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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2024-000871

Horry Georgetown Technical College ..... Appellant,

v.

Claycon Pharma RE, LLC, Pathway Treatment Center, LLC
Pathway Clinic, LLC, and City of Conway..... Respondents,

FINAL BRIEF OF RESPONDENTS, CLAYCON PHARMA RE, LLC, PATHWAY TREATMENT CENTER, LLC, AND PATHWAY CLINIC, LLC

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STATEMENT OF THE ISSUES ON APPEAL

I. WHETHER HORRY GEORGETOWN TECHNICAL COLLEGE, WHICH IS NOT, BY STATUTORY DEFINITION, A SECONDARY SCHOOL, IS ENTITLED TO THE PROTECTIONS SET FORTH IN SECTION 61-93.2624 OF THE SOUTH CAROLINA CODE OF REGULATIONS ANNOTATED OR SECTION 5.1.32(B) OF THE UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF CONWAY, SOUTH CAROLINA.

STATEMENT OF THE CASE

This case involves a dispute over the establishment and operation of an opioid treatment center ("OTC") on real property located at 1800 Husted Road, Conway, South Carolina 29526 (the "Subject Property"). (R. pp. 21-29, 32-40). Respondent Claycon Pharma Conway RE, LLC ("Claycon") is the owner of the Subject Property; and Respondents Pathway Treatment Center, LLC ("PTC") and Pathway Clinic, LLC ("PC") are Claycon's tenants at the Subject Property. (R. pp. 21, 32). Respondents seek to establish and operate an OTC[1] on the Subject Property.

Appellant Horry Georgetown Technical College ("HGTC") is a college with its Conway, South Carolina main campus located at 2050 Hwy 501 East, Conway, South Carolina, 29526. (R. p. 32, HGTC's Final Brief, p. 5). HGTC, by its own admission, is a "college" and "post-secondary" school, which contains grades higher than the twelfth grade. (R. pp. 45-47, HGTC's Final Brief, p. 5). Pursuant to a basic Google Maps search, HGTC's main campus at 2050 Hwy 501 East is located approximately one (1) mile (i.e., 5,280 feet) from the Subject Property. HGTC owns and operates one building, HGTC Building 2000, which is an Advanced Manufacturing Center, located at 250 Allied Drive. (See HGTC's Final Brief, p. 5). Pursuant to a basic Google

[1] It is uncontested that the OTC Respondents seek to operate is an "Opioid Treatment Program" within the meaning of S.C. Code Regs. Ann. § 61-93.2624 and an "Outpatient treatment facility for Drug and Alcohol Abuse" under Section 5.1.32(D) of the Unified Development Ordinance for the City of Conway, South Carolina.

Maps search, HGTC Building 2000 is approximately 0.3 miles (i.e., 1,584 feet) from the Subject Property.

HGTC initiated this case on October 10, 2024, seeking a declaratory judgment prohibiting Respondents from operating an OTC on the Subject Property. (R. pp. 21-29). In its Complaint, HGTC asserted that Respondents' OTC should not be allowed to operate at the Subject Property because such operation would violate: (1) a 1,000 foot spacing requirement in favor of an "education facility," which is set forth in Section 5.1.32(B) of the City of Conway's Unified Development Ordinance ("UDO"); and (2) a 500 foot spacing requirement in favor of a "secondary school," which is set forth in South Carolina Code of Regulations Annotated ("S.C. Code Regs. Ann.") Section 61-93.2624. (R. pp. 21-29). HGTC asserts: (1) it meets the definition of an "education facility" under the UDO and the definition of "secondary school" under state statutory law; and (2) that the property line of the Subject Property is located less than 250 feet from the property line of HGTC; therefore, operation of an OTC on the Subject Property would violate both the 1,000 foot spacing requirement set forth in the UDO and the 500 foot spacing requirement set forth in South Carolina statutory law. (R. pp. 21, 22, 25, 26). HGTC filed an Amended Complaint on October 12, 2023, which only added the City of Conway, South Carolina as a defendant in the case. (R. pp. 32-40).

Specifically, HGTC's Amended Complaint seeks the following relief:

1. A declaratory judgment declaring that Section 5.1.32(B) of the City of Conway's UDO, which prohibits operation of outpatient treatment facilities for drug and alcohol abuse within 1,000 feet of a "public or private education facility," is not preempted by S.C. Code Regs. Ann. Section 61-93.2624, or South Carolina Code Annotated ("S.C. Code Ann.")

Section 44-7-78, both of which prohibit operation of an OTC within 500 feet of "the property line of a public or private elementary or secondary school[.]" (R. pp. 35-36).

2. A declaratory judgment finding that HGTC Building 2000, located at 250 Allied Drive, Conway, South Carolina, is a "public or private educational facility" within the meaning of Section 5.1.32(B) of the City of Conway's UDO. (R. p. 36).

3. A declaratory judgment finding that Respondents have not been granted a variance to Section 5.1.32(B) of the City of Conway's UDO decreasing the allowable distance between an OTC and a "public or private education facility" from 1,000 feet to 500 feet. (R. p. 37).

4. A declaratory judgment finding that HGTC Building 2000, located at 250 Allied Drive, Conway, South Carolina, is a "public or private secondary school" within the meaning of S.C. Code Regs. Ann. Section 63-91.2624. (R. p. 37).

5. A declaratory judgment finding that all property lines of the Subject Property are less than 500 feet from 250 Allied Drive, Conway, South Carolina; and, as such, establishment of an OTC on the Subject Property would violate S.C. Code Regs. Ann. Section 63-91.2624. (R. pp. 37-38).

6. An order enjoining Respondents from establishing any OTC on the Subject Property. (Am. R. p. 38).

On December 4, 2023, in lieu of filing an Answer to HGTC's Amended Complaint, Respondents filed a Motion to Dismiss, in which they sought dismissal of HGTC's case, in its entirety.[2] (R. pp. 41-44). In their Motion to Dismiss, Respondents argued: (1) HGTC, by and through its own admission and marketing, is a college and/or post-secondary school, which has

[2] Respondents' Motion to Dismiss alternatively sought judgment on the pleadings. (R. p. 41).

grades higher than the twelfth; and (2) because HGTC is not an "education facility[,]" as defined within Conway's UDO, or an "elementary or secondary school[,]" as defined by South Carolina statutory law, none of the spacing requirements for OTCs under the City of Conway's UDO or South Carolina statutory law apply to HGTC. (R. pp. 41-44). Included within Respondents' Motion to Dismiss, as Exhibit A thereto, is a copy of the "About HGTC" page of HGTC's official website, wherein HGTC repeatedly describes itself as a "college" that provides "post-secondary…programs." (R. pp. 45-47). Exhibit A contains information that is generally known to the public in Horry County, South Carolina and which is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. (See R. pp. 45-47).

Respondents' Motion to Dismiss was heard by the Horry County Court of Common Pleas, via the Court's WebEx Virtual Courtroom, on March 26, 2024. (R. pp. 98-119). During the March 26, 2024 hearing, counsel for each of the parties presented their respective arguments to the Court.[3] (R. pp. 98-119).

Counsel for Respondents presented the following documents to the Court on March 26, 2024, which were not included in the pleadings of the case: a map of HGTC's Conway, South Carolina campus and an excerpt of course descriptions from HGTC's curriculum. (R. p. 102, line 15-p. 103, line 24, p. 114, line 14-p. 115, line 2). Respondents' counsel also produced a copy of the "About HGTC" page of HGTC's official website, which was included as Exhibit A to Respondents' Motion to Dismiss. (R. p. 104, line 25-p. 105, line 6).

[3] During the hearing, rather than presenting its own argument, counsel for the City of Conway, South Carolina stated that the City supported Respondents' Motion to Dismiss and Respondents' arguments made in support thereof. (R. p. 109, lines 17-20).

During the hearing on Respondents' Motion to Dismiss, HGTC's counsel argued that an entity separate from HGTC, called HCS Early College, operates a high school on HGTC's campus.[4] (R. p. 111, line 20-p. 114, line 3). The Court questioned why such entity, if existing, had not come forward to contest Respondents' ability to operate an OTC. (R. p. 113, lines 13-21). Ultimately, after hearing oral arguments by the parties, the Circuit Court requested Respondents' counsel prepare an order granting Respondents' Motion to Dismiss and instructed Respondents' counsel to include therein the issue of HGTC's standing to assert a claim on behalf of a separate high school entity on its campus. (R. p. 116, line 18-p. 117, line 20).

On March 26, 2024, the Circuit Court entered a Form 4 Order granting Respondents' Motion to Dismiss, which stated a formal order was to follow. (R. pp. 1-3). On April 5, 2024, HGTC filed a Motion to Reconsider and For Leave to Amend Complaint ("Motion to Reconsider"). (R. pp. 60-64). However, HGTC failed to serve a copy of its April 5, 2024 Motion to Reconsider and For Leave to Amend Complaint on Judge Culbertson within ten (10) days of its filing.

On April 26, 2024, the Circuit Court entered its formal Order Granting Respondents' Motion to Dismiss or Judgment on the Pleadings. (R. pp. 4-15). The Court's April 26, 2024 Order Granting Respondents' Motion to Dismiss clearly holds:

1. HGTC is not entitled to relief under either Section 5.1.32(B) of the City of Conway's UDO or S.C. Code Regs. Ann. Section 63-91.2624 because HGTC has grades higher than the

[4] HGTC's Amended Complaint does mention HCS Early College. (See R. pp. 32-40). HGTC briefly mentions this alleged high school for the first time in its Memorandum in Opposition to Respondents' Motion to Dismiss. (See R. pp. 53-54).

twelfth grade and does not meet the definition of a "secondary school," which applies to both pertinent statutes;[5]

2. HGTC does not have standing because it is not a "secondary school" pursuant to the pertinent local and state statutes; therefore, it neither has standing under the pertinent statutes, nor could it have suffered an injury-in-fact;

3. HGTC does not have standing under South Carolina's "public importance" exception because the claims asserted by HGTC could be brought by other parties who can show the required injury; and

4. Each of HGTC's claims fail because they seek either:

    a. advisory opinions, which the Court does not issue; or

    b. HGTC has failed to state viable causes of action under South Carolina local and state statutory law.

(R. pp. 4-15). The Court's April 26, 2024 Order further notes that, although the specific issue was not before the Circuit Court on Respondents' Motion to Dismiss, it does not appear that either HGTC's main campus location at 2050 Hwy. 501 East or Building 2000 at 250 Allied Drive are located within 500 feet of the Subject Property. (R. p. 6, fn 4).

Several hours after the Court entered its April 26, 2024 Order Granting Respondents' Motion to Dismiss, HGTC filed an Amended Motion to Reconsider and For Leave to Amend Complaint ("Amended Motion to Reconsider"). (R. pp. 65-88). Neither HGTC's April 5, 2024

[5] Respondents recognize that S.C. Code Regs. Ann. § 63-91.2624 is a regulation and Conway's UDO is an ordinance. For ease of reference herein, Respondents may, at times, refer to the foregoing collectively as pertinent statutes.

Motion to Reconsider, nor its April 26, 2024 Motion to Reconsider contain any proposed amended complaint or set forth facts demonstrating that amendment *would not* be futile. (R. pp. 63, 68).

On May 28, 2024, HGTC filed its Notice of Appeal in this case, which removed jurisdiction of this case from the Circuit Court and rendered the Circuit Court unable to rule upon HGTC's pending Motion and Amended Motion to Reconsider. (See R. pp. 16-17).

STANDARD OF REVIEW

Questions of statutory construction and standing are matters of law for the Court to decide. See Boiter v. South Carolina Dept. of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405 (2011) ("Questions of statutory construction are a matter of law.") (citing Charleston Cty. Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459, S.E.2d 841, 843 (1995) ("The determination of legislative intent is a matter of law.")); see also Carnival Corp., et. al. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 753 S.E.2d 846 (2014) (where the trial court dismissed a complaint as a matter of law due to the plaintiff's lack of standing), Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d 46 (1984) ("The trial judge should have held as a matter of law that [plaintiff] had no standing to sue…").

"An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) [of the South Carolina Rules of Civil Procedure ("SCRCP")]." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). When considering a motion to dismiss, the trial court should consider only the allegations set forth in the complaint. Plyler v. Burns, 373 S.C. 637, 645, 657 S.E.2d 188, 192 (2007). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf,

the complaint states any valid claim for relief." Capital City, 382 S.C. at 99, 674 S.E.2d at 528 (citing Plyler, 373 S.C. at 645, 647 S.E.2d at 192).

Although a pleading under attack must be liberally construed so that substantial justice is done between the parties, substantial justice is done when inadequate pleadings seeking relief that cannot be obtained are summarily dismissed. Moore v. City of Columbia, 284 S.C. 278, 283, 326 S.E.2d 157, 160 (Ct. App. 1985). On a motion made pursuant to Rule 12(b)(6), SCRCP, the court is required to presume all well-pled *facts*, not propositions of law, to be true. HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (citing Morrow Crane Co. v. T.R. Tucker Constr. Co., 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988)). An appellant "cannot transform an unsupported proposition of law into a statement of fact merely by stating they are informed and believe it to be so." HHHunt, 389 S.C. at 635, 699 S.E. at 705 (citing Morrow, 296 S.C. at 429, 373 S.E.2d at 702). Therefore, conclusory allegations in a complaint should be disregarded. HHHunt, 389 S.C. at 635, 699 S.E.2d at 705. Where the allegations in a complaint fail to adequately allege a valid or complete cause of action or support a reasonable inference of judgment, judgment upon the pleadings is proper. See e.g., Lydia v. Horton, 355 S.C. 36, 583 S.E.2d 750 (2003).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY GRANTED RESPONDENTS' MOTION TO DISMISS BECAUSE HGTC'S AMENDED COMPLAINT DOES NOT STATE ANY VALID CLAIM FOR RELIEF.

The Circuit Court properly dismissed HGTC's Amended Complaint because, even construing such pleading in the light most favorable to HGTC, HGTC fails to state a valid claim

for relief therein.[6] More particularly, HGTC's Amended Complaint fails to state a valid claim because it is predicated, in its entirety, upon HGTC's improper conclusion of law that it "operates two secondary educational facilities…" (R. p. 32). Review of South Carolina statutory law and the City of Conway's UDO makes clear that HGTC is not a "secondary school" within the meaning of either statute. Therefore, HGTC has not asserted a valid claim for relief within its Amended Complaint.

HGTC's Amended Complaint seeks that the Court enjoin Respondents from establishing and/or operating an OTC on the Subject Property. (R. pp. 32-40). All declaratory relief HGTC seeks within its Amended Complaint arises out of and concerns such request. (Id.). HGTC seeks the aforementioned relief pursuant to the following state and local statutory laws: (1) the South Carolina Department of Health and Environmental Control's[7] Standards for Licensing Facilities for Chemically Dependent or Addicted Persons, specifically, S.C. Code Regs. Ann Section 61-93.2624; and (2) Section 5.1.32(B) of the City of Conway's UDO. (See Id.).

In order to rule upon Respondents' Motion to Dismiss, the Circuit Court had to conduct a statutory analysis of both of the foregoing statutes. "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). If the legislative intent can be reasonably discovered in the language used,

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[6] HGTC implies within its Final Brief that the Circuit Court dismissed HGTC's action with prejudice only because it found HGTC did not have standing to bring this action. (See HGTC's Final Brief, p. 2). However, the Circuit Court's April 26, 2024 Order Granting Respondents' Motion to Dismiss conducts a statutory analysis and determines "there is no set of allegations plead or argued by [HGTC] that would in any way allow it to be classified as a 'secondary school' under state law" or the City of Conway's UDO. (R. pp. 9-10). Therefore, neither statute provides any relief for HGTC and, as such, HGTC has failed to state a valid claim for relief. (See R. pp. 9-10).

[7] The South Carolina Department of Health and Environmental Control shall hereinafter be referred to as "DHEC."

such intent must prevail. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). Where a statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). Courts must reject a statutory interpretation that would defeat the plain legislative intention. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

What a legislature says in the text of a statute is considered the best evidence of legislative intent or will. Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Durham v. United Cos. Fin. Corp., 331 S.C. 600, 503 S.E.2d 465 (1998), Adkins v. Comcar Indus., Inc., 323 S.C. 409, 475 S.E.2d 762 (1996), Worsley Cos. V. South Carolina Dept. of Health and Envtl. Control, 351 S.C. 97, 102, 567 S.E.2d 907, 910 (Ct. App. 2002); see also Timmons v. South Carolina Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970) (where the language of a statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000), Bayle, 344 S.C. at 122, 542 S.E.2d at 739. Regulations are interpreted using the same rules as statutory construction. Murphy v. S.C. Dep't of Health & Envtl. Control, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). Ordinances are also subject to the standard rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 818 S.E.2d 5 (2018).

The South Carolina Regulation and the City of Conway Ordinance at issue in this case are both clear and unambiguous. S.C. Code Regs. Ann. Section 61-93.2624 prohibits the operation of

an Opioid Treatment Program, such as the OTC at issue in this matter, from operating within five hundred (500) feet of "the property line of a public or private elementary[8] or secondary school…" S.C. Code Ann. Section 59-1-150, which governs education in the State of South Carolina, provides the following pertinent definitions of schools:

- The term "'Secondary school' means either a junior high or a high school."
- The term "'Junior high school' shall be considered synonymous with the term 'high school.'"
- The term "'High school' means any public school which contains grades no lower than the seventh and no higher than the twelfth."

Neither S.C. Code Reg. Ann. Section 61-93.2624, nor S.C. Code Ann. Section 59-1-150 include a "college" within their terms. Rather, the South Carolina General Assembly, in codifying its definitions of schools within S.C. Code Ann. Section 59-1-150, used words that expressly exclude any grades over twelfth from the definition of a "secondary school." Also telling, S.C. Code Regs. Ann. Section 61-93.2624 expressly omits colleges from its protection. Therefore, if the General Assembly had intended to provide a spacing requirement between an OTC and a college, it could have included colleges within its protective language. It did not do so.

Section 5.1.32(B) of the City of Conway's UDO prohibits the operation of an outpatient treatment facility for Drug and Alcohol Abuse within 1,000 feet from any "public or private education facility…" Section 2.2.1 of the City of Conway's UDO defines "educational facilities" as "any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge and *meets state requirements for elementary and secondary*

[8] HGTC does not allege it is an elementary school. Therefore, this part of the statute is not pertinent to the Court's analysis.

education." (emphasis added). Therefore, the City of Conway's UDO also makes clear that its protections extend to the same schools protected by S.C. Code Regs. Ann. Section 63-91.2624 – those with grades no lower than kindergarten and no greater than twelfth. Based upon the foregoing, in order for HGTC to be a "secondary school" within the meaning of S.C. Code Regs. Ann. Section 61-93.2624 or an education facility within the meaning of Section 5.1.32(B) of the City of Conway's UDO, HGTC may not have grades higher than the twelfth.

HGTC repeatedly refers to itself as a "secondary school" within its Amended Complaint. (R. pp. 32, 33, 37). However, such allegations are not "well-pled" facts; rather, they are incorrect conclusions of law, which the Court is not required to treat as true for purposes of a Motion to Dismiss. See HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (citing Morrow Crane Co. v. T.R. Tucker Constr. Co., 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988)).

HGTC is a college, as is plain and clear from its very name – Horry Georgetown Technical *College*. As the Court's April 26, 2024 Order Granting Respondents' Motion to Dismiss correctly holds, "[HGTC], a college, certainly has grades higher than twelfth. [HGTC] does not in any way allege or argue that it does not have grades "no higher than the twelfth." (R. p. 9). In fact, nowhere within HGTC's Amended Complaint does HGTC allege *it does not* have grades higher than the twelfth grade. (See R. pp. 32-40). Likewise, counsel for HGTC made no such allegation or argument during the hearing on Respondents' Motion to Dismiss. (See R. pp. 98-119).

Pursuant to Rule 201 of the South Carolina Rules of Evidence ("SCRE"), the Circuit Court may take judicial notice of facts not subject to reasonable dispute that are either (1) generally known within the territorial jurisdiction of the trial court or are (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Likewise,

the South Carolina Supreme Court has held that South Carolina courts are not required to be ignorant of a fact that is generally and reliably established merely because evidence of the fact is not offered. See Matter of Henry C. 280 S.C. 308, 309-10, 313 S.E.2d 287, 288 (1984) (internal quotation omitted). HGTC, on its own website, expressly describes itself as a "two-year technical college," from its founding in 1966, provides "post-secondary" programs, "lifelong learning," and access to "other post-secondary education" opportunities. (R. pp. 45-47). It is thus clear that HGTC provides education to grades higher than the twelfth grade; that this is a fact generally known in Horry County, South Carolina; and that such fact is capable of accurate and ready determination.

HGTC also attempts to avoid the fact that is a college by asserting, *after* the filing of its Amended Complaint and at the hearing on Respondents' Motion to Dismiss, that an entity separate from HGTC, called HCS Early College, operates a high school on HGTC's campus. (R. p. 111, lines 20-p. 114, line 3). However, this allegation does not affect the Court's statutory analysis.[9] Both S.C Code Regs. Ann. Section 63-91.2624 and Section 5.1.32(B) of the City of Conway's UDO make clear that their protections do not extend to an entity with grades higher than the twelfth. Therefore, whether *some* students in grades lower than twelfth attend classes on HGTC's campus is immaterial to the Court's analysis in this matter.[10] Further, HGTC failed to plead any facts establishing that it has a right to bring a claim on behalf of the alleged high school entity. (See R. pp. 32-40). Conversely, during the hearing on Respondents' Motion to Dismiss, counsel for HGTC stated, in pertinent part, "[The high school entity] operates *under the school board*,

[9] This fact is also not pled within HGTC's Amended Complaint. (See R. pp. 32-40).
[10] It appears HGTC misconstrues the key issue in this matter, which is that if HGTC has any grades over twelfth, it does not fall under the spacing protections set forth in either S.C. Code Regs. Ann. Section 63-91.2624 or the Section 5.1.32(B) of the City of Conway's UDO.

school district…from what I understand, the way that I found more information on it was on, I believe the school district's website…" (R. p. 113, lines 13-16) (emphasis added).

As a result of the foregoing, the spacing requirements set forth in S.C. Code Regs. Ann. Section 63-91.2624 and Section 5.1.32(B) of the City of Conway's UDO do not apply to HGTC. The Circuit Court thus properly dismissed HGTC's Amended Complaint, as HGTC fails to state any valid claim for relief therein.

II. THE CIRCUIT COURT PROPERLY GRANTED RESPONDENTS' MOTION TO DISMISS BECAUSE HGTC LACKS STANDING TO BRING ITS CLAIMS UNDER BOTH A TRADITIONAL STANDING ANALYSIS AND THE PUBLIC IMPORTANCE EXCEPTION.

The Circuit Court was correct to dismiss HGTC's Amended Complaint on the grounds that HGTC does not have standing either under a traditional standing analysis or under the public importance exception to such standing requirements.

"In its most basic sense, '[s]tanding refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right.'" Preservation Society of Charleston v. South Carolina Dept. of Health and Envtl. Control, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020) (quoting S.C. Dept. of Soc. Servs. v. Boulware, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018)). Standing is a fundamental requirement to bring an action. Preservation Society, 403 S.C. at 209, 845 S.E.2d at 486 (quoting Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 659 (1999)). A party may acquire standing by: (1) statute, (2) under the principal of constitutional standing, or (3) under the public importance exception to general standing requirements. Preservation Society, 403 S.C. at 209-10, 845 S.E.2d at 486 (citing Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012)).

"'Statutory standing exists…when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation.'" Preservation Society, 403 S.C. at 210, 845 S.E.2d at 486 (quoting Youngblood v. S.C. Dep't of Soc. Servs., 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013)). Constitutional standing is inapplicable when standing is conferred by statute. Preservation Society, 403 S.C. at 210, 845 S.E.2d at 486 (internal citations omitted).

Constitutional standing limits the jurisdiction of courts to actual cases or controversies and requires a plaintiff to show the following three elements: (1) the plaintiff must have suffered an "injury in fact," i.e. an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision. Id. (internal citations omitted).

South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where "an issue is of such public importance as to require its resolution for future guidance." Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, et. al., 407 S.C. 67, 753 S.E.2d 846 (2014) (citing Davis v. Richland Cnty. Council, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Whether the exception applies turns on whether resolution of the dispute is needed for "future guidance." ATC South, Inc. v. Charleston Cnty., 380 S.C. 190, 199, 669 S.E.2d 337, 341 (2008). Where claims asserted by a plaintiff "could be brought by other parties who can show the required injury," a plaintiff does not have standing under the public importance exception. Carnival Corp., 407 S.C. at 81, 753 S.E.2d at 853.

Here, HGTC lacks standing under the traditional statutory and constitutional standing analysis and also does not meet the requirements of the public importance exception, as outlined

in detail hereunder. Therefore, the Circuit Court properly dismissed HGTC's Amended Complaint for lack of standing.

A. HGTC LACKS STANDING TO BRING ITS CLAIMS UNDER THE TRADITIONAL STATUTORY AND CONSTITUTIONAL STANDING ANALYSES.

The Circuit Court correctly dismissed HGTC's Amended Complaint on the grounds HGTC lacked traditional standing to bring its claims.

First, HGTC does not have statutory standing in this case. Pursuant to the plain language of both S.C. Code Regs. Ann. Section 63-91.2624 and Section 5.1.32(B) of the City of Conway's UDO, neither statute confers standing upon HGTC because HGTC is not a protected entity thereunder (i.e., HGTC is not a "secondary school" or any other entity protected thereunder). (See supra Section I, pp. 8-14).

HGTC argues that it acquires statutory standing to bring this matter under the South Carolina Uniform Declaratory Judgments Act, codified in S.C. Code Ann. Section 15-53-10, because it has a "deed establishing ownership of property to be impacted by the opioid facility." (HGTC's Final Brief, pp. 8-9). HGTC's Final Brief then relies upon the incorrect assertion that it has an interest in its legal status because it is an "education facility" within the meaning of the City of Conway's UDO. (HGTC's Final Brief, p. 9). HGTC's argument fails because the property HGTC allegedly owns is not protected under S.C. Code Regs. Ann. Section 63-91.2624 or Section 5.1.32(B) of the City of Conway's UDO. (See supra Section I, pp. 8-14). The Uniform Declaratory Judgments Act provides relief for any person "*interested* under a deed…" or "whose rights, status or other legal relations *are affected* by a statute [or] municipal ordinance…" See S.C. Code Ann. § 15-53-10 (emphasis added). Here, HGTC has not and cannot establish it is an "interested" party or that its "rights, status or other legal relations are affected by a statute [or] municipal ordinance"

since its property does not qualify protection under the spacing requirements set forth in S.C. Code Regs. Ann. Section 63-91.2624 and Section 5.1.32(B) of the City of Conway's UDO. Therefore, HGTC has no statutory standing in this matter.

In order to have constitutional standing, HGTC must have suffered an injury-in-fact, which is a concrete particularized, and actual or imminent invasion of a legally protected interest. Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dept. of Natural Resources, 345 S.C. 594, 600-01, 550 S.E.2d 287, 291-92 (2001). Second, a causal connection must exist between the injury and the challenged conduct. Id. Third, it must be likely that a favorable decision will redress the injury. Id. HGTC cannot meet the first of these elements because it has not suffered an injury-in-fact.

HGTC is a college, which has grades higher than the twelfth grade. (HGTC's Final Brief, p. 5, R. pp. 45-47). Having some students in grades twelve and under who attend classes on HGTC's campus does not qualify HGTC for protection under the clear meaning of either S.C. Code Regs. Ann. Section 61-93.2624 or Section 5.1.32(B) of City of Conway's UDO. To be a "secondary school" within the meaning of such statutes, HGTC cannot have grades higher than twelfth. See S.C. Code Ann. § 59-1-150 (defining "secondary school" as any public school which contains grades no lower than the seventh and no higher than the twelfth), S.C. Code Regs. Ann. § 63-91.2624 (applying, in pertinent part, only to "secondary schools"), Conway UDO §§ 2.2.1 (adopting the state definition of "secondary school") and 5.1.32(B).

Based upon the foregoing, HGTC cannot accurately assert that it has suffered a concrete, particularized, and actual or imminent invasion of a legally protected interest. HGTC has no legally protected interest pursuant to the statutes under which it seeks relief. At best, HGTC alleges

only a generalized grievance or an injury that may be suffered by another entity and has not alleged any particularized harm to itself that is allowed relief under South Carolina law.

In sum, the South Carolina DHEC Regulation and the City of Conway Ordinance provide a clear and unambiguous spacing protection for various defined entities. HGTC is not an entity which qualifies for such protection. Therefore, HGTC has no statutory standing and has no constitutional standing, as it cannot have suffered an injury-in-fact pursuant to either statute under which it seeks relief.

B. HGTC LACKS STANDING UNDER THE PUBLIC IMPORTANCE EXCEPTION.

The Circuit Court likewise properly held HGTC does not have standing under South Carolina's public importance exception. South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where "an issue is of such public importance as to require its resolution for future guidance." Carnival Corp., 407 S.C. 67, 753 S.E.2d 846 (citing Davis v. Richland Cnty. Council, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Where claims asserted by a plaintiff "could be brought by other parties who can show the required injury," a plaintiff does not have standing under the public importance exception. Carnival Corp., 407 S.C. at 81, 753 S.E.2d at 853.

The two statutes at issue in this matter provide spacing protections for various types of entities and they are clear and unambiguous regarding which entities such statutes protect. Therefore, HGTC cannot argue that there are no other parties who could show injury under these statutes if an OTC was operating in violation of such statutes.

Moreover, at the hearing on Respondents' Motion to Dismiss, HGTC's counsel alleged that there is a separate high school entity operating on HGTC's campus. (R. p. 111, line 20-p. 113, line

17). Upon hearing such allegation, the Court immediately questioned why that entity had not brought its own claim. (R. p. 113, lines 18-21). The Circuit Court acknowledged, in its April 26, 2024 Order Granting Respondents' Motion to Dismiss, that if Horry County's school district operates a separate high school with no grades higher than the twelfth grade within the distances prohibited by S.C. Code Regs. Ann. 63-91.2624 or Section 5.1.32(B) of the City of Conway's UDO, the ***Horry County School District*** may have a valid claim for relief. (R. p. 12).

In its Final Brief, HGTC argues that public education of high school students is "immensely important to the public at-large." (HGTC's Final Brief, p. 10). Respondents agree. However, HGTC is a ***college***, not a secondary school. It is important to note that HGTC has only argued that a state-recognized high school, HCS Early College, is located on HGTC's ***main campus*** (i.e., 2050 Hwy 501 East, Conway, South Carolina, 29526) and that "HCS students attend certain classes at HGTC's facilities, including the facility at 250 Allied Drive." (HGTC's Final Brief, pp. 10, 11). There are no facts pled within HGTC's Amended Complaint or assertions within its oral arguments or written briefings in this case, which establish that HGTC owns this alleged high school or has any right to assert a claim on its behalf.

The statutes at issue in this matter clearly provide spacing requirements between an OTC and a school with grades no higher than the twelfth. Therefore, if there is such a "secondary school" within the protected distance from the OTC at issue herein, it may have its own standing to pursue an action. The foregoing clearly bars HGTC from entitlement to standing under the public importance exception. See Carnival Corp., 407 S.C. at 81, 753 S.E.2d at 853. Further, if HCS Early College does exist, its existence in no way provides HGTC with standing to bring an action on behalf of the Horry County School District.

As a result, Circuit Court properly concluded that HGTC lacks standing in this matter by way of the public importance exception.

III. THE CIRCUIT COURT PROPERLY DISMISSED HGTC'S AMENDED COMPLAINT WITH PREJUDICE AND HELD THAT HGTC'S FILING OF AN AMENDED COMPLAINT WOULD BE FUTILE.

The Circuit Court was correct in dismissing HGTC's Amended Complaint with prejudice because review of the applicable statutory law in this matter clearly reveals HGTC is not entitled to the protections provided under such statutory laws. Therefore, any amendment to HGTC's pleadings would be futile.

"Dismissal of a case 'without prejudice means a plaintiff may reassert [its] complaint by curing defects that led to the dismissal. In contrast, dismissal of a complaint 'with prejudice' is intended to bar relitigation of the same claim." Spence v. Spence, 368 S.C. 106, 128, 628 S.E.2d 869, 880-81 (2006) (citing Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989)). It is important to note that "when a complaint is dismissed with prejudice…[and] the plaintiff fails to present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted, the appellate court may in its discretion affirm the dismissal of the complaint with prejudice." Spence, 368 S.C. at 130-31, 628 S.E.2d at 882 (internal citations omitted). Although the foregoing path is not typical (i.e., dismissal generally is without prejudice and a plaintiff in most cases should be afforded the opportunity to file and serve an amended complaint), *the Court of Appeals may affirm dismissal with prejudice where amendment is "clearly futile.*" Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 192, 826 S.E.2d 585, 594 (2019) (emphasis added).

The foregoing law is particularly instructive in this matter. The Circuit Court dismissed HGTC's case with prejudice because HGTC does not meet the statutory definition of a "secondary

school" under S.C. Code Regs. Ann. 63-91.2624 or Section 5.1.32(B) of the City of Conway's UDO. As such, the facts herein demonstrate HGTC is simply not entitled to the relief it seeks within its Amended Complaint. HGTC has not set forth any new or additional facts that would result in HGTC being deemed a "secondary school" entitled to the protections set forth in either S.C. Code Regs. Ann. 63-91.2624 or Section 5.1.32(B) of the City of Conway's UDO. Because HGTC has grades higher than the twelfth, it cannot be a "secondary school" protected by the statutes under which HGTC seeks relief and has no path to relief under such statutes.

Moreover, HGTC, at any point in time after Respondents filed their Motion to Dismiss on December 4, 2023, could have filed a Motion to Amend, which presented proposed changes that would cure the deficiencies in HGTC's Amended Complaint. It never did so. In fact, at no point did HGTC present the Circuit Court with a copy of a proposed amended complaint with new or additional facts, which would support a valid claim for relief.

As stated above, although trial courts typically should not dismiss pleadings with prejudice at the 12(b) stage without allowing the pleader to amend its complaint, where any amendment would be futile, such dismissal with prejudice should be upheld. Alterna Tax Asset Group, LLC v. York County, 434 S.C. 328, 334, 863 S.E.2d 465, 468 (Ct. App. 2021) (citing Skydive, 426 S.C. at 180-90, 826 S.E.2d at 592-93). The Court of Appeals has affirmed the lower court's dismissal of a party's claim with prejudice where the party did not present the lower court with any proposed changes it would make to the complaint to cure the deficiencies identified. Paridis v. Charleston County School District, 424 S.C. 604, 819 S.E.2d 147, fn 3 (Ct. App. 2018) (citing Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) ("A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.").

In its April 26, 2024 Order Granting Respondents' Motion to Dismiss, the Circuit Court explained that it was denying HGTC an opportunity to amend *due to the futility* of such an opportunity. The Circuit Court stated, in pertinent part, "[HGTC] has not offered any allegations or facts to show that it does not contain grades higher than twelfth. Therefore, any motion to amend would be futile." (R. p. 14, fn 8). In its Final Brief, HGTC argues that by informing the Circuit Court of the existence of a high school/secondary school on HGTC's campus is enough to defeat futility. (See HGTC's Final Brief, p. 14). However, as previously stated, simply having some students on HGTC's campus that may be in grades twelve and under does not convert HGTC from a college or post-secondary school into a secondary school. Further, HGTC did not demonstrate it had the authority to bring a claim on behalf of HCS, a separate entity. Therefore, the Circuit Court's decision to dismiss this matter with prejudice and to deny HGTC an opportunity to amend should be affirmed.

HGTC also argues that its case "had not moved past the initial pleadings when the circuit court granted [Respondents'] Motion to Dismiss; thus, the Court should not have granted Respondents' Motion to Dismiss. (HGTC's Final Brief, p. 12). HGTC should be barred from making this argument, as it is not preserved for appellate review. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and *ruled upon by the trial judge to be preserved for appellate review*.") (internal citations omitted) (emphasis added). HGTC made this argument for the first time *after* the Court ruled on Respondents' Motion to Dismiss, and it has not been ruled upon by the Circuit Court. (See R. pp. 4-15, 16-17, 68-70, HGTC's Final Brief, pp. 14-15).

Prior to April 26, 2024, when the Circuit Court's entered its Order Granting Respondents' Motion to Dismiss, HGTC never requested the Court convert Respondents' Motion to Dismiss into

a Motion for Summary Judgment in order to enable HGTC to develop a factual record. (See R. p. 53-64, 98-119). In fact, HGTC's Memorandum In Opposition to Respondents' Motion to Dismiss relied upon a standard of review for consideration of motions to dismiss – i.e., that the court only consider those facts set forth in the pleadings. (R. p. 55). Arguably, HGTC raises this issue for the very first time in its Final Brief herein. (HGTC's Final Brief, pp. 14-15). The only other place where the concept is vaguely implied is within HGTC's Amended Motion to Reconsider, filed on April 26, 2024, after the Court filed its Order Granting Respondents' Motion to Dismiss. (R. p. 69). Ultimately, HGTC's argument must fail because the Circuit Court has never ruled on the issue. (See R. p. 16) (holding that the Circuit Court does not have jurisdiction to rule upon [HGTC's] Motion to Reconsider and Motion for Leave to Amend Complaint filed 4/5/2024 or Amended Motion to Reconsider and Motion for Leave to Amend Complaint filed 4/26/2024."). Therefore, this argument has no merit and should not be considered by the Court.

IV. THE CIRCUIT COURT PROPERLY CONSIDERED ONLY FACTS THAT WERE GENERALLY KNOWN WITHIN ITS TERRITORIAL JURISDICTION AND THAT WERE CAPABLE OF READY DETERMINATION BY ACCURATE SOURCES.

The Circuit Court did not err in considering some facts outside of the pleadings in this matter; however, even in the event this Court believed the Circuit Court erred in doing so, HGTC did not properly preserve this issue for appeal, as it was not raised and ruled upon by the Circuit Court. See Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733.

In its Final Brief, HGTC argues that the Circuit Court erred in granting Respondents' Motion to Dismiss because the court relied on documents outside of the pleadings in doing so. (HGTC's Final Brief, p. 15). First and foremost, HGTC should be barred from raising this issue, as it has not been properly preserved for appellate review. Wilder Corp., 330 S.C. at 76, 497 S.E.2d

at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have *been raised to and ruled upon by the trial judge to be preserved for appellate review*.") (internal citations omitted) (emphasis added). HGTC raised this issue for the very first time in its April 26, 2024 Amended Motion to Reconsider, which was filed after the Court granted Respondents' Motion to Dismiss. (R. pp. 68-70). The Circuit Court thus never ruled on this issue. (See R. pp. 16-17) (holding that the Circuit Court does not have jurisdiction to rule upon [HGTC's] Motion to Reconsider and Motion for Leave to Amend Complaint filed 4/5/2024 or Amended Motion to Reconsider and Motion for Leave to Amend Complaint filed 4/26/2024."). This issue is thus not preserved for the Court of Appeals to review and should be barred from consideration. See generally Creech v. South Carolina Wildlife and Marine Resources Dept., 328 S.C. 24, 491 S.E.2d 571 (1997); see also 15 S.C. Jur. Appeal and Error § 71.

Further, even in the event this issue was preserved for appellate review, the Circuit Court did not err, or if it did, such error was harmless. The Court was presented with a limited amount of facts outside of the pleadings by Respondents, all of which were of the nature that they could be taken under judicial notice. As HGTC states in its Final Brief, at the hearing on Respondents' Motion to Dismiss, Respondents introduced the following documents that were not included in the pleadings: a map of HGTC's Conway, South Carolina campus and an excerpt of course descriptions from HGTC's curriculum. (R. p. 102, lines 15-p. 103, line 24, p. 114, line 14-p. 115, line 2). Respondents' counsel also produced a copy of the "About HGTC" page of HGTC's official website, which was included as Exhibit A to Respondents' Motion to Dismiss. (R. p. 104, line 25-105, line 5).

Each of these documents were documents created by and made public by HGTC. Pursuant to Rule 201, SCRE, the facts contained on each of these documents were generally known within

the territorial jurisdiction of the Circuit Court and were capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In fact, HGTC has not disputed the accuracy of any of these documents or their public nature. The South Carolina Supreme Court has adopted the following stance on judicial note:

> '[O]ur courts are not required to be ignorant of a fact which is generally and reliably established merely because evidence of the fact is not offered. The Courts will take judicial notice of subjects and facts of general knowledge, and also of facts in the field of any particular science which are capable of demonstration by resort to readily accessible sources of indisputable accuracy, and judges may inform themselves as to such facts by reference to standard works on the subject.'

Matter of Henry C., 280 S.C. 308, 309-10, 313 S.E.2d 287, 288 (1984) (quoting State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724, 725 (1974)). Ultimately, these facts could have all been judicially noticed by the Court pursuant to common law and Rule 201, SCRE. However, regardless of the foregoing, the facts presented are immaterial to the Court's dismissal of HGTC's Complaint, which could be ordered absent consideration of any of these outside documents and/or materials.

As is argued in detail above, HGTC, by its very name and own admissions is a ***college*** – which indicates it has grades higher than twelfth. (HGTC's Final Brief, p. 5; see also supra Section I, pp. 8-14). HGTC has not denied this. Therefore, under the bare minimum facts set forth in HGTC's Amended Complaint, HGTC still fails to set for a valid claim for relief – as it is clear HGTC is not a "secondary school" under the meaning of the statutes at issue in this case.

It is true that if, on a motion under 12(b)(6), SCRCP, matters outside the pleadings are presented and not excluded, the motion shall be treated as one for summary judgment. Higgins v. Medical Univ. of South Carolina, 326 S.C. 592, 597, 486 S.E.2d 269, 271 (Ct. App. 1997) (internal citations omitted). However, an error in conversion (i.e., a failure to convert the motion to dismiss

to a motion for summary judgment) "is harmless 'if the dismissal can be justified under Rule 12(b)(6) without reference to matters outside of the plaintiff's complaint.'" Higgins, 326 S.C. at 602, 486 S.E.2d at 274 (internal quotation omitted). Such is the case here. With or without HGTC's promotional materials (i.e., its website, its course guide, and its map), it is appropriate for the Circuit Court to have dismissed HGTC's Amended Complaint with prejudice.

Finally, HGTC improperly argues that its own introduction of evidence outside of its Amended Complaint creates an issue of material fact in this case. The Court should likewise reject this argument. HGTC makes no express mention of a separate high school entity called HCS within its original Complaint or Amended Complaint. (See R. pp. 21-29, 32-40). HGTC first mentions this alleged entity within its Memorandum in Opposition to Respondents' Motion to Dismiss, filed March 15, 2024, three months after Respondents filed their Motion to Dismiss. (R. p. 56). In doing so, HGTC vaguely states that HCS exists, and that HCS's main campus is located on HGTC's main campus at 2050 US-501, Conway, South Carolina 29526. (Id.). It is odd, at best, that during the three month period between receiving Respondents' Motion to Dismiss and the filing of its Memorandum in Opposition to such Motion, HGTC did not verify who owned and operated HCS.[11] Moreover, in such three-month time period, HGTC also did not move to amend its pleadings to assert ownership over and/or a right to assert a claim on behalf of HCS. HGTC is in the best position to know, and should know, whether HCS is a separate entity, which would have its own potential claim against Respondents or whether it owns and operates HCS. It is noteworthy that HGTC skirts around this issue, on the one hand implying it has the right to assert a claim on

[11] Also, it goes without saying that if HGTC owns and operates HCS, it should be well-aware of such fact and able to verify such fact to the Court.

HCS's behalf and on the other, admitting HCS operates under the school board/school district. (See R. p. 56; see also R. p. 113, lines 13-17).

As a result, although these facts were not submitted by HGTC by affidavit, this situation is akin to the South Carolina Supreme Court's discussion of "sham" affidavits in Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004). In Cothran, the Supreme Court found that a court may disregard conflicting affidavits that are submitted for the purpose of creating an alleged dispute of material fact. See Cothran, 357 S.C. at 218, 592 S.E.2d at 633. Here, HGTC presents facts it should know in a vague and ambiguous manner. Then, asserts such facts create a material dispute of fact. HGTC should be barred from doing so and this Court should reject any such argument accordingly.

V. THE CIRCUIT COURT HAD JURISDICTION TO RULE UPON THIS MATTER.

In its Final Brief, HGTC incorrectly asserts that if HGTC does not have standing to bring its claims, the Circuit Court did not have subject matter jurisdiction to rule upon HGTC's claims. (HGTC's Final Brief, pp. 18-19). As is the case with several other issues HGTC has raised before this Court, HGTC did not properly preserve this issue for appeal, as it was not raised and ruled upon by the Circuit Court. See Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733. Therefore, the Court of Appeals should decline to consider this argument.

HGTC first raised the issue of subject matter jurisdiction in its April 26, 2024 Amended Motion to Reconsider, which was filed after the Court entered its Order Granting Respondents' Motion to Dismiss. (See R. pp. 70, 88). However, HGTC filed this appeal on May 28, 2024, before the Circuit Court ruled on any issues presented by HGTC in its Motion to Reconsider or Amended Motion to Consider. (See R. pp. 16-17) (holding that the Circuit Court does not have jurisdiction to rule upon [HGTC's] Motion to Reconsider and Motion for Leave to Amend

Complaint filed 4/5/2024 or Amended Motion to Reconsider and Motion for Leave to Amend Complaint filed 4/26/2024."). As a result this issue is not preserved for review by the Court of Appeals. See Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733.

Notwithstanding the above, HGTC's argument is both illogical and incorrect. Article V, Section 11, of the South Carolina Constitution vests the Circuit Court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. There is no such inferior court here in which jurisdiction would have been vested.

The South Carolina Uniform Declaratory Judgments Act further provides that "[c]ourts of record within their respective jurisdictions shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20. "Subject matter jurisdiction is defined as 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 100, 674 S.E.2d 524, 528 (Ct. App. 2009) (internal quotation omitted). Based upon the foregoing, it is clear that the Horry County Court of Common Pleas has subject matter jurisdiction over a declaratory judgment action filed concerning property located in Horry County, South Carolina.

Nonetheless, HGTC relies on the following two cases for the proposition that a lack of standing challenges a court's subject matter jurisdiction: S.C. Pub. Interest Found v. Wilson, 437 S.C. 334, 878 S.E.2d 891 (2022), Bardoon Props., NV v. Eidolon Corp., 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). HGTC incorrectly misconstrues this one sentence to challenge the Circuit Court's Order Granting Respondents' Motion to Dismiss. However, review of these cases reveals that neither holds that a court does not have authority to determine a motion to dismiss if a plaintiff lacks standing.

For example, in the Wilson case, the South Carolina Supreme Court holds that if a plaintiff lacks standing, the ***plaintiff*** does not have the right to proceed to the merits of his claims against the defendant. 437 S.C. at 341, 878 S.E.2d at 895. Then, in Bardoon, the South Carolina Supreme Court holds, "The right of a plaintiff to maintain a suit, while frequently treated as going to the question of jurisdiction, goes, in reality, to the right of the plaintiff to relief rather than to the jurisdiction of the court to afford it." 326 S.C. at 169, 485 S.E.2d at 373. The Supreme Court in Bardoon also states, "the wealth of authority is to the effect that the issue of a party's status as a real party in interest does not involve subject matter jurisdiction" and, "[w]hether or not a party is the 'real party in interest' simply does not involve the court's power to hear a case of the general class." Id. Therefore, in Bardoon, the Supreme Court held that the issue of whether a party is a "real party in interest" does not involve subject matter jurisdiction. Id., 326 S.C. at 170-71, 485 S.E.2d at 373-74.

It would be illogical to find that a court cannot rule on a case if the party bringing the case lacks standing. Such an assertion implies that a party without standing could file a lawsuit and it sit indefinitely, without rulings, because the trial court would have no authority to hear the case. Such argument is without merit and should be rejected by the Court of Appeals. The Circuit Court in this matter had the authority to rule upon Respondents' Motion to Dismiss as to each of HGTC's claims.

VI. THE COURT OF APPEALS SHOULD AFFIRM THE CIRCUIT COURT'S DISMISSAL OF HGTC'S CLAIMS WITH PREJUDICE BECAUSE NO HGTC BUILDING IS LOCATED WITHIN 1,000 FEET OF THE SUBJECT PROPERTY.

Pursuant to Rule 220(c), SCACR, Respondents respectfully request that the Court of Appeals affirm the Circuit Court's Order Granting Respondents' Motion to Dismiss on the

additional ground that HGTC's Amended Complaint fails to set forth a valid claim for relief because no HGTC building/facility is located within 1,000 feet of the Subject Property.

Rule 201(f), SCRE, allows a court to take judicial notice at any stage of a proceeding. The Court may take judicial notice of a fact that is not subject to reasonable dispute that is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Courts take judicial notice of geographical facts and locations, which are matters of common knowledge or readily ascertainable by reference to official maps or various other trustworthy sources of news. 23 C.J.S. Criminal Procedure and Rights of Accused § 948 Judicial Notice of Geographic Facts, Generally. The South Carolina Supreme Court has further held that South Carolina courts are not required to be ignorant of a fact that is generally and reliably established merely because evidence of the fact is not offered. See Matter of Henry C. 280 S.C. 308, 309-10, 313 S.E.2d 287, 288 (1984) (internal quotation omitted).

Basic review of Google Maps reveals that HGTC's main campus at 2050 Hwy 501 East is located approximately one (1) mile (i.e., 5,280 feet) from the Subject Property. The HGTC building in closest proximity to the Subject Property is HGTC Building 2000, which is an Advanced Manufacturing Center, located at 250 Allied Drive. This is the location that HGTC focuses upon in its Final Brief as being within the area prohibited by the pertinent statues. Basic review of Google Maps reveals that HGTC Building 2000 is approximately 0.3 miles (i.e., 1,584 feet) from the Subject Property. Even allowing for a .1 differential in mileage calculation, HGTC Building 2000 is still located more than 1,000 feet from the Subject Property. This is a substantially greater distance than the two-hundred and fifty (250) feet distance HGTC alleges, without any support therefor, in its own pleadings.

On a motion made pursuant to Rule 12(b)(6), SCRCP, the court is required to presume all well-pled *facts*, not propositions of law, to be true. HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (citing Morrow Crane Co. v. T.R. Tucker Constr. Co., 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988)). An appellant "cannot transform an unsupported proposition of law into a statement of fact merely by stating they are informed and believe it to be so." HHHunt, 389 S.C. at 635, 699 S.E. at 705 (citing Morrow, 296 S.C. at 429, 373 S.E.2d at 702). Therefore, conclusory allegations in a complaint should be disregarded. HHHunt, 389 S.C. at 635, 699 S.E.2d at 705. HGTC's assertion that Building 2000 is only 250 two-hundred and fifty (250) feet from the Subject Property is just that – a conclusory allegation, which can be proven false by capable and ready determination of accurate sources, and need not be accepted by the Court as true.

As discussed above, HGTC alleges, in its Amended Complaint, that it has a Facility which is less than 250 feet from the property line of the Subject Property. (R. p. 33). However, the only buildings HGTC alleges host students in grades twelve and under are Building 2000, located at 250 Allied Drive, and its main campus, located at 2050 Hwy 501 East. (R. p. 32). Neither of these locations is within 1,000 feet, much less 250 feet of the Subject Property. The Court's April 26, 2024 Order takes note of this fact, stating, "It does not appear that either location is within 500 feet of [Respondents'] property, but that specific issue is not before the Court in this Motion to Dismiss." (R. p. 6, fn 4). Moreover, HGTC has not, in any way, provided support for the allegation that high school students take classes in Building 2000, an advanced manufacturing center. HGTC's own curriculum guide indicates early college students take classes in basic core subjects like English, Math, Social Students, Science, and the like; not advanced manufacturing. (R. pp. 122-123). Therefore, HGTC's allegations are belied by their own materials.

Based upon the foregoing, the Court of Appeals should take judicial notice of the distances between Building 2000 and the Subject Property and HGTC's main campus and the Subject Property, which are both more than 1,000 feet. As a result, the Court of Appeals should affirm the Circuit Court's Order Granting Respondents' Motion To Dismiss on the additional sustaining ground that no buildings for which HGTC seeks protection under the applicable spacing requirements are within the prohibited distance of the OTC.

CONCLUSION

In sum, the Circuit Court properly granted Respondents' Motion to Dismiss HGTC's Amended Complaint in this matter. HGTC has failed to state a claim upon which relief can be granted, as it is not a secondary school within the meaning of S.C. Code Ann. Regs. Section 61-93.2624 or an education facility within the meaning of Section 5.1.32(B) of the City of Conway's UDO. Due to the foregoing, HGTC also lacks standing to bring its claims, both under traditional standing requirements and the public importance exception thereto. Each of the remaining arguments HGTC has presented to the Court of Appeals has either not been preserved for appellate review and/or fails for the reasons set forth herein. Therefore, Respondents respectfully request the Court of Appeals affirm the Circuit Court's April 26, 2024 Order Granting Respondents' Motion to Dismiss with Prejudice.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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Myrtle Beach, South Carolina
October 16, 2024

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2024-000871

Horry Georgetown Technical College ..... Appellant,

v.

Claycon Pharma RE, LLC, Pathway Treatment Center, LLC
Pathway Clinic, LLC, and City of Conway..... Respondents,

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondents' Final Brief complies with Rule 211, SCACR.

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Myrtle Beach, South Carolina
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