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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 Treasurer ……..……Cross Co-Plaintiff,

and

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

v.

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

FINAL RESPONSE BRIEF OF JASPER COUNTY

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The City of Hardeeville ("Hardeeville") is asking this Court to write into law something that does not exist: The power of a municipality to levy and collect *ad valorem* taxes on multi-county park property the municipality annexed years after the park's creation. Hardeeville makes this request despite the property's constitutionally tax-exempt status, despite the statutory mandate that the property's fee-in-lieu of tax revenues be distributed in accordance with the agreement between the participating counties, and despite a county's obligation to pay, and a private entity's right to receive, the first 40% of those revenues as payment for special source revenue bonds. The power Hardeeville attempts to claim is in direct conflict with this State's plain and unambiguous laws. Hardeeville's request must be denied, and the trial court's order must be affirmed.

I. GOVERNING LAW

In 1988, South Carolina citizens voted to amend the Constitution of the State of South Carolina ("Constitution"), enabling neighboring counties to jointly develop an industrial or business park within one or more of the counties' boundaries ("multi-county park" or "park"). *See* S.C. Acts No. 690 (S.C. 1988); S.C. CONST. art. VIII, § 13(D); *Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 627, 552 S.E.2d 737, 740 (2001). Once a multi-county park is developed, all property within the park becomes exempt from all *ad valorem* taxes. S.C. CONST. art. VIII, § 13(D). Instead of *ad valorem* taxes, owners of park property must pay a fee-in-lieu of taxes equivalent to the amount of *ad valorem* taxes that would otherwise be charged. *Id.*[1] There is no exception to the exemption.

[1] Multi-county parks are not industrial or business parks in the traditional sense; rather, they are legal designations giving counties control over revenues generated by investments in the park to promote economic development within South Carolina. *See Horry Cty.*, 346 S.C. at 627–30, 552 S.E.2d at 740–41 (citing S.C. Acts No. 690 (S.C. 1988); *Amendment Benefits Rural Counties*, THE STATE, Oct. 18, 1988). Allowing counties to develop parks and convert *ad valorem* taxes to fee-in-lieu of tax revenues enables counties to, among other things, then issue special source revenue bonds, which are secured by and payable from those same revenues. *See* S.C. Code Ann. § 4-1-175.

After the constitutional amendment, the General Assembly enacted statutes establishing what is required to create a multi-county park. *See* S.C. Code Ann. §§ 4-1-170–172. First, the neighboring counties must reduce their agreement to writing. *Id.* §§ 4-1-170(A) & 4-1-172. Second, the written agreement must specify (a) the sharing of park expenses, (b) the percentage of park revenue allocated to each county, and (c) the manner in which those revenues must be distributed to each of the taxing entities within those counties. *Id.* § 4-1-170(A). Third, if the park's proposed boundaries would include all or a portion of a municipality, the counties must obtain the municipality's consent before creating the park. *Id.* § 4-1-170(C). There are no other requirements.

II. HARDEEVILLE'S APPEAL

Hardeeville's appeal is a plea for this Court to legislate from the bench and re-write this State's plain and unambiguous laws governing the creation of a multi-county park, the tax-exempt status of park property, and the distribution of fee-in-lieu of tax revenues that flow from park property. The insoluble problem with each of Hardeeville's arguments is that *all multi-county park property is constitutionally exempt from all ad valorem taxation*. Hardeeville offers four meritless reasons this constitutional mandate does not apply to the multi-county park property Hardeeville annexed after the park's creation.

First, Hardeeville argues the underlying multi-county park agreement between Jasper County ("Jasper") and Beaufort County ("Beaufort") is deficient because it failed to sufficiently address how revenues must be distributed to each of the taxing entities within Jasper. The Record shows the park agreement complies with all statutory requirements. The park agreement is valid and enforceable as a matter of law. *See infra* pp. 9–12 & 20–27.

Second, Hardeeville argues even if the park agreement is valid and enforceable, the park property Hardeeville annexed is not subject to the agreement's terms—or the constitutionally mandated tax-exempt status—because Hardeeville did not provide its consent to the agreement.

Hardeeville's argument has no basis in the law. By law, a municipality's consent is required to a park agreement *only if* the park's proposed geographic boundary would encompass municipal property *prior to* the creation of the park. The Record shows Hardeeville did not annex park property into its jurisdictional limits *until six years after the park was created*. Hardeeville's consent to the park agreement was not required. *See infra* pp. 12 & 18–20.

Third, Hardeeville argues because Section 5-3-150 allows municipalities to annex park property, it must be true that Hardeeville is permitted to levy and collect *ad valorem* taxes on the annexed property. This argument ignores that (1) the property was already constitutionally tax-exempt at the time of Hardeeville's annexation; (2) municipalities are only permitted to levy and collect *ad valorem* taxes on property not otherwise tax-exempt by state law; and (3) the distribution of park revenues is statutorily required to be governed by the park agreement. *See infra* pp. 13–17.

Fourth, Hardeeville argues it should be permitted to continue levying and collecting *ad valorem* taxes on park property because it did so in the past due to an inadvertent oversight by Jasper, the Treasurer, and Auditor. The problem with this argument is fourfold: (1) as noted, park revenues are required to be distributed pursuant to the park agreement; this is not optional; (2) when misallocations are discovered, counties are given the express statutory right to correct future distributions; (3) estoppel only lies against the government in certain, unique circumstances, none of which are present in this case; and (4) Hardeeville's county "deference" argument lacks any basis in the law. *See infra* pp. 17–18.

The simple fact is Hardeeville is upset it agreed to annex a piece of property with the expectation of receiving *ad valorem* taxes, only to find out it was never entitled to do so.[2] However,

[2] This not to say that Hardeeville will not receive revenue from the property it annexed. Hardeeville will receive its pro rata share of fee-in-lieu of tax revenue, after 1% is paid to Beaufort and 40% is paid to the bondholders. *See* Order p. 24 ¶ 6 (R. 00028). Importantly, this is revenue Hardeeville would not have otherwise received if it did not annex the property.

this does not justify Hardeeville's request for permission to continue violating the law in perpetuity. Nor does it justify Hardeeville's request that this Court act as a super-legislature and re-write laws enacted by the General Assembly—a request that, if granted, would turn this State's public finance and economic development laws upside down. For these reasons, and as explained in greater detail throughout this Brief, Hardeeville's arguments must be rejected, and the trial court's July 13, 2022 Order must be affirmed.

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT CORRECTLY CONCLUDE ALL MULTI-COUNTY PARK PROPERTY IS EXEMPT FROM ALL *AD VALOREM* TAXES AND OWNERS OF PARK PROPERTY MUST INSTEAD PAY A FEE-IN-LIEU OF *AD VALOREM* TAXES WHICH MUST BE DISTRIBUTED PURSUANT TO THE PARK AGREEMENT?

II. DID THE TRIAL COURT CORRECTLY CONCLUDE HARDEEVILLE'S CONSENT TO THE PARK AGREEMENT WAS NOT REQUIRED?

III. DID THE TRIAL COURT CORRECTLY CONCLUDE THE MULTI-COUNTY PARK AGREEMENT IS VALID AND ENFORCEABLE?

IV. DID THE TRIAL COURT CORRECTLY CONCLUDE FURTHER DISCOVERY WAS NOT NECESSARY FOR FINDING JASPER WAS ENTITLED TO PARTIAL MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW?

STATEMENT OF THE CASE

On February 1, 2021, Hardeeville filed a Complaint against Jasper, the Jasper County Treasurer ("Treasurer"), and the Jasper County Auditor ("Auditor") (collectively, the "Jasper Parties"). *See* Original Compl **(**R. 00033). On June 21, 2021, after Hardeeville's Motion to Amend Complaint, the trial court entered the parties' Consent Order to Amend Complaint. *See* Consent Order Am. Compl. (R. 00047).

Hardeeville's Amended Complaint requested injunctive relief and a declaratory judgment to determine and declare the rights and legal relations of the parties as it relates to certain property annexed by Hardeeville which was and is located within a multi-county park jointly developed by Jasper and Beaufort. *See* Am. Compl. (hereinafter "Compl.") (R. 00051).

On July 21, 2021, the Jasper Parties filed their Answer to Hardeeville's Amended Complaint and Amended Cross Complaint. *See* Answer to Am. Compl. and Am. Cross-Compl. (hereinafter, "Answer and Counterclaim") (R. 00177). In the Answer and Counterclaim, the Jasper Parties asserted counterclaims for a declaratory judgment and for unjust enrichment against Hardeeville.[3] *Id.* The Jasper Parties' counter-request for declaratory judgment similarly asked the trial court to determine and declare (i) the rights of the parties with regard to the revenue arising from park property, including park property annexed by Hardeeville after the park was created; (ii) whether park property is exempt from *ad valorem* taxes; (iii) whether the *ad valorem* taxes on park property were converted to fee-in-lieu of taxes as a matter of law; and (iv) whether the revenue (i.e., fee-in-lieu of taxes) generated from the park property must be distributed in the manner provided in the governing park agreement between Jasper and Beaufort. *Id.*

On July 27, 2021, Jasper filed a Motion for Partial Summary Judgment moving the trial court for judgment of matter of law on these issues. *See* Jasper's Mot. Partial Summ. J. (R. 00207). Almost two weeks after Jasper's Motion was filed, Hardeeville served its first set of discovery requests on Jasper on August 9, 2021. *See* Hardeeville's First Set Interrogs. & First Set of Reqs. Produc. (R. 00529 & R. 00538). Because the information sought in Hardeeville's discovery requests was not relevant to the issues raised in Jasper's Motion for Partial Summary Judgment, Jasper moved for a protective order staying the time for Jasper's answers and objections to Hardeeville's discovery requests until at least 30 days after the trial court entered a decision on Jasper's Motion for Partial Summary Judgment. *See* Jasper's Mot. Prot. Order (Aug. 24, 2021) (R. 00225).

Then, on October 15, 2021, Hardeeville filed its own Motion for Summary Judgment and a Response to Jasper's Motion for Partial Summary Judgment. *See* Pl.'s Mot. Summ. J. (R. 00246);

[3] The claim for unjust enrichment is not at issue in this appeal, and remains pending in the trial court.

Pl.'s Resp. to Def.'s Mot. Partial Summ. J. (R. 00237). In Hardeeville's Motion for Summary Judgment, Hardeeville argued there were no genuine issues of material fact, this dispute involves basis statutory interpretation and contract law, and the trial court could find as a matter of law that the underlying park agreement was invalid and not binding on Hardeeville. *See* Pl.'s Mot. Summ. J. (R. 00246). In Hardeeville's Response to Jasper's Motion, Hardeeville conversely argued the there was a genuine issue of material fact as to whether the park agreement was valid, and summary judgment was premature until Jasper responded to Hardeeville's discovery requests. *See* Pl.'s Resp. to Def.'s Mot. Partial Summ. J (R. 00237).

On October 25, 2021, Jasper filed a Memorandum of Law in Support of its Motion for Partial Summary Judgment and Reply to Hardeeville's Response in Opposition. *See* Mem. Law Supp. Mot. Partial Summ J. & Reply to Pl.'s Resp. (R. 00362). Also on October 25, 2021, Jasper filed a Response in Opposition to Hardeeville's Motion for Summary Judgment and the Affidavit of Records Custodian Wanda Hendrix Simmons. *See* Resp. to Pl.'s Mot. Summ. J. (R. 00491); Simmons Aff. (R. 00253). On October 27, 2021, the trial court held a hearing on Jasper's and Hardeeville's cross-motions for partial summary judgment. *See* Hr'g Tr. (Oct. 27, 2021) (R. 00570).

On November 11, 2021, Nickel Plate Road, LLC filed a supplemental Memorandum in Opposition to Hardeeville's Motion for Summary Judgment. *See* Nickel Plate, LLC's Mem. Opp. to Pl.'s Mot. Summ J. (R 00500). On June 2, 2022, counsel for Jasper submitted a letter to the trial court, enclosing a copy of a May 5, 2022 South Carolina Attorney General Opinion. *See* Letter of Walter H. Cartin, Esq. to The Honorable Steven DeBerry, IV (R. 00620). On June 3, 2022, counsel for Hardeeville submitted a letter to the trial court in response to Jasper's counsel's letter. *See* Letter of Michael E. Kozlarek, Esq. to The Honorable Steven DeBerry, IV (R. 00628).

On July 13, 2022, the trial court granted Jasper's Motion for Partial Summary Judgment and denied Hardeeville's Motion for Summary Judgment. *See* Order (the "Order") (R. 00005). On July 25, Hardeeville filed a Motion to Reconsider. *See* Mot. Recons. (R. 00521). On August 4, 2022, Jasper filed a response to Hardeeville's Motion to Reconsider. *See* Resp. to Pl.'s Mot. Recons. (R. 00531). On August 10, 2022, Hardeeville filed a Reply to Jasper's response. *See* Pl.'s Reply to Resp. to Mot. Recons. (R. 00538). On September 2, 2022, the trial court denied Hardeeville's motion to Reconsider. *See* Order Den. Mot. Recons. (R. 00030). On September 13, 2022, Hardeeville filed its Notice of Appeal.

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP." *USAA Prop. and Cas. Ins. Co. v. Clegg*, 377.S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (citing *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Ellis v. Davidson*, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004) (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d (2003)). The trial court's Order must be affirmed unless there is a genuine issue as to any material fact showing Jasper was not entitled to judgment as a matter of law. *See* Rule 56(c), SCRCP.

Appellate courts are required to review ambiguities and inferences arising from the evidence in a light most favorable to the non-moving party.[4] *USAA Prop.*, 377 S.C. at 653, 661

[4] Hardeeville also moved the trial court for summary judgment. Despite arguing a genuine issue of material fact prevented the trial court from granting Jasper's motion for partial summary judgment, Hardeeville conversely argued there was no genuine issue of material fact and the court could decide as a matter of law that Hardeeville's motion should be granted. Importantly, the relief requested by Hardeeville was the exact opposite of the relief requested by Jasper; in other words, *there is no actual genuine issue of material fact*. *Compare* Hardeeville's Mot. Summ. J. (R. 00246) *with* Hardeeville's Resp. Opp. to Jasper's Mot. Partial Summ. J. (R. 00237).

S.E.2d at 796. However, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 64, 661 S.E.2d at 796 (quoting *Ellis*, 358 S.C. 509, 595 S.E.2d 817).

Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, this burden is discharged by showing there is no evidence to support the nonmoving party's case. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the nonmoving party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original).

STATEMENT OF FACTS

The facts material to the issues on appeal are not in dispute. Most of the facts stated below are contained within the exhibits to Hardeeville's Amended Complaint. The remainder of the material facts were contained within the parties' other pleadings and filings and are not in dispute.

I. CREATION OF THE PARK

In December 1999, Jasper and Beaufort reduced their decision to jointly develop a multi-county park to writing (the "MCIP Agreement"). *See* Compl. Ex. B (R.00069–76); Simmons Aff. Ex. 1-A (R. 00260). On January 3, 2000, Jasper introduced an ordinance approving the development of the multi-county park with Beaufort (the "Park Ordinance"). Am. Compl. Ex. A (R. 00065–68); Simmons Aff. Ex. 1-A (R. 00256).

The Park Ordinance attached as an exhibit, and incorporated by reference, the MCIP Agreement. Specifically, the Park Ordinance stated the following:

> The form of the joint industrial park agreement **(the "Agreement") is attached hereto and all terms of the Agreement are hereby incorporated herein**. The forms, terms and provisions of the Agreement presented to this meeting and filed with the Clerk of Jasper County Council be and they are hereby approved and **all**

> **of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set out in this Ordinance in its entirety**.

Id. (emphasis added).

The Park Ordinance and the MCIP Agreement were read at three meetings of Jasper's County Council, with the final reading taking place on February 7, 2000. Compl. Ex. A p. 2 (R. 00068); Simmons Aff. Ex. 1-A p. 2 (R. 00259). The MCIP Agreement was executed by Jasper, acting through its Council, on April 10, 2000. Compl. Ex. B pp. 4–5 (R. 00074–75); Simmons Aff. Ex. 1-A pp. 8–9 (R. 00264–65). The Park Ordinance, Beaufort's respective park ordinance, and a fully executed copy of the MCIP Agreement were filed with Jasper's Clerk of Court's office at Book 8, pages 82–84, between 3:44 PM and 3:52 PM on April 10, 2000. *See* Compl. Ex. A (R. 00066); Simmons Aff. Ex. 1-A (R. 00257).[5]

II. TERMS OF THE PARK AGREEMENT

A. The MCIP Agreement Converts *Ad Valorem* Taxes to Fee-In-Lieu of *Ad Valorem* Taxes.

Consistent with the provisions of Section 4-1-170 of the South Carolina Code ("Code") and Article VIII, § 13(D) of the Constitution, the MCIP Agreement states that all property located in the park is exempt from all *ad valorem* taxes during the term of the Park Agreement. Compl. Ex. B § 4 (R. 00071); Simmons Aff. Ex. 1-A (R. 00257). Instead of *ad valorem* taxes, owners of property located inside the park's boundaries are required to pay a fee-in-lieu of *ad valorem* taxes. *Id.* The amount that any park property owner is required to pay is "equivalent to the *ad valorem* property taxes or other in-lieu-of payments that would have been due and payable" if the property was not located in the park ("Park Revenues"). *Id.*

[5] The Park Ordinance, Beaufort's respective park ordinance, and the MCIP Agreement (all of which were recorded together) are, collectively, the "Park Agreement."

B. The MCIP Agreement Allocates Park Expenses and Park Revenues and Specifies How Park Revenues Must Be Distributed to the Taxing Entities within the Participating Counties.

The MCIP Agreement contains specific provisions to comply with the requirements of Section 4-1-170(A) to (1) address sharing of park expenses, (2) specify by percentage the revenue to be allocated to each county, and (3) specify the manner in which revenue must be distributed to the taxing entities within each of the counties. *See* Compl. Ex. B (R. 00070–73); Simmons Aff. Ex 1-A (R. 00257).

First, the MCIP Agreement addresses the allocation of park expenses between Jasper and Beaufort. *Id.* Section 5 of the MCIP Agreement requires park expenses to be allocated as follows:

> 5. **Allocation of Park Expenses.** The Counties shall bear expenses, including, but not limited to, development, operation, maintenance and promotion of the Park in the following proportions:
>
> A. Site Location County 100%
> B. Partner County 0%

Id. § 5 (R. 00072) (emphasis in original).

Second, the MCIP Agreement addresses the allocation of revenues between the counties. *Id*. Section 6 of the MCIP Agreement requires revenues to be allocated as follows:

> 6. **Allocation of Park Revenues.** The Counties shall receive an allocation of all revenue generated by the Park through payment of fees in lieu of *ad valorem* property taxes or from any other source in the following proportions:
>
> A. Site Location County 99%
> B. Partner County 1%

Id. § 6 (R. 00072) (emphasis in original).

Third, the MCIP specifies that revenues allocated to Jasper must be distributed to each of the taxing entities within Jasper "**in accordance with an ordinance adopted by Jasper**." *Id.* § 7

(R. 00072) (emphasis added). Prior to Jasper and Beaufort executing the MCIP Agreement, the referenced ordinance (i.e., the Park Ordinance) was adopted by Jasper's Council.[6]

C. The Park Ordinance Further Specifies How Park Revenues Must Be Distributed and Authorized the Issuance of Special Source Revenue Bonds.

The Park Ordinance further specifies the manner in which revenues must be distributed to each of the taxing entities within Jasper:

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

Compl. Ex. A (R. 00067–68) (bold emphasis added).

The Park Ordinance also authorized Jasper to issue special source revenue bonds ("Bonds") payable from Park Revenues. Section IX of the Park Ordinances provides as follows:

> 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.

Compl. Ex. A § IX (R. 00067–68) (emphasis in original).

Accordingly, if Jasper did not issue Bonds, then all Park Revenues must be proportionally distributed to the taxing entities within Jasper which otherwise would levy *ad valorem* taxes on

[6] *Compare* Compl. Ex. A (R. 00065–68) *with* Compl. Ex. B (R. 00069–76) (showing that the Park Ordinance was adopted by Jasper's Council on February 7, 2000, and Jasper's Council executed the Park Agreement on April 10, 2000).

areas comprising the park if the park property was not exempt from *ad valorem* taxes (the "Jasper Taxing Entities"). If, however, Jasper issued Bonds, the Park Ordinance permitted Jasper to first use a portion of Park Revenues to make Bond payments.

D. The General Bond Ordinance Amended the Park Agreement's Distribution of Revenues to the Jasper Taxing Entities.

On April 16, 2001, Jasper adopted General Bond Ordinance No. 01-04 (the "General Bond Ordinance"). The General Bond Ordinance expressly amended Section IX of the Park Ordinance, and, thus, the manner in which the Park Agreement required Park Revenues to be distributed to the Jasper Taxing Entities. Compl. Ex. C § 11.1 (R. 00101–102). After the amendment, Section IX of the Park Ordinance now reads:

> SECTION IX. Jasper County hereby directs that, of the fee-in-lieu of *ad valorem* taxes pursuant to the [Park] Agreement actually received by Jasper County for Park premises, one (1%) percent of such fees be paid to Beaufort County. **Of the remainder of such fees, forty (40%) percent shall be designated for the payment of special source revenue bonds, and the balance shall be paid to each of the taxing entities in Jasper County which levy an *ad valorem* property tax in any areas comprising the Park in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes.**

Id. (emphasis added). The General Bond Ordinance was recorded with Jasper's Clerk of Court's office at Book 8, Page 244, on May 30, 2001. *See* Compl. Ex. C (R. 00078).

After 1% of Park Revenues are distributed to Beaufort, the Park Agreement requires the next 40% of Park Revenues to be used as payment for the Bonds. Compl. Ex. C §§ 5.2 & 11.1 (R. 00093 & 00101–102). The Park Agreement then distributes the remainder of Park Revenues to the Jasper Taxing Entities (which would include Hardeeville when it later annexed park property as described in Section IV below) "in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes." *Id.* § 11.1 (R. 00101–102).

III. HARDEEVILLE'S SUBSEQUENT ANNEXATION OF PARK PROPERTY

At the time the Park was created, none of the property to be located in the park was within the geographic boundary of Hardeeville. *See* Compl. ¶¶ 9 & 38 (R. 00055 & R. 00059). On October 5, 2006**—over six years after the Park was created—**Hardeeville annexed into its jurisdictional limits certain park property that was already located within the geographic boundary of the park (the "Annexed Property"). *See* Compl. Ex. B p. 7 & Ex. F (R. 00076 & R. 00150–65); *see also* Compl. ¶¶ 38–50 (R. 00059–61).

ARGUMENTS

I. ALL PARK PROPERTY IS EXEMPT FROM ALL *AD VALOREM* TAXES, AND PROPERTY OWNERS MUST PAY A FEE-IN-LIEU OF *AD VALOREM* TAXES WHICH MUST BE DISTRIBUTED PURSUANT TO THE PARK AGREEMENT.

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

All park property, including the Annexed Property, is exempt from all *ad valorem* taxes as a matter of law. Instead of *ad valorem* taxes, all owners of park property must pay a fee-in-lieu of taxes. Article VIII, § 13(D) states as follows:

> Counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties. The area comprising the parks and **all property** having a situs therein is **exempt from all ad valorem taxation. The owners or lessees of any property situated in the park shall pay an amount equivalent to the property taxes or other-in-lieu-of payments that would have been due and payable except for the exemption herein provided**.

S.C. CONST. art VIII, § 13(D) (emphasis added); *see Horry Cty.*, 346 S.C. at 630, 552 S.E.2d at 741 ("Article VIII, § 13(D) and § 4-1-170 exempt property in MCBPs from *ad valorem* taxation[.]"); *see also* S.C. Code Ann. § 4-1-175. There is no exception to this tax exemption or the rule that owners of multi-county park property must, instead, make fee-in-lieu of tax payments.

There is no dispute the Annexed Property is located within the park's geographical boundaries. *See* Compl. Ex. B p. 7 & Ex. F (R. 00076 & R. 00150–65); *see also* Compl. ¶¶ 38–50

(R. 00059–61). Yet, Hardeeville argues the Annexed Property is neither exempt from *ad valorem* taxes nor are the fee-in-lieu-of revenues generated from the Annexed Property subject to the Park Agreement's required revenue distribution scheme. *See* Hardeeville's Br. pp. 23–25. However, the Constitution does not say all park property is exempt from all *ad valorem* taxes, *except taxes levied by a municipality*. It simply states that all park property is exempt from all *ad valorem* taxes and owners of park property must make fee-in-lieu of payments. S.C. CONST. art. VIII, § 13(D).[7] Therefore, because the Annexed Property is within the geographic boundaries of a multi-county park, the Annexed Property is exempt from all *ad valorem* taxation, and the owner of the Annexed Property must make a fee-in-lieu of tax payment.

Hardeeville also argues 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. *See* Hardeeville Br. pp. 22–25. Fortunately, the Court need not search for the conflict Hardeeville claims exists between the trial court's interpretation of Section 4-1-170(C) (i.e., the plain meaning) and the plain meaning of Section 5-3-150. There is no actual conflict.[8]

Notably, a municipality's power to levy and collect *ad valorem* taxes is not found anywhere within Section 5-3-150. That power, and corresponding limitations, is located at S.C. Code Ann.

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[7] *See also Horry Cty.*, 346 S.C. at 628 n.2, 552 S.E.2d at 741 n.2 ("We reject the district's argument that the 'amount equivalent to property taxes' constitutionally required of MCBPs is somehow not a fee in lieu of taxes, especially since the fee in lieu statutes specifically reference § 4-1-170. The fact that special rules apply to fees owed on property in MCBPs does not mean they are not 'fees in lieu of taxes.'").

[8] Section 5-3-150 speaks only to one alternative method of annexation available to municipalities. 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 affected by that annexation. Rather, the statute provides that if park property is annexed by a municipality, the assessed valuation of the property is not affected. *See* S.C. Code Ann. §5-3-150(5). 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 and other matters, like general obligation bond capacity.

§§ 5-21-110–140. A municipality has the power to levy taxes on all real property within the municipality's limits, **except for real property exempt from taxation**. S.C. Code Ann. § 5-21-110 ("All municipal taxes levied by cities . . . in this State shall be levied on all property, real and personal, **not exempt from taxation**[.]") (emphasis added).[9]

Thus, contrary to Hardeeville's arguments, South Carolina law does limit Hardeeville's ability to levy and collect *ad valorem* taxes on the Annexed Property. The Annexed Property is constitutionally exempt from all *ad valorem* taxes, S.C. CONST. art. VIII, § 13(D), and Hardeeville is prohibited from levying and collecting *ad valorem* taxes on tax-exempt property. S.C. Code Ann. § 5-21-110. Therefore, the trial court's ruling that Hardeeville may not levy and collect *ad valorem* taxes on the Annexed Property, and the owner of the Annexed Property must, instead, make fee-in-lieu of tax payments must be affirmed.

B. All Fee-In-Lieu of *Ad Valorem* Tax Payments Must Be Distributed Pursuant to the Park Agreement Between the Counties.

The Park Agreement controls how the Park Revenues *must* be distributed. Section 4-1-170(A)(3) states as follows:

> The written agreement entered into by the participating counties must include provisions which: . . . (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.

S.C. Code Ann. § 4-1-170(A)(3) (emphasis added); *see also Horry Cty.*, 346 S.C. at 629, 552 S.E.2d at 741 ("[F]or a project located in an industrial development park as defined in § 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.") (quoting S.C. Code Ann. § 4-29-67(L)(2)) (emphasis added). State law does not provide an exception to this rule.

[9] *See also* Op. S.C. Att'y Gen., 1983 WL 181830, at *1 (April 5, 1983) (interpreting Section 5-21-110 and concluding "[a]ll property having a tax situs within a municipality is taxable by the municipality *unless exempted from such taxation*") (emphasis added).

Despite the statutory mandate that all Park Revenues be distributed in the manner set forth in the Park Agreement, Hardeeville argues the statutorily granted discretion to counties over the allocation of park revenues as determined in the governing park agreement extends only to a taxing entity's park property if that taxing entity is not a municipality, such as a school district. *See* Hardeeville's Br. pp. 13–14 & 24–25. There is no support in South Carolina law for this argument.

The *Horry County* Court described the extent of counties' discretion to allocate and distribute park revenues pursuant to the underlying park agreement, and in doing so, made no distinction for municipal property.[10] Rather, the Court repeatedly framed the issue as the *county's* discretion over the allocation of park revenues to *all other taxing entities*. *See* 346 S.C. at 626, 552 S.E.2d at 739 ("The district argues the trial court erred in construing § 4-1-170 . . . as **granting the county discretion over the allocation of revenue** from MCBPs. We disagree); *id.* at 630, 552 S.E.2d at 741 ("[Section] 4-1-170(2) specifically **allocates that revenue to the county, not to any other taxing entity**.") (emphasis added).

Moreover, a recently issued May 5, 2022 opinion from the South Carolina Attorney General's Office further explains in detail the extent of a county's discretion (by way of a valid park agreement) over the allocation of a park's revenues for all taxing entities' park property. Analyzing Sections 4-1-170 and 4-29-67 and the Supreme Court's decision in *Horry County*, the Attorney General concluded that counties are under no obligation to either distribute park revenues in the same proportion as it would if the property were taxable or employ a specific methodology

[10] Hardeeville has previously argued that because the *Horry County* Court defined "County" to also include the City of Myrtle Beach, this means the Court's holdings have no bearing on a county's authority with respect to municipality revenues derived from multi-county park property. *See* Hardeeville's Mot. Recons. pp. 3–4 ¶ 2 (R. 00509–10). However, simply because the Court discussed the county's authority over park revenues with respect to only one specific taxing entity (i.e., a school district) it does not follow that the Court's reasoning would not also apply to another taxing entity, such as a municipality. The *Horry County* Court made no such distinction, and such a distinction is not found anywhere else in South Carolina law.

in doing so. *Id.* at *4.[11] And in response to the final question (whether there was any statutory remedy for a "**local government entity**" who believed that the distribution of park revenues was inequitable), the Attorney General concluded "the law does not provide for remedy for school districts **or other taxing entities** who believe they received an inequitable allocation of fee in lieu revenue in the agreement creating a [park]." *Id.* at *1 (emphasis added).

Neither the statutory scheme nor the *Horry County* decision nor the Attorney General's opinion make any distinction between a municipality's property and other taxing entities' property with respect to a county's discretion over the allocation and distribution of park revenues by way of a valid park agreement. Therefore, Park Revenues, including those generated from the Annexed Property, must be distributed pursuant to the terms of the Park Agreement. *See* S.C. Code Ann. § 4-1-170(A)(3); *Horry Cty.*, 346 S.C. at 629, 552 S.E.2d at 741.

C. Future Distributions May Be Corrected.

Hardeeville argues because the Jasper Parties inadvertently collected and remitted to Hardeeville 100% of Hardeeville's share of fee-in-lieu of tax revenues (if the property were not subject to the Park Agreement) attributable to the Annexed Property in the past, that means Hardeeville should be allowed to continue receiving the same amount in perpetuity. Hardeeville's Br. pp. 19–21. Hardeeville's argument is incorrect for four reasons.

First, the statutory mandate that all Park Revenues be distributed in accordance with the Park Agreement is not optional. S.C. Code Ann. § 4-1-170(A)(3). Second, counties are expressly given the right to correct future distributions when misallocations are discovered. *Id.* § 4-1-170(B).[12] Third, Hardeeville's "deference" argument, *see* Hardeeville's Br. p. 21, is entirely

[11] The only limitation on the county's discretion in allocating park revenues is that each taxing entity within a park "must receive some allocation" of the park revenues. *See* Op. S.C. Att'y Gen., 2022 WL 1606364, at *4 (May 5, 2022); *but see Horry Cty.*, 346 S.C. at 636, 552 S.E.2d at 745 (Pleicones, J. dissenting) ("In my view, the statutes permit the county to allocate 0% to a taxing entity in the county . . . .").

[12] *Cf.* S.C. Code Ann. § 4-1-170(B); § 4-29-67(L)(4); § 4-12-30(K)(4); § 12-44-80(C).

irrelevant to a local government's past practice—this applies only to an administrative agency's interpretation of its own regulations or the statutes it is charged with enforcing.[13]

Fourth, to the extent Hardeeville is claiming the Jasper Parties are estopped from correcting future distributions, this argument likewise fails. 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 a governmental entity 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 shows that the Park Agreement and General Bond Ordinance were properly recorded with Jasper's Clerk of Court's office on April 10, 2000, and May 30, 2001, respectively. Compl. Exs. A–C (R. 00065–00113); Simmons Aff. Exs. 1-A & 1-C (R. 00256–00313). Thus, Hardeeville has not and cannot establish it lacked knowledge. Hardeeville's estoppel argument, therefore, fails as a matter of law. *See 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").

[13] *See, e.g., Kiawah Dev. Partners, II v. S.C. Dep't of Health and Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) ("As repeatedly stated in our decisions, our deference doctrine provides that courts defer to an *administrative agency's* interpretations with respect to statutes entrusted to its administration or its own regulations 'unless there is a compelling reason to differ.'") (emphasis added); *cf. Kiawah*, 411 S.C. at 34–35, 766 S.E.2d at 718 ("We defer to an agency interpretation *unless* it is 'arbitrary, capricious, *or manifestly contrary to the statute*.") (emphasis added).

Accordingly, Hardeeville's request to continue collecting *ad valorem* taxes on the Annexed Property into the future without regard to the Park Agreement must be rejected. The trial court's ruling that all Park Revenues, including those generated from the Annexed Property, must be allocated and distributed in accordance with the Park Agreement must be affirmed.

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

Hardeeville's consent to the Park Agreement was not required because Hardeeville did not annex park property until *after* the park was created. *See* S.C. Code Ann. § 4-1-170(C). Nevertheless, Hardeeville argues because it did not consent to the Park Agreement, the Annexed Property is not exempt from Hardeeville's *ad valorem* taxes, and Hardeeville may levy and collect *ad valorem* taxes on that property. *See* Hardeeville's Br. pp. 22–26. Hardeeville's argument must be rejected because it directly contradicts the plain language of Section 4-1-170.

A statute must be interpreted according "to its plain and ordinary meaning, and this Court may not resort to subtle or forced construction in an attempt to limit or expand the statute's scope." *New York Times Co. v. Spartanburg Cty. Sch. Dist. No.* 7, 374 S.C. 307, 310, 649 S.E.2d 28, 29–30 (2007) (citing *City of Columbia v. Am. Civ. Liberties Union of S.C., Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 749 (1996)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Duke Energy Carolinas, LLC v. S.C. Office of Reg. Staff*, 434 S.C. 392, 434, 864 S.E.2d 873, 895 (2021) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* at 434, 864 S.E.2d at 895–96.

Section 4-1-170 states as follows: "If the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality *prior to the creation of the multi-county industrial park*." S.C. Code Ann. § 4-1-170(C) (emphasis added). This statute plainly requires counties to obtain a municipality's consent *only if* a park would encompass

municipal property *at the time the park is created*. If the legislature intended to require counties to obtain municipality consent at any point after the park was created, it would have said so in plain terms exactly as it did concerning municipal property within a park's boundaries prior to the creation of the park. *See Horry County*, 346 S.C. at 630, 552 S.E.2d at 742; *Duke Energy Carolinas, LLC*, 434 S.C. at 435, 864 S.E.2d at 896.

Hardeeville's proposed *ex post facto* consent requirement is strikingly similar to an argument struck down by the South Carolina Supreme Court in *City of Abbeville v. Aiken Elec. Co-op, Inc.*, 287 S.C. 361, 338 S.E.2d 831 (1985). In that case, the cities argued that *upon annexation*, Section 58-27-640 (a statute providing the Public Service Commission the power to assign service areas to electric suppliers) became inoperative. 287 S.C. at 365, 338 S.E.2d at 834. The cities' argument was based on Article VIII, § 15 of the Constitution's requirement that laws not be passed "granting the right to construct and operate in a public street or on public property an . . . electric plant . . . without *first obtaining the consent of the governing body of the municipality*." *Id.* (citing S.C. CONST. art. VIII, § 15) (emphasis added).

The cities argued this constitutional provision granted them "the absolute right not only to refuse consent for new construction and operation but, in addition, to 'oust' any entity providing service in an area at the time of its annexation or incorporation." *Id.* The Court disagreed, holding the following:

> **"First obtaining" clearly is a condition precedent to a referenced event, and "proposed" is equally indicative of a future occurrence. Consent is required only at the time facilities are first erected. When service is initiated in rural areas there are no governing bodies of a municipality with whom to consult. Accordingly, obtaining consent at initial erection of facilities is impossible.**

Id. at 368, 338 S.E.2d at 835 (emphasis added).

The same analysis applies in this case. Municipality consent is only required *prior to* the creation of a park. S.C. Code Ann. 4-1-170(C). Before and at the time the park was first created,

there was no municipality property located within the park's boundaries, and thus no municipality from which Jasper needed to or could seek consent. *See* Compl. ¶¶ 9 & 38 (R. 00055 & R. 00059). Accordingly, obtaining Hardeeville's consent at initial creation of the park was impossible.

III. THE PARK AGREEMENT IS VALID AND ENFORCEABLE.

Under both the Code and the Constitution, there are two primary requirements to create a park: (1) two or more contiguous counties, and (2) a written agreement. *See* S.C. Code Ann. §§ 4-1-170(A) & -172; S.C. CONST. art. VIII, § 13(D). Under Section 4-1-170(A), the written agreement must include provisions which:

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

S.C. Code Ann. 4-1-170(A). There are no other requirements.

There is no dispute that Jasper and Beaufort are contiguous counties, and Hardeeville admits the Park Agreement satisfies subsections (1) and (2) of Section 4-1-170(A). Hardeeville's Br. p. 16. Thus, the only issue for this Court to determine regarding whether the Park Agreement is valid and enforceable is whether the agreement satisfies Section 4-1-170(A)(3).

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

Hardeeville argues the trial court erred in holding that the Park Agreement was valid because the specific manner in which park revenues must be distributed to each of the Jasper Taxing Entities is not within the four corners of the MCIP Agreement. *See* Hardeeville's Br. pp. 16–17; *see also* Hr'g Tr. p. 24, ll. 10–14 (Oct. 27, 2021) (R. 00607). Hardeeville's argument must be rejected because neither Title 4 of the Code nor Article VIII, § 13(D) of the Constitution require a park agreement to consist of one and only one document. Hardeeville's argument also directly contradicts well-established principles of contract law. As explained below, the Park Agreement sufficiently specifies the manner in which Park Revenues must be distributed to each of the taxing

entities within Jasper. Therefore, the trial court's ruling that the Park Agreement satisfies Section 4-1-170(A) must be affirmed.

1. The MCIP Agreement and Park Ordinance Must Be Considered and Construed Together to Interpret the Terms of the Park Agreement.

It is basic contract law that a contract's terms may be supplemented by the terms of another document. *Shaw v. East Coast Builders of Columbia, Inc.*, 291 S.C. 482, 484, 354 S.E.2d 392, 392 (1987) (citing *Twiggs v. Williams*, 98 S.C. 431, 82 S.E. 676 (1914)). Absent something indicating a contrary intention, instruments relating to the same subject matter, for the same purpose, and executed in the course of the same transaction are to be considered and construed together. *See Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 10, 406 S.E.2d 162, 165 (1991) (citing *Klutts Resort Realty, Inc. v. Down'round Dev. Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977)); *Sentry Eng'g and Constr., Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 338 S.E.2d 631 (1985); *Plaza Dev. Servs. v. Joe Harden Builder, Inc.*, 294 S.C. 430, 433–34, 365 S.E.2d 231, 233 (Ct. App. 1988). When construing such instruments, "if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 92, 594 S.E.2d 485, 493 (Ct. App. 2004) (quoting *Edward Pinckney Assocs., Ltd. v. Carver*, 294 S.C. 351, 354, 364 S.E.2d 473, 473 (Ct. App. 1987)). This rule applies even where the parties are not the same, if the several instruments were known to all parties and were delivered to accomplish an agreed purpose. *Id.* at 93, 594 S.E.2d at 493 (citing 17 Am.Jur.2d *Contracts* § 388 (1991)).

The relevant material facts are as follows:

i. Jasper and Beaufort reduced their decision to develop the park to writing in the MCIP Agreement. *See* Compl. Ex. B (R. 00069–76).

ii. The MCIP Agreement identified the property included in the park. *Id.* p. 2 § 3 R. 00071).

iii. The MCIP Agreement expressly referenced Jasper's and Beaufort's respective ordinances that would further specify the manner in which revenues must be distributed to the applicable taxing entities within each county. *Id.* p. 3 § 7 (R. 00072).

iv. The Park Ordinance included the MCIP Agreement as an exhibit and expressly incorporated all of the MCIP Agreement's terms. *Id.* Ex. A p. 1 § 1 (R. 00066).[14]

v. Beaufort signed the MCIP Agreement on February 14, 2000, *id.* Ex. B p. 5 (R. 00074), and Jasper signed the MCIP Agreement on April 10, 2000, *id.* at p. 6 (R. 00075).

vi. The Park Ordinance, Beaufort's respective ordinance, and a fully executed MCIP Agreement were recorded together in Jasper's Clerk of Court's office at Book 8, pages 82–84, on April 10, 2000, between 3:44PM and 3:52PM. *See* Simmons Aff. Ex. 1-A (R.00257); *see also* Compl. Exs. A & C (R. 00066 & R. 00078).

Accordingly, the MCIP Agreement and Park Ordinance relate to the same subject matter, were for the same purpose, were executed in the course of the same transaction, and show a plain and unmistakable intent to be considered and construed together. Both documents also clearly contemplate the Park Ordinance supplementing and controlling the MCIP Agreement's revenue distribution scheme. Thus, to properly construe and interpret the required distribution of Park Revenues under the Park Agreement, the MCIP Agreement and the Park Ordinance's terms must be construed and considered together. *See Shaw*, 291 S.C. at 484, 354 S.E.2d at 392; *Cafe Assocs., Ltd.*, 305 S.C. at 10, 406 S.E.2d at 165; *Sentry Eng'g and Constr., Inc.*, 287 S.C. at 350, 338 S.E.2d at 633–34; *Plaza Dev. Servs.* 294 S.C. at 433–34, 365 S.E.2d at 233; *Ellie, Inc.* 358 S.C. at 92–93, 594 S.E.2d at 493.

[14] Compl. Ex. A § 1 (R. 00066) (The form of the joint industrial park agreement **(the "Agreement") is attached hereto and all terms of the Agreement are hereby incorporated herein.** The forms, terms and provisions of the Agreement presented to this meeting and filed with the Clerk of Jasper County Council be and they are hereby approved and **all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set out in this Ordinance in its entirety**.) (emphasis added).

2. The MCIP Agreement and Park Ordinance Specify the Manner in which Park Revenues Must Be Distributed to the Jasper Taxing Entities.

The MCIP Agreement specifies the manner in which Park Revenues must be distributed to the Jasper Taxing Entities through express reference to the terms of the Park Ordinance. Specifically, the MCIP Agreement states:

> 7. **Revenue Allocation Within Each County.** Revenues generated by the Park through the payment of fees in lieu of *ad valorem* property taxes shall be distributed to the Counties according to the proportions established by Section 6. . . . **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**.

Compl. Ex. B § 7 (R.00072) (emphasis added). The "ordinance adopted by Jasper" was the Park Ordinance—the very same ordinance that attached the MCIP Agreement as an exhibit and expressly incorporated by reference all of the MCIP Agreement's terms.

Section IX of the Park Ordinance fully satisfies the requirements of Section 4-1-170(A)(3). That section states the following:

> 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 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.

Compl. Ex. A, § IX (R. 00067–68) (bold emphasis added). This language sufficiently instructs the taxing authorities in Jasper how to distribute Park Revenues to the Jasper Taxing Entities—i.e., in proportion to the taxing entities' respective millage rates. Accordingly, the Park Agreement satisfies Section 4-1-170(A)(3).

3. The General Bond Ordinance Amended the Park Agreement's Revenue Distribution Scheme.

On April 16, 2001, Jasper enacted the General Bond Ordinance approving the issuance of the Bonds. One of the General Bond Ordinance's expressly stated purposes is "amending [the Park Ordinance] relating to the distribution of the fees in lieu of *ad valorem* taxes in the Park." Compl. Ex. C p. 2 (R. 00079) (capitalization removed from original). The General Bond Ordinance expressly references the MCIP Agreement, which it accurately identifies as "the Agreement for Development of Joint County Industrial and Business Park executed on behalf of Beaufort County as of February 14, 2000, and executed on behalf of Jasper County as of April 10, 2000, as such may be amended or supplemented from time to time." *Id.* § 1.1 (R. 00084).

All of these documents—the MCIP Agreement, the Park Ordinance, and the General Bond Ordinance—relate to the same subject matter, were for the same purpose, and were part of the same transaction. These documents all show a plain and unmistakable intent to be considered and construed together.[15] Therefore, the MCIP Agreement, Park Ordinance, and General Bond Ordinance must be considered and construed together to interpret the terms of the Park Agreement and effectuate the intent of the parties. *See Shaw*, 291 S.C. at 484, 354 S.E.2d at 392; *Cafe Assocs., Ltd.*, 305 S.C. at 10, 406 S.E.2d at 165; *Sentry Eng'g and Constr., Inc.*, 287 S.C. at 350, 338 S.E.2d at 633–34; *Plaza Dev. Servs.* 294 S.C. at 433–34, 365 S.E.2d at 233; *Ellie, Inc.* 358 S.C. at 92–93, 594 S.E.2d at 493.

After the General Bond Ordinance was enacted, the Park Agreement's required revenue distribution scheme to the Jasper Taxing Entities is now as follows:

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

[15] All documents necessary to determine the present revenue distribution scheme under the Park Agreement were recorded and made public record over 5 years before Hardeeville annexed the Annexed Property. *See* Compl. Ex. A & C (R. 00066 & R. 00078); Simmons Aff. Ex. 1-A (R.00257).

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

Compl. Ex. C, § 11.1 (R. 00101).

This language specifies that after 1% is paid to Beaufort, the next 40% of Park Revenues must be used as payment for the Bonds. *Id.* The remainder of Park Revenues must then be distributed to the Jasper Taxing Entities (which later included Hardeeville) in "the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes." *Id.* Again, this language sufficiently instructs the taxing authorities how to distribute the remaining Park Revenues to the Jasper Taxing Entities.

4. No Further Amendment to the Park Agreement is Necessary.

Hardeeville argues the Order amounts to a "blue penciling" because "neither [Hardeeville] nor Jasper Respondents know how much revenue [Hardeeville] is actually to receive." Hardeeville's Br. 18–19. This statement is not only wrong, but it misrepresents the facts.

The Order did not amend anything. It simply found, as a matter of law, that Park Revenues are required to be distributed in accordance with the Park Agreement's terms. In turn, this requires Park Revenues to be distributed in accordance with the General Bond Ordinance's terms. *See supra* pp. 11–12 § D. The General Bond Ordinance tells Hardeeville exactly how the Park Revenues will be distributed, which enables Hardeeville to determine the amount it will receive. This financial information was also already provided to Hardeeville by Jasper, as evidenced by Hardeeville's

own pleadings. *See* Compl. Ex. G (R. 00166–70).[16] Therefore, Hardeeville's claim that it does not know what amount of Park Revenues it will receive from the Annexed Property under the terms of the Park Agreement is not true.

5. Horry County School District v. Horry County Does Not Support Hardeeville's Position.

Hardeeville makes vague references throughout its Brief to the South Carolina Supreme Court's ruling in *Horry County* regarding an "inadequacy" in the underlying park agreement in that case. Hardeeville's exact argument is unclear, but to the extent Hardeeville has argued, or will argue, the Park Agreement's revenue distribution provision does not adequately provide a basis for determining what proportion of Park Revenues go to debt service and what proportion to school operations, this argument must be rejected.

First, and most importantly, the *Horry County* Court did not address, let alone hold, that a park agreement's terms could not be supplemented by another document. The Court did not provide any indication as to what documents the Court was referencing or not referencing when it interpreted the terms of the park agreement at issue in that case.

Second, although the *Horry County* Court noted the park agreement in that case may be insufficient because it did not provide a basis for determining what proportion of park revenues went to debt service and what proportion to school operations, 346 S.C. at 631, 552 S.E.2d at 742, that is not an issue in this case. The Park Agreement's language that revenues "shall be paid to each of the taxing entities in Jasper County which levy an *ad valorem* property tax in any areas comprising the Park in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes" specifies what

[16] Consistent with the terms of the General Bond Ordinance, *see* Compl. Ex. C § 11.1 (R. 00101), Jasper informed Hardeeville that "the distributions to it of its millage levy included the 41% that should have gone to Beaufort County and the bond holders." Compl. Ex. G p. 2 (R. 00168).

proportion of Park Revenues goes to debt service and what proportion goes to operations. *See* Order p. 13 (R. 00017). Therefore, *Horry County* is neither applicable nor instructive to whether the Park Agreement satisfies Section 4-1-170(A)(3).

6. The Record Shows the Park Agreement is Consistent with Common Practice in South Carolina.

Hardeeville's argument regarding the alleged invalidity of the Park Agreement is further undermined by the materials submitted with Nickel Plate Road, LLC's ("Nickel Plate") Opposition to Plaintiff's Motion for Summary Judgment. In that memorandum, Nickel Plate stated that "reliance on an ordinance" to satisfy Section 4-1-170(A)(3) "is commonly how that requirement is satisfied in multi-county industrial park agreements." *See* Mem. Nickel Plate Road, LLC Opp. Pl.'s Mot. Summ. J. p. 4 (Nov. 11, 2022) (R. 00503).[17]

To support this position, Nickel Plate attached to its Memorandum an agenda packet from the Oconee County Council. *Id.* Ex. A (R. 00507–20). Included within that agenda packet was a copy of an Agreement for Development of a Joint County Industrial and Business Park (Project Ruby Slipper) between Oconee County and Pickens County (the "Oconee-Pickens Park Agreement"), with an effective date of December 31, 2021. *Id.* (R. 00514–18). Section 7 of Oconee-Pickens Park Agreement, "Revenue Allocation within Each County," states the following: "Revenues allocable to Oconee County by way of fees in lieu of ad valorem taxes generated from properties located in Oconee County shall be distributed within Oconee County **in accordance with the applicable governing ordinance of Oconee County in effect from time to time**." *Id.*

[17] *See also id.* (R. 00503) ("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 is this case which refers to ordinances that are not in the park agreement itself to specify how park fees will be allocated . . . . The paragraph dealing with revenue allocation is in paragraph 7 in that park agreement, just as it is in the [MCIP] Agreement in this case.")

(R. 00516) (emphasis added). The difference in this language from the language in the Park Agreement is not substantive.

The Record shows park agreements have satisfied the requirements of Section 4-1-170(A)(3) through reference to ordinances since the early 2000s and are still doing so to this day. Hardeeville did not and cannot present any legal authority to suggest that a park agreement's reference to an ordinance's terms is insufficient or invalidates the governing park agreement. The remaining requirements to create a valid and enforceable park agreement under Section 4-1-170 are not in dispute. Therefore, the trial court's ruling that the Park Agreement is valid and enforceable must be affirmed.

IV. FURTHER DISCOVERY IS NOT NECESSARY FOR FINDING JASPER WAS ENTITLED TO PARTIAL MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW.

Hardeeville argues that granting Jasper's motion for partial summary judgment was premature until Jasper responded to Hardeeville's discovery requests because there *could exist* information and documents that would support Hardeeville's arguments. *See* Hardeeville's Br. pp. 20–21.[18] Specifically, Hardeeville argues (1) the trial court could not have determined the Park Agreement was valid as a matter of law without discovery because "interpreting and understanding the Park Agreement is only possible by reference to actions and ordinances issued by Jasper, subsequent to the execution of the Park Agreement"; and (2) Hardeeville does not know the factual reason why it is no longer entitled to levy and collect an amount equal to 100% of the *ad valorem* taxes on the Annexed Property. Hardeeville misrepresents the Record.

Every document necessary for "interpreting and understanding the Park Agreement" (i.e., the Park Ordinance, MCIP Agreement, and General Bond Ordinance) were exhibits to

[18] Hardeeville also states the Jasper Parties "have failed to respond" to Hardeeville's December 23, 2020 request for documents pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.* ("FOIA"). Hardeeville's Br. p. 20 n.4. To the extent Hardeeville is claiming Jasper did not produce any documents in response to Hardeeville's FOIA request, that claim is not true.

Hardeeville's Complaint. *See* Compl. Exs. A–C (R. 00065–113). There are no other documents needed to determine if the Park Agreement satisfies Section 4-1-170's requirements. Discovery of additional facts would not change that the Park Agreement is valid and enforceable as a matter of law or that Park Revenues must be distributed in accordance with the Park Agreement.

With respect to Hardeeville's second argument, Hardeeville's claim that it has been left in the dark about what led to the change in the Jasper Parties' position is without merit. This purportedly unknown information is, again, located within Hardeeville's own pleadings. Attached to Hardeeville's Amended Complaint is a November 9, 2020 letter from the Jasper County Administrator to the Hardeeville City Manager. Compl. Ex. G (R. 00166–70). In that letter, the Jasper County Administrator explained what led to the need for the accounting reconciliation where the distribution errors were discovered. *Id.* (R. 00167–68). The letter also explained to Hardeeville the exact amount of the error, and the method for calculating its portion of Park Revenues moving forward. *Id.* Hardeeville's claim that it does not know what amount of money it will receive in the future is nothing more than a ploy to gain sympathy and confuse this Court about the actual, material facts.

Finally, for purposes of withstanding a motion for summary judgment, Hardeeville was required to "demonstrate discovery *will likely uncover additional relevant evidence*." *Dawkins*, 354 S.C. at 71, 580 S.E.2d at 440 (emphasis added). Hardeeville failed to make this demonstration, either to the trial court or now on appeal. The simple fact is even if "additional evidence" were uncovered, none of it would be relevant to the issues on appeal.

CONCLUSION

For the foregoing reasons, Jasper respectfully requests this Court reject Hardeeville's arguments and affirm the trial court's July 13, 2022 Order.

s/J. Evan Phillips
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