county, not to any another taxing entity. Third, while § 4-1-170 clearly contemplates some allocation to the other taxing entities within the county, neither § 4-1-170 nor the fee in lieu statutes require the county to distribute to the district a proportion of MCBP funds identical to the district's millage, as required for other fee in lieu revenue. Fourth, § 4-1-170 contemplates that a school district might not receive the funding from MCBPs that it would from taxable property by specifying that the index of taxpaying ability will be calculated based on funds "received and retained" by the school district. If the legislature had intended to require counties to distribute MCBP revenue in the same proportion as if the property were taxable, it could have said so in plain terms exactly as it did concerning tax exempt non-MCBP property. Compare § 4-29-67(L)(1) with § 4-29-67(L)(2); See also *Tilley v. Pacesetter*, 333 S.C. 33, 508 S.E.2d 16 (1998) (if legislature had intended certain result in statute it would have said so).

Horry Cty. Sch. Dist., 346 S.C. at 630-31, 552 S.E.2d at 741-42 (footnotes omitted).

With this authority in mind, we address your specific questions. In response to your first question, given the Court's decision in Horry County School District, we do not believe a county is required to distribute the fee in lieu revenue in the same proportion as it would if the property were taxable.

As for your second question, the Supreme Court in Horry County School District instructed: "Section 4-1-170(3) requires the agreement creating the MCBP to 'specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.'" Id. at 631, 552 S.E.2d at 742. But, the Supreme Court did not specify a methodology counties must use. Moreover, in our review of section 4-1-170, we did not find a requirement by the General Assembly that counties use a particular method in making such an allocation. Thus, based on the Court's holding and the absence of a specific requirement under section 4-1-170, we believe counties are not required to employ a specific methodology to allocate fee in lieu revenue.

Next, you question whether fee in lieu revenue must be reallocated to all of the taxing entities. The Supreme Court in Horry County School District cites to section 4-1-170(3) stating the agreement must "specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties," as "requiring some allocation to each of the taxing entities within the county." Id. at 631, 552 S.E.2d at 742 n.4. As such, we believe each taxing entities within the JCIBP must receive some allocation of the fee in lieu revenue.

Lastly, you ask whether local taxing authorities have a remedy to redress inequitable allocations of fee in lieu revenue. We did not find such a remedy in the statutes governing JCIBPs. Furthermore, in Horry County School District, the Supreme Court appears to recognize a remedy does not exist, describing it as a problem "inherent in the MCBP scheme." Id. at 635, 552 S.E.2d at 744.

The MCBP scheme allows the county to determine unilaterally what percentage of revenue derived from the fee in lieu to allocate to schools. Certainly nothing in the ballot question authorizing the constitutional amendment alerted voters that this result was possible. On the contrary, voters were assured by public officials that school funding would not be affected. See Amendment Benefits Rural Counties, The State, Oct. 18, 1988, at Metro 1 ("It's important that voters understand that they are not exempting taxes,' Ed Burgess of the State Development Board said. 'All of the taxing entities will get their share. A contract will guarantee payment.'").

...

The school district and many *amici curiae* have argued passionately against the policies effected by the statutes at issue here. We sympathize with the schools' plight; however, this Court does not sit as a super-legislature. Granting the relief the district requests would involve re-writing § 4-1-170, under the guise of statutory construction, to require revenue from MCBP fees to be allocated in

J. Alexander Sherard, Esq.
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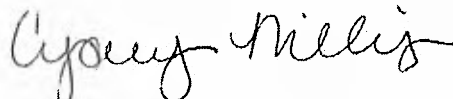
the same proportions as if the property were subject to ad valorem taxes. Such action is the sole prerogative of the Legislature.

Id. at 635-36, 552 S.E.2d at 744. As such, we conclude that the law does not provide for remedy for school districts or other taxing entities who believe they received an inequitable allocation of fee in lieu revenue in the agreement creating a JCIBP.

Conclusion

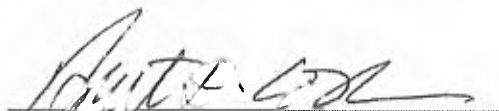
Considering the Supreme Court's opinion in Horry County School District, we do not believe fee in lieu revenue collected from a JCIBP must be distributed to local taxing entities in the same proportion as the property tax revenue they would have received had the property been taxable. However, we believe all taxing entities must be allocated some fee in lieu revenue and the amount allocated must be specified in the agreement establishing the JCIBP, but no particular allocation method is required. As our Supreme Court recognized in Horry County School District, "[t]he MCBP scheme allows the county to determine unilaterally what percentage of revenue derived from the fee in lieu to allocate to schools." Finding no other remedy under the law, schools, like other taxing entities, appear to be left without a remedy to redress inequitable allocation of fee in lieu revenue.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

KING & KOZLAREK

Finance | Development | Litigation

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June 3, 2022

BY ONLY EMAIL (HSDEBERRYSC@SCCOURTS.ORG; HSDEBERRYLC@SCCOURTS.ORG)

The Honorable H. Steven DeBerry, IV
South Carolina Circuit Court Judge – At Large
181 North Irby Street, Suite 3600
Florence, South Carolina 29501

Re: *City of Hardeeville vs. Jasper County, South Carolina, et al.*
Case No.: 2021-CP-27-00028

Dear Judge DeBerry:

Hardeeville agrees with Jasper County's suggestion of June 2, 2022: the Attorney General's Letter of May 5, 2022, may be helpful in resolving the referenced dispute. Hardeeville, however, disagrees with the County's interpretation of that Letter.

As discussed on pages 17-18 of Hardeeville's proposed order (a copy of which is attached for the Court's convenience), all parties to this dispute agree Hardeeville was (and is) not a party to the Jasper agreement that purports to create the multi-county park at issue. Thus, whether the amount of taxes that Hardeeville is collecting through its millage levy would be equitable, or inequitable if those taxes were allocated as a fee—the crux of the school districts' complaint in both the inquiry that prompted the Attorney General's Letter and *Horry County*—is not a central issue before this Court.

Rather, a central issue before this Court is whether the Jasper agreement is viable and, if so, whether Hardeeville is bound. Although done so in the context of a school district, the Attorney General's Letter speaks to this by emphasizing a portion of the *Horry County* holding: “the [multi-county park] **agreement must specify** the manner in which revenue must be distributed to **each of the taxing entities** within each of the participating counties” (emphasis added). Hardeeville's proposed order, page 23, suggests this Court reach the same conclusion: “the Park Agreement does not comply with, at a minimum, section 4-1-170(A)(3) because the Park Agreement **fails to specify** the manner in which revenue must be distributed to **each of the taxing entities** within each of the participating counties” (internal quotations and citations omitted) (emphasis added).

The Attorney General's Letter concludes as Hardeeville has requested this Court to conclude: “the amount allocated must be specified **in the agreement establishing the [park]**” (emphasis added), which is what section 4-1-170(A)(3) requires, which is one of the holdings in *Horry County*, and which is precisely one of the elements missing from the Jasper agreement.

Hardeeville will provide further briefing and additional oral presentations as the Court directs but otherwise will not engage in further post-motion letter writing.

Respectfully submitted,



Michael E. Kozlarek

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

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

CITY OF HARDEEVILLE,)
)
Plaintiff,)

vs.)

JASPER COUNTY, SOUTH CAROLINA,)
JASPER COUNTY TREASURER, and)
JASPER COUNTY AUDITOR,)
)
Defendants.)

**ORDER GRANTING PLAINTIFF CITY OF
HARDEEVILLE’S MOTION FOR SUMMARY
JUDGMENT AND DENYING JASPER
COUNTY’S MOTION FOR PARTIAL
SUMMARY JUDGMENT AND DENYING
DEFENDANT JASPER COUNTY’S MOTION
FOR PROTECTIVE ORDER AND DISMISSING
CITY OF HARDEEVILLE AS A PARTY**

AND

JASPER COUNTY, SOUTH CAROLINA,)
)
Cross Co-Plaintiff,)

VERNA GARVIN, in her official capacity)
as Jasper County Treasurer,)
Cross Co-Plaintiff, and)

MONICA WILSON, in her official capacity)
as Jasper County Auditor,)
Cross Co-Plaintiff)

vs.)

CITY OF HARDEEVILLE,)
NICKEL PLATE ROAD, LLC, and)
BEAUFORT COUNTY, SOUTH)
CAROLINA,)
Cross Defendants.)

I. INTRODUCTION

This matter is before the Court pursuant to Defendant Jasper County’s (“Jasper”) Motion

for Partial Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (“SCRCP”), filed July 27, 2021 (“Jasper Summary Judgment Motion”), Jasper’s Motion for Protective Order, pursuant to Rule 26(c), SCRCP, filed August 24 (“Jasper Protective Motion”), and Plaintiff City of Hardeeville’s (“Hardeeville”) Motion for Summary Judgment, pursuant to Rule 56, SCRCP, filed October 15 (“Hardeeville Summary Judgment Motion”).

The Court held a hearing on all pending motions on October 27, 2021. Present and participating at the hearing were Walter H. Cartin, Esq. on behalf of Jasper, and Michael E. Kozlarek, Esq. on behalf of Hardeeville. Also participating at the hearing was Bernie Ellis, Esq. for Nickel Plate Road, LLC (“Nickel Plate”). Also present at, but not participating in, the hearing was David L. Tedder, Esq., Jasper County Attorney, on behalf of Jasper, Mary B. Lohr, Esq., on behalf of both Defendant Jasper County Treasurer (“Treasurer”) and Defendant Jasper County Auditor (“Auditor”), Thomas J. Keaveny, II, Beaufort County Attorney, on behalf of Defendant Beaufort County, South Carolina (“Beaufort”), and Andrew Fulghum, Jasper County Administrator (“Administrator”).

In addition to the oral presentations provided by Jasper, Hardeeville, and Nickel Plate, the Court reviewed the pleadings and exhibits, motions, the memoranda provided, any affidavit(s), and proposed orders submitted by Jasper and Hardeeville. Following this extensive review, as described more fully below, the Court concludes Jasper has failed to meet its burden sufficient for this Court to grant partial summary judgment in Jasper’s favor. Further, the Court concludes Hardeeville is entitled to summary judgment. Finally, Jasper’s Protective Motion only seeks protection from responding to discovery “until thirty (30) days after the Court enters a decision on Jasper’s Motion for Partial Summary Judgment.” Jasper Protective Motion, p. 2.

Having ruled against Jasper regarding the Jasper Summary Judgment Motion, and having concluded Hardeeville is entitled to summary judgment, the Court finds the Jasper Protective Motion is mooted and does not further address the Jasper Protective Motion.

II. PROCEDURAL BACKGROUND

The subject of this dispute is whether certain real property (“Real Property”) lying in Hardeeville’s corporate limits is part of a multi-county industrial or business park involving Jasper and Beaufort (“Multi-County Park”), and, if so, whether Hardeeville is nonetheless permitted to impose either an ad valorem tax or an equivalent fee-in-lieu of tax against the Real Property.

On February 1, 2021, Hardeeville filed this action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, South Carolina Code Annotated section 15-53-10, *et seq.*, and Rule 57, SCRCP, to declare the rights, duties, and responsibilities of Hardeeville and Jasper, the Auditor, and the Treasurer, and for injunctive relief prohibiting these defendants from violating State law and/or their respective duties and responsibilities thereunder all as relates to the Real Property. Contemporaneously with the Summons and Complaint, Hardeeville requested an *ex parte* temporary restraining order and preliminary injunction prohibiting the defendants from disbursing certain funds pending a resolution of the pending dispute. The Honorable Bentley D. Price granted an *ex parte* temporary restraining order on February 5. At the subsequent hearing on the preliminary injunction, Judge Price ordered that the temporary restraining order be dissolved, and the parties provide a consent order under Rule 67, SCRCP to accomplish the same restrictions as Hardeeville’s requested preliminary injunction. Judge Price entered the Rule 67, SCRCP Consent Order on March 17, 2021 (“Consent Order”). The Consent Order required the

Treasurer to deposit all Disputed Funds¹ with the Jasper County Clerk of Court in accordance with the provisions of Rule 67, SCRPC.

On February 9, 2021, Jasper answered Hardeeville's Complaint, largely denying the substantive allegations, and cross complained against Beaufort and Nickel Plate. Beaufort and Nickel Plate each answered. By the parties' consent, Hardeeville filed an Amended Complaint to which Jasper filed an Amended Answer and an Amended Cross Complaint. Beaufort and Nickel Plate each filed an Amended Answer. Neither Beaufort nor Nickel Plate have made any claims against Hardeeville, Jasper, the Treasurer, or the Auditor.

The Jasper Summary Judgment Motion was filed on July 17, 2021. On August 9, 2021, Hardeeville served discovery on Jasper. In response, Jasper filed its Protective Motion. On October 15, 2021, Hardeeville filed its Summary Judgment Motion. By the parties' consent, all then-pending motions were heard by the Court on October 27, 2021. At the hearing's conclusion, the Court requested Jasper and Hardeeville to provide proposed orders to the Court for its consideration in lieu of additional memoranda of law.

III. FACTUAL BACKGROUND

In addition to other facts described throughout this Order, for purposes of summary judgment, this Court accepts the following material facts as not in dispute.²

1. On February 7, 2000, Jasper enacted an ordinance in which Jasper authorized the execution of an agreement to create the Multi-County Park ("Park Ordinance").

¹ As described in the Consent Order.

² During the Hearing, Hardeeville raised concerns over the timeliness and accuracy of the information contained in the Affidavit of Records Custodian Wanda Hendrix Simmons filed by Jasper ("Affidavit"). Although not a final ruling on either the timeliness or validity of the Affidavit, for purposes of considering summary judgment, this Court accepts the Affidavit in the light most favorable to Jasper.

2. Section I of the Park Ordinance incorporates the Park Agreement by reference into the Park Ordinance: “The form of the joint industrial park agreement (the ‘Agreement’) is attached hereto and all the terms of the Agreement are hereby incorporated herein.”³
3. The Agreement for Development of Joint County Industrial and Business Park (“Park Agreement”), which was approved by the Park Ordinance, was last executed on April 10, 2000.
4. The Park Agreement’s has a stated effective date of December 31, 1999, which is 38 days before the execution of the Park Agreement was authorized by the Park Ordinance.
5. On January 11, 2001, *Horry County School District. v. Horry County*, 346 S.C. 621, 552 S.E.2d 737 (2001), was heard by our Supreme Court.
6. On April 16, 2001, Jasper enacted a bond ordinance (“General Bond Ordinance”), in which Jasper authorized the issuance of special source revenue bonds.
7. On April 16, 2001, Jasper enacted a first supplemental bond ordinance, in which Jasper authorized the issuance of additional special source revenue bonds.
8. On September 4, 2001, our Supreme Court filed the *Horry County* opinion.
9. On October 20, 2003, Jasper enacted a second supplemental bond ordinance, in which Jasper authorized the issuance of additional special source revenue bonds.
10. Section 2.1(H) of the General Bond Ordinance provides that the project, for which the bonds are being issued, results in “no pecuniary liability of . . . [any] incorporated

³The Park Agreement does not specifically incorporate the Park Ordinance by reference. Rather, Section 7 of the Park Agreement provides that: “Revenues received by Jasper County shall be distributed by Jasper County to the political subdivisions of Jasper County (hereinafter referred to as the ‘Jasper Participating Taxing Entities’) in accordance with an ordinance adopted by Jasper County.” No specific reference to the Park Ordinance is contained in Section 7 or elsewhere in the Park Agreement.

municipality, or a charge against the general credit or taxing power of [either the County or any incorporated municipality].”

11. Section 5.2 of the General Bond Ordinance provides that the sole security for and sole source of payment of any bonds is “Net Fee Payments.”
12. Net Fee Payments includes only those amounts received by the County pursuant to the Park Agreement.
13. Net Fee Payments did not, and do not, include any ad valorem taxes.
14. On October 5, 2006, Hardeeville annexed into its jurisdictional limits the Real Property, which had been designated as part of the Multi-County Park.
15. Prior to the annexation, the Real Property’s owner petitioned Hardeeville to annex the Real Property.
16. Jasper did not, at annexation, own any portion of the Real Property.
17. Hardeeville is not a signatory or otherwise a party to the Park Agreement or to any contract related to the Multi-County Park.

III. SUMMARY JUDGMENT STANDARD

A. *Jasper Summary Judgment Motion*

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *City of Columbia v. ACLU of South Carolina*, 323 S.C. 384, 475 S.E.2d 747 (1996). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). Every benefit of the doubt is given to the non-moving party.

Watters v. Terminix Service, Inc., 376 S.C. 632, 658 S.E.2d 110 (Ct. App. 2008).

Although “[s]tatutory interpretation is a question of law.” *Chapman S.C. Dep’t of Soc. Servs.*, 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017), this Court must review the Jasper Summary Judgment Motion in its appropriate context. Jasper asserts certain property that Jasper claims has been designated as being part of the Multi-County Park is exempt from ad valorem property taxes. In South Carolina, all property is subject to taxation unless specifically exempted. *Long Cove Home Owners’ Ass’n, Inc. v. Beaufort Cty. Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997). Taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E. 337 (1920). Exemption statutes are narrowly construed, and those who claim an exemption must prove they come clearly within that exemption. *Henry P. Moses Co. v. S.C. Tax Comm’n*, 224 S.C. 193, 78 S.E.2d 187 (1953). Statutes granting property tax exemptions must not be strained or liberally construed in favor of the claimant and, to be entitled to an exemption, the taxpayer must clearly bring itself within the exemption upon which the taxpayer relies. *Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949).⁴

South Carolina case law is clear that tax exemption statutes “will not be strained or liberally construed in the taxpayer’s favor.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74-75, 716 S.E.2d 877, 881 (2011). The cardinal rule of statutory interpretation is to ascertain and

⁴The Court is aware that “[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Evening Post Pub. Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011); *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). This is of particular concern to the Court in the instant case because Jasper has declined to respond to Hardeeville’s discovery, and while seeking protection from discovery, it has elected to provide the Court with a set of documents in connection with its Affidavit. Nonetheless, viewing all of this in the light most favorable to Jasper, as the non-moving party regarding Hardeeville’s Summary Judgment Motion, the Court still finds Hardeeville, not Jasper, is entitled to summary judgment.

effectuate the intent of the legislature.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). To do so, the statutes’ terms must be given “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881. When any words are unambiguous, the words’ literal meaning must be applied. *Id.* Further, a statute must be read as a whole “and in a manner consonant and in harmony with its purpose.” *Mead v. Beaufort Cty. Assessor*, 419 S.C. 124, 135, 796 S.E.2d 165, 170 (Ct. App. 2016).

In addition to these typical rules of statutory construction, because this case deals with the interpretation of a tax exemption claim, the language of that exemption “must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.” *Berkeley Cty. Sch. Dist. v. S.C. Dep’t of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009); *Hock RH, LLC v. S.C. Dep’t of Rev.*, 423 S.C. 208, 213, 813 S.E.2d 540, 542 (Ct. App. 2018) (“The general rule is that a strict construction is required of constitutional and statutory provisions that grant exemptions . . . from taxation.” (internal quotation omitted)). It is improper to strain or liberally construe the constitutional or statutory language creating the exemption in favor of claiming the exemption. *Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542; *Berkeley Cty. Sch. Dist.*, 383 S.C. at 345, 679 S.E.2d at 919 (“[T]he language of a tax exemption statutes must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.”); *Charleston Cty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982) (“The general rule is that a strict construction is required of constitutional and statutory provisions that grant exemptions or deductions from taxation.”); *TNS Mills, Inc. v. S.C. Dep’t of Rev.*, 311 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (“The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly

construed against the claimed exemption.”); *John D. Hollingsworth on Wheels, Inc. v. Greenville Cty. Treasurer*, 276 S.C. 314, 317, 278 S.E.2d 340, 342 (1981) (“The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.”); *Mead*, 419 S.C. at 140, 796 S.E.2d at 173 (“In conjunction with these rules of statutory construction, we must also be cognizant of our policy to strictly construe a tax credit against the taxpayer as it is a matter of legislative grace.”); *Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542 (“The general rule is that a strict construction is required of constitutional and statutory provision that grant exemptions . . . from taxation.”); *Hibernian Soc. v. Thomas*, 282 S.C. 465, 470, 319 S.E.2d 338, 342 (Ct. App. 1984) (“As a general rule, tax exemption statutes are strictly construed against the taxpayer.”).

Our State appellate courts have made it clear that the overarching premise in South Carolina is that taxation is the rule with an exemption being the exception. Thus, regardless of whether it is a taxpayer claiming a tax exemption or, as here, a county claiming an exemption, this Court must view the county’s exemption claim as an exception to the general rule of taxation, and, in determining whether such exception should be applied, the Court must strictly construe the applicable legislative enactments.⁵

To be able to receive summary judgment, Jasper must establish, with every inference drawn against it, that Jasper met all factual and legal requirements for creating the Multi-County Park, that there are no genuine issues of material fact in dispute regarding that creation, and that Jasper’s legal arguments are correct as a matter of law. The Court finds Jasper’s Summary

⁵ Even were this Court to ignore the requirement that the Court strictly construe a tax exemption against the applicant, the Court would nonetheless reach the same conclusions contained in this Order.

Judgment Motion fails in all respects.

B. Hardeeville Summary Judgment Motion

A trial court will grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. Summary judgment is proper when a claim raises issues of law devoid of disputed material facts. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)) (holding the “purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”). On the grounds proposed by Hardeeville, summary judgment for Hardeeville’s claim for declaratory judgment and injunctive relief are proper.

IV. DISCUSSION

Jasper requests this Court find that, irrespective of Hardeeville’s 2006 annexation of the Real Property, (a) Section 13(d) gave Jasper the unfettered discretion to create the Multi-County Park, (b) Section 13(d) and Section 4-1-170 provided Jasper with the unfettered discretion to designate what property would be located in the Multi-County Park, (c) once the Real Property was designated by Jasper as being “part of” the Multi-County Park the Real Property forevermore became exempt from *all* ad valorem property taxes and that granted property tax exemption is inviolate, (d) the fee-in-lieu of taxes generated by the Real Property may be directed at Jasper’s discretion, regardless of Hardeeville’s objection and lack of consent, (e) that Jasper’s 2006 notice of Hardeeville’s annexation, and Jasper’s subsequent active role in levying, collecting, and distributing Hardeeville’s tax revenue to Hardeeville should be ignored as irrelevant, and (f) as

a derivative of the earlier aspects of the ruling sought by Jasper, the Court must also find that Jasper was entitled to pledge, and actually pledged, a portion of those fee-in-lieu of taxes to repay multiple series of bonds issued by Jasper.⁶

Hardeeville's requested ruling is much more straightforward: the Court should conclude Hardeeville is not bound by the Park Agreement or any bond-related arrangements.

As described more fully below, the Court agrees with Hardeeville and disagrees with Jasper.⁷ The Court concludes Hardeeville is not bound by the Park Agreement or any related arrangements involving the Real Property, including the bonds issued by Jasper and Jasper's related repayment obligations. Further, the Court concludes Hardeeville is entitled to receive and retain whatever revenues are generated by the millage Hardeeville elects to impose against the Real Property.

Further, because no litigant involved in this matter, except Jasper, has raised any claims against Hardeeville, with this ruling against Jasper's claims, there are now no claims pending against Hardeeville, and Hardeeville is dismissed from this action. This ruling does not impact the claims the other litigants may have against each other in pursuing their cross complaint.

A. Section 13(d) and Section 4-1-170

This Court cannot construe a statute without regard to its plain and ordinary meaning

⁶Under Section 5.2 of the General Bond Ordinance, Jasper is only required to remit debt service to Nickel Plate from "Net Fee Payments." By definition, Net Fee Payments includes only those amounts actually received by Jasper under the Park Agreement but does not include ad valorem taxes. Thus, the Court concludes that if Hardeeville is not bound by the Park Agreement, then neither Jasper nor Nickel Plate can have any direct claim against Hardeeville under any of the bond-related documents. That is, all claims under the bond-related documents are solely derivative of Jasper's right to receive fee-in-lieu of taxes from Hardeeville in the first instance. A similar result is reached with respect to the 1% Jasper would owe Beaufort under Section 6 of the Park Agreement.

⁷Nickel Plate submitted a memorandum in opposition to the Hardeeville Summary Judgment Motion, which largely adopted Jasper's arguments, thus, except where specifically noted, the Court does not separately address Nickel Plate's arguments.

and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993). A statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object. *Davis v. County of Greenville*, 322 S.C. 73, 470 S.E.2d 94 (1996).

The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001). If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005). Under the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011); *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 29-30, 661 S.E.2d 349, 351-52 (2008).

Jasper argues (a) Section 13(d) gave Jasper the unfettered discretion to create the Multi-County Park, (b) Section 13(d) and Section 4-1-170 provided Jasper with the unfettered discretion to designate what property is located in a Park, and (c) once the Real Property was designated by Jasper as being "part of" the Multi-County Park the Real Property forevermore became exempt from *all* ad valorem property taxes and that granted property tax exemption is inviolate.

Neither Section 13(d) nor Section 4-1-170 supports Jasper's position. In relevant part, Section

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

Moreover, Section 13(d) must be read in its factual context. Each parcel in this State is, necessarily, located in a county *and* a school district. By contrast, absent annexation or the creation of a new municipality (both of which generally require consent of impacted landowners), a parcel is not automatically located in an incorporated municipality. Thus, a constitutional provision specifically addressing counties and school districts, but not municipalities, is consistent with the factual reality of all real property in this State. Recognizing that municipalities have distinctly different characteristics from school districts, the General Assembly expressly addressed municipalities by creating section 4-1-170(C).

Regardless of the parties’ reading of Section 4-1-170(C), which the Court addresses below in more detail, the mere existence of Section 4-1-170(C) invalidates Jasper’s solely county-control construction of Section 13(d). That is, Jasper’s reading of Section 13(d) would require this Court

to find that only counties can control the creation a multi-county park. Were Jasper's reading accurate, then Section 4-1-170(C), which expressly requires a municipality's consent would be an unconstitutional enactment. As our Supreme Court has instructed, this Court must presume that when the General Assembly enacts a statutory provision, that provision is constitutional. *See generally Davis*, 322 S.C.at 73, 470 S.E.2d at 94. Thus, Jasper's reading of Section 13(d) in favor of pure county control over multi-county park creation must fail.

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

The cannon of statutory construction, “*expressio unius est exclusio alterius*,” or “*inclusio unius est exclusio alterius*” applies here. Those expressions mean that “to express or include one thing implies the exclusion of another, or of the alternative.” *Black's Law Dictionary* 602 (7th ed. 1999)

(quoted in *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 579, 582 (2000)). Again, the Court's reading is, and must be, consistent with the factual scenario in which *any* multi-county park could be created, not just the Multi-County Park at issue in this dispute.

Thus, the revenue distribution under an agreement covers those governmental entities that have jurisdiction over the property at the time of the agreement. A municipality that subsequently annexes property after a multi-county park's creation would possess interests that exist outside of the agreement, as contemplated by the text of Section 13(d) and Section 4-1-170, in so far as the municipality is neither a county, nor a school district, nor otherwise a contracting party. If, and to the extent the counties want to include a municipality in the arrangement, then Section 4-1-170(C) requires the counties to amend the agreement to obtain the municipality's consent such that Section 4-1-170(A)(3), which requires the agreement specify the manner in which revenue must be distributed to each of the taxing entities in each of the participating counties, is satisfied.

The Court likewise finds this is not only the appropriate legal construction of these sections but is also compelled by common sense. Jasper's attempt to capture and distribute Hardeeville's millage would have the practical impact of making Hardeeville a *de facto*, if not an actual, party to the Park Agreement. Rather than amending the Park Agreement to include Hardeeville, which would require Hardeeville's consent under Section 4-1-170(C) and basic premises of contract law, Jasper seeks to have this Court judicially mandate Hardeeville's addition not only without Hardeeville's consent, but also over Hardeeville's very vehement objection and upon terms which are plainly detrimental to Hardeeville.

Such a substantive amendment would have the impact of materially changing a number of

fundamental elements⁸ of the Park Agreement after the Real Property is already located inside Hardeeville's jurisdiction and would violate Section 4-1-170(C), which requires a municipality's consent. Thus, Jasper is essentially asking this Court to violate State law to accomplish what Jasper otherwise could not do. This Court will not do so.⁹

Jasper suggests that our Supreme Court's ruling in *Horry County*, requires a different result. Jasper argues that *Horry County* provides that only a county, irrespective of what other governmental entities might be involved, is in complete control of a multi-county park. The Court does not read *Horry County* so broadly.

First, in *Horry County*, there were three parties to the park agreement: Horry County, Georgetown County, and the City of Myrtle Beach. Because the counties and the municipalities were both aligned in interest and this park agreement complied with Section 4-1-170(C), *Horry County* does not compel a result in the instant dispute, in which the primary issue before the court is that Hardeeville is **not** a consenting party to the Park Agreement.

Second, in the first sentence of its opinion, the Supreme Court defined "the county," collectively, to mean Horry County **and** the City of Myrtle Beach. *Id.* at 621, 552 S.E.2d at 737. As

⁸For example, (a) the judicially forced addition of a new party to the Park Agreement, (b) the inclusion of Hardeeville's millage as part of the revenue contemplated under the Park Agreement, and (c) the initial mention of distribution of Hardeeville's millage, particularly in amounts other than Hardeeville has enjoyed since annexing the Real Property in 2006 and to entities other than Hardeeville. Admittedly (by Jasper), none of these items are addressed in the Park Agreement, yet Jasper's requested ruling would require this Court to judicially add all of them.

⁹This Court cannot conclude that the voters or the General Assembly intended to abrogate common law contract rights with the enactment of Section 13(d) and Section 4-1-170 without a specific reference to a municipality being bound to a park agreement to which the municipality is not a party. *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., LLC*, 866 S.E.2d 542, 556, 866 S.E.2d 542, ___ (2021) ("[s]tatutes in derogation of the common law are to be strictly construed[,] and [u]nder this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature" (internal quotations and citations omitted)). As municipalities, unlike school districts, are not specifically described as being either a forced party to, or controlled by, a park agreement under either Section 13(d) or Section 4-1-170, this Court cannot conclude a municipality's common law contracting rights or sovereignty under this State's Home Rule Act of 1975 have been stripped by the General Assembly.

a result, each reference in the *Horry County* opinion to “the county” means both Horry County and the City of Myrtle Beach. Thus, a plain reading of *Horry County* establishes that when our Supreme Court opined that a “county” may have discretion to allocate revenues, it meant that this is true when a county and a city are acting in concert. This conclusion is consistent with *Horry County’s* factual context. There is no evidence in the opinion of any dispute between Horry or Georgetown Counties and the City of Myrtle Beach. Rather, by the plain language of the Supreme Court’s definitional term, the opinion reveals the Supreme Court’s understanding of complete agreement between the county and the city. Thus, the Supreme Court was ruling that the county and the city, rather than the school district, had control. The Supreme Court made no findings in *Horry County* with respect to a county’s rights versus a city’s rights under Section 13(d) or Section 4-1-170, generally, or specifically under Section 4-1-170(C). As a result, *Horry County* does not support Jasper’s position.

Unlike *Horry County*, in which the county and the city acted in concert, here, Hardeeville vehemently objects to Jasper’s attempts to usurp Hardeeville’s annexation rights, capture Hardeeville’s revenue, compel Hardeeville’s services, and judicially force Hardeeville to be an unwilling party to the Park Agreement. Rather, in attempting to capture and distribute Hardeeville’s revenue, Jasper is implicitly making Hardeeville a part of the Park Agreement without making provision for distribution of revenue to Hardeeville. In attempting to achieve this result by agreement, Jasper would be required by Section 4-1-170(A)(3) specifically to provide for the revenue distribution in the Park Agreement as it relates to Hardeeville. However, as noted earlier, Jasper has admitted neither Hardeeville nor its revenue was ever contemplated as being

part of the Park Agreement.¹⁰ Moreover, attempting to add Hardeeville to the Park Agreement would require Hardeeville's consent under Section 4-1-170(C). This Court will not rewrite an agreement or judicially mandate compliance by a non-party. *Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 588, 694 S.E.2d 15, 18 (reasoning that an injunction that has the impact of rewriting an agreement "on terms other than those agreed upon by the parties," is reversible error).

B. Section 5-3-150

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

Section 5-3-150 provided the basis through which Hardeeville annexed the Real Property. According to the record before this Court, the Real Property's landowner, which constituted 100% of the landowners of the property being annexed, petitioned Hardeeville to annex the Real Property. Jasper has not suggested, and there is no evidence before this Court suggesting,

¹⁰Thus, this Court's refusal to bind Hardeeville to the Park Agreement has no impact on Nickel Plate as the repayment of any debt issued by Jasper could not have been dependent on revenue from Hardeeville that was never contemplated by Jasper or captured in the Park Agreement. This conclusion is consistent with Section 2.1(H) of the General Bond Ordinance enacted by Jasper that unequivocally states that the bonds give rise to "no pecuniary liability of . . . [any] *incorporated municipality*, or a charge against the general credit or taxing power of [either the County or any incorporated municipality]" (emphasis added).

Hardeeville failed to comply with Section 5-3-150's requirements.

Jasper admits that following annexation, which occurred in 2006, Hardeeville began levying, collecting, and retaining 100% of the taxes related to the Real Property. Jasper admits that in 2008, Hardeeville contracted with the Auditor and the Treasurer to levy and collect Hardeeville's taxes and fees against all property located in Hardeeville, including the Real Property, and distributed 100% of the collections related to the Real Property to Hardeeville.

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

First, the Court must read Section 13(d) and Section 4-1-170 in concert with Section 5-3-150. Nothing in Section 13(d), Section 4-1-170, or Section 5-3-150 suggests the General Assembly intended to limit a municipality's ability to annex property or to levy and collect taxes necessary to support the public services provided to that annexed property. Rather, Section 5-3-150(1) specifically requires a municipality annexing property to provide notice to the public what services will be provided and when and how much those services will cost the landowners of the property being annexed through taxes and fees.

Further, Jasper's reading does not comport with the plain language of the remainder of Section 5-3-150.

Section 5-3-150(4) provides that

Any real property owned by a governmental entity and leased to any other entity pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or 4-29-69 is considered to have an assessed valuation equal to the original cost of the real property as determined under Section 4-29-67(D). For purposes of this section, the lessee of real property pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or 4-29-69 is the freeholder with respect to the property.

Section 5-3-150(5) provides that

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

(emphasis added).

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

General Assembly intended to restrict a municipality's ability to annex multi-county park property and, therefore, tax that property, it expressly did so.¹¹ See Section 5-3-150(5) ("when title to real property in the park is held by a political subdivision of the State, the property may be annexed only with prior written consent of the governing body of the political subdivision holding title").¹²

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

Further, as a matter of public policy, the General Assembly would not have intended for a municipality to be able to annex property, which requires the municipality to provide services to the annexed property, but then leave the capture and distribution of revenue generated by the

¹¹Again, the cannon of statutory construction, "expressio unius est exclusio alterius," or "inclusio unis est exclusio alterius" applies here.

¹²Jasper does not own the Real Property. Thus, Hardeeville was not required to obtain Jasper's consent prior to annexation.

annexed property up to another entity, such as the county. Essentially, in that scenario, a municipality would be required to provide services, but would receive no revenue, which result contradicts the plain language of Section 5-3-150(1). Jasper's response is to claim that *Horry County* addressed, and dismissed, similar policy arguments made by the Horry County School District. Again, Jasper misreads *Horry County* by failing to acknowledge that none of the statutes applicable to annexation or multi-county parks treat municipalities and school districts interchangeably.

As discussed above, in *Horry County*, the county and the city were acting in concert. Thus, our Supreme Court's opinion weighed a county and city's combined rights versus a school district's rights, rather than opining about the respective rights of the parties in a dispute between a county and a city. Further, the analysis in *Horry County* indicates the Supreme Court considered the actual text of the relevant constitutional and statutory provisions and, from that text, concluded the General Assembly made a policy decision in favor of giving discretion to a county/city instead of to a school district. That is, the Supreme Court found the General Assembly made an intentional policy choice in enacting certain statutes, and the Supreme Court would enforce that choice. Neither Section 4-1-170(C) nor Section 5-3-150 are referenced in *Horry County*. Thus, the policy considerations in *Horry County* do not apply here because the statutory language at issue in this dispute was not the statutory language at issue in *Horry County*.

The Supreme Court's method of determining the General Assembly's policy intentions (reviewing the relevant statutory text) does fit in the instant dispute but not for the reasons Jasper suggests. The plain language of Section 5-3-150 read in concert with Section 13(d) and Section 4-1-170 establishes the General Assembly's intent to permit a municipality to annex property, and

to charge fees and taxes against the full assessed value of the property even if the property has previously been designated as part of a multi-county park. To read the plain language otherwise would require this Court to ignore, for example, much of subsection (5). Thus, unlike the statutory structure regarding school districts in *Horry County*, the General Assembly declared, through Section 5-3-150, its policy intention in favor of a municipality's ability to annex, tax, and provide services, all *subsequent* to the creation of a multicounty park. Under Jasper's reading of Section 13(d), subsection (5) and Section 4-1-170(C), for example, would be unconstitutional pronouncements of the General Assembly.

Finally, it strains credibility to suggest the General Assembly requires notice (a) of the taxes and fees to be imposed by a municipality following annexation and (b) of the services that same municipality is required to provide, but intended that such notice operates only to force the services to be provided by a municipality while a county, which is not providing the noticed services, is entitled capture and keep that revenue without the municipality's consent and without an obligation to provide the noticed services.

C. *Additional Failures of the Park Agreement*

This Court finds the Park Agreement does not comply with, at a minimum, section 4-1-170(A)(3) because the Park Agreement fails to "specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties." Section 7 of the Park Agreement provides that any revenue Jasper receives pursuant to the Park Agreement will be distributed "in accordance with an ordinance adopted by Jasper County." That is, on the face of the Park Agreement there is no provision for the actual distribution of revenue. As Hardeeville suggests, to understand the revenue distribution someone could not merely read the

Park Agreement itself but would have to find each and every subsequent document that addressed revenue distribution. Jasper suggests that at least three subsequent ordinances have modified this revenue distribution. However, nothing before this Court, including the Affidavit, proves that Jasper has not again modified, rescinded, or repealed the revenue distribution subsequent to the three ordinances it proffered. That is not what Section 4-1-170(A) requires. Further, despite these, at least, three amendments, nothing appears to indicate Jasper is now compliant with our Supreme Court's admonition in the *Horry County* case regarding the parties' revenue distribution.

Section 4-1-170(A) requires the written agreement to "(1) *address* sharing expenses of the park; (2) *specify by percentage* the revenue to be allocated to each county; and (3) *specify the manner* in which revenue must be distributed to each of the taxing entities within each of the participating counties" (emphasis added). Notably, the General Assembly elected to use different language for each required element of the agreement. Park expenses need only be "addressed," while revenue must be "specif[ied] by percentage" and the "manner in which revenue must be distributed" must likewise be "specified."

Where a term is not defined in a statute, the Court must employ a common understanding of the undefined term *Sonoco Prods. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) ("The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation."). Reading these three requirements in concert and comparing the language, the Court must conclude that "specify" means something other than and requires more particularity than merely "addressing." Further, reviewing the Park Agreement in its entirety, specifically Sections 5, 6, and 7, the parties elected

to (a) address expense sharing by specific percentage, and (b) specify percentages for revenue distribution between Jasper and Beaufort, as required by Section 4-1-170(A)(2), but (c) told the Park Agreement's reader to look elsewhere for the specific manner in which revenue must be distributed. The Court cannot conclude this is what the General Assembly intended without torturing the language of the statutory requirement to "specify."

However, as a means of attempting to excuse this failure, Jasper argues it is entitled to, and did, incorporate any and every ordinance that was or is ever enacted in Jasper (and Beaufort)¹³ into the Park Agreement. Jasper even suggests that the very ordinance that authorized the execution of the Park Agreement is somehow incorporated into the Park Agreement itself as one of the ordinances contemplated by Section 7 of the Park Agreement.

First, allowing the ordinance that authorized the execution of the Park Agreement to be incorporated into the Park Agreement, which ordinance also purports to incorporate the Park Agreement by reference into the ordinance, would be like looking into a mirror with a mirror on the opposite wall. Each document craves a circular reference to itself. This is clearly an absurd result.

Second, the assertion that parties to a contract may bind themselves to subsequently enacted law may be correct, when it applies to laws relating to a sovereign's police powers. This is to say that a sovereign, before the time of a contract's execution, or at some future point, may declare

¹³For the purposes of a summary judgment motion, Jasper is required to establish the efficacy of the Park Agreement, and each evidentiary requirement imposed on Jasper is also placed on Beaufort. Because Jasper has moved for summary judgment the burden of establishing Beaufort took all necessary actions to accomplish the Multi-County Park's creation, including specifying the manner in which revenue must be distributed rests on Jasper, and the Court cannot assume those requirements were met without proof. As noted above, the Affidavit is silent on the issue of whether there are other documents that purport to change Jasper's revenue distribution discussed in Section 7 of the Park Agreement. Likewise, the Affidavit, having come from Jasper's records custodian, does not address any documents that may be in the custody or control of Beaufort.

some conduct unlawful is generally true. This was the situation in *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007). Thus, a general statute may reasonably be deemed subject to a future legislative exercise of a police power, or as in *Catawba*, a statute itself might provide for that legislative variability.

However, this proposition fails when a subsequent legislative act purports not to exercise police powers, but rather to alter the monetary rights of parties and *non-parties* to a contract. In this context, the United States Constitution's Contract Clause's prohibition against subsequent passage of laws altering parties' contracted rights is a more applicable analogy, than a contention regarding state police powers. Thus, *Catawba* has no application here; no party asserts that conduct in the multicounty park has become unlawful. Additionally, even if the parties to the Park Agreement contemplated that some near-term future legislative actions might alter their respective revenue rights and obligations, they would, necessarily, have been required to specify some time-based boundaries, otherwise "[i]f such rights may be added to the original contract by subsequent legislation, it would be difficult to say at what point they must stop." *Collins v. Collins Adm'r*, 79 Ky. 88, 94 (1880); cf. 3 Corbin on Contracts § 551 at 197 (Rev. Ed. 1960).

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

This is made even more obvious because the ordinance that authorized the Park Agreement was adopted in Jasper in February 2000. The Park Agreement was executed in April 2000. However, the Park Agreement purports to have an effective date of December 31, 1999, more than a month before it was authorized by ordinance to exist. This timing highlights a key flaw in Jasper's theory of unfettered county control of multi-county park arrangements, that is, Jasper could enact an ordinance at any point in time authorizing a Park Agreement regarding property that was annexed by a municipality while claiming the park agreement had an effective date prior to the annexation. Or, as Jasper is asking here, use this Court to impose an amendment to the revenue distribution that alters the rights of a non-party municipality while claiming the municipality's consent is not required because the Park Agreement attempts to incorporate any and all future legislative acts by Jasper County, regardless of whether those acts comport with statute and regardless of when those revenue distribution amendments post-date the annexation.

Jasper also seems to suggest that one or more post-Park Agreement ordinances satisfies the Section 4-1-170(A)(3) requirement by providing that any remaining revenue be distributed to each of the taxing entities in Jasper "in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year." However, *Horry County* suggests a different conclusion. Our Supreme Court "note[d] an inadequacy in the agreement" that formed the basis of the dispute. *Id.* at 631, 552 S.E.2d at 742. In analyzing Section 4-1-170(3), the Supreme Court was "concern[ed]" that an agreement in which a revenue percentage was allocated to a particular governmental entity, without further specifying which portion was allocated to operations versus debt and whether the county auditor or the local government would make the determination "may require the amendment of the agreement." *Id.* As in *Horry*

County, the Park Agreement at issue here does nothing more than provide for a proportionate split of revenue based a numerator representing the individual government's millage with a denominator of all governmental entities' total millage. There is no description of the allocation to operations versus debt or who makes the allocation decision.

Moreover, Jasper's current arguments do not comport with either its, or the Auditor's, Treasurer's, Beaufort's, or Nickel Plate's longstanding interpretation of Section 13(d), Section 4-1-170, the Park Agreement itself, or the method by which Hardeeville's imposed millage was distributed. As noted above, since annexation in 2006, Jasper, Beaufort, and Nickel Plate with the Auditor and the Treasurer, have all interpreted the Park Agreement exactly as Jasper admits the Park Agreement is written: not including or impacting Hardeeville's millage or revenue distribution to anyone other than Hardeeville. Thus, Jasper's and the other litigants' own years' long interpretation of the applicable authority itself militates against Jasper's new interpretation. For 14 years, the Multi-County Park parties, Nickel Plate (which has had a sudden epiphany that it is entitled to 40% of Hardeeville's levy), and the levying and collecting officials of Jasper County have interpreted the governing principles to conclude that Hardeeville, after annexation, was entitled to levy and collect millage and that the Park Agreement clearly did not affect Hardeeville's rights or obligations as an annexing municipality.

D. Hardeeville's Taxes Versus Fees-In-Lieu of Taxes

To rule for Hardeeville, this Court need not conclude whether the revenues collected are taxes or fees. Section 5-3-150 appears to provide that a municipality may charge taxes and fees to annexed property, even, as suggested by subsections (4) and (5), after annexation. This comports with the Court's reading of Section 13(d), which appears to exempt from ad valorem taxes the

taxes of governmental entities that are controlled explicitly by Section 13(d) (counties and school districts) or by contract under Section 4-1-170 and the *Horry County* reasoning. Thus, whether the revenues are considered taxes or fees-in-lieu of taxes, the practical result is identical: Hardeeville may impose its millage and collect the revenue generated therefrom.

IV. CONCLUSION

Based on the foregoing, Hardeeville has requested this Court deny the Jasper Summary Judgment Motion and grant summary judgment in Hardeeville's favor, declaring that Hardeeville's levy of taxes and/or imposition of fees against the Real Property, and Hardeeville's collection of the revenues based on same, is proper, irrespective of the existence of the Multi-County Park and the Park Agreement and related rulings that logically flow from the same.

After having considered all pleadings, motions, memoranda, and other materials provided by all parties in this action, oral arguments regarding the same, and construing the plain language of the applicable constitutional and statutory provisions and the Park Agreement in conjunction with the accepted, undisputed facts, this Court cannot conclude Jasper created a valid and enforceable Park Agreement as it relates to Hardeeville's interest in taxes and/or fees of the Real Property:

THEREFORE, it is ORDERED, ADJUDGED, and DECREED, that the Hardeeville Summary Judgment Motion be and hereby is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that Hardeeville is not a party to the Park Agreement and is entitled to levy taxes and/or impose fees against the Real Property according to the generally applicable law of this State.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that the Consent Order is hereby

dissolved, and all funds held by the Jasper County Clerk of Court according to that Consent Order are hereby released to Hardeeville, and the Treasurer is hereby directed to distribute to Hardeeville all revenues that may be held by the Treasurer or may, in the future, be collected by the Treasurer, with respect to Hardeeville's levy of taxes or imposition of fees related to the Real Property.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that Jasper, the Auditor, the Treasurer, Beaufort, and Nickel Plate, are each enjoined from taking any action, and asking others to take any action, in furtherance of disbursing any funds related Hardeeville's levy of taxes and/or imposition of fees related to the Real Property to any entity or individual other than Hardeeville, removing any tax levy or imposition of fees that Hardeeville has or may, in the future, have against the Real Property, reallocating any tax levy and/or imposition of fees that Hardeeville has or may, in the future, have, or may have had, against any portion of the Real Property to any other entity or individual, and/or otherwise negatively impacting Hardeeville's ability to impose a levy or impose a fee against the Real Property, and Hardeeville's ability to collect tax or fee revenues based on the levy of taxes or imposition of fees without regard to the Multi-County Park and/or the Park Agreement.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that Hardeeville is dismissed as a party to this action, including Jasper's cross complaint.

AND IT IS SO ORDERED.

Honorable H. Steven DeBerry, IV

_____, South Carolina
March _____, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY COURT OF COMMON PLEAS

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

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

City of Hardeeville.....Appellant,

v.

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

AND

Jasper County, South Carolina.....Cross Co-Plaintiff,

Verna Garvin, in her official capacity
as Jasper County TreasurerCross Co-Plaintiff,

and

Monica Wilson, in her official capacity
as Jasper County Auditor.....Cross Co-Plaintiff,

v.

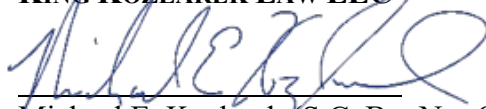
City of Hardeeville, Nickel Plate Road, LLC, and Beaufort County,
South Carolina.....Cross Defendants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

[Signature Page Follows]

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April 11, 2023
Greenville, South Carolina