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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case Nos. 2019-CP-10-00846, -02131, and -02539
Appellate No. 2023-000778
Opinion No. 5966 (S.C. Ct. App. Filed February 1, 2023)

City of Charleston,

Petitioner,

v.

City of North Charleston and Millbrook Plantation, LLC,

Respondents.

and

Millbrook Plantation, LLC

Plaintiff,

v.

City of Charleston,

Defendant.

and

City of Charleston,

Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC

Defendants.

APPENDIX

**Counsel identified on the following page*

BRUCE E. MILLER, P.A.
Bruce E. Miller, (SC Bar No. 3980)
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
bmiller@brucemillerlaw.com
(843) 579-7373
Attorney for Respondent Millbrook Plantation, LLC

NORTH CHARLESTON LEGAL DEPT.
Kriston D. Neely (SC Bar No. 72855)
J. Brady Hair (SC Bar No. 9040)
2500 City Hall Lane
North Charleston, SC 29406
kneely@northcharleston.org
brady@bradyhair.com
(843) 740-2550
Attorneys for Respondent North Charleston

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843)-724-3730
Attorneys for Petitioner City of Charleston

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

RECORD ON APPEAL

Susan J. Herdina (S.C. Bar No. 13165)
Email: herdinas@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 01121)
Email: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr. (S.C. Bar No. 06802)
Email: mcqueeneyd@charleston-sc.gov
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorneys for Appellant City of Charleston

Derk Van Raalte, Esq. (S.C. Bar No. 9286)
J. Brady Hair, Esq. (S.C. Bar No. 9040)
Legal Department
2500 City Hall Lane
North Charleston, South Carolina 29406
Telephone: (843) 740-2550
E-mail: derk@bradyhair.com
Attorneys for Respondent City of North Charleston

Bruce E. Miller, Esq. (S.C. Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, South Carolina 29412
Telephone: (843) 579-7373
E-mail: bmiller@brucemillerlaw.com
Attorney for Respondent Millbrook Plantation, LLC

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	CASE NO. 18-CP-10-846
MILLBROOK PLANTATION, LLC, Plaintiff, vs. CITY OF CHARLESTON, Defendant.	CASE NO. 18-CP-10-2131
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	CASE NO. 18-CP-10-2539 **ORDER GRANTING MILLBROOK'S MOTION TO DISMISS**

FILED
2019 MAR -1 PM 4:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NATURE OF CASE

Plaintiff City of Charleston ("City") filed two actions[1] alleging that the two annexation

[1] Pursuant to a consent motion by all parties, these two actions, along with the action filed by Millbrook challenging City's annexation of its property, were consolidated by court order, which was filed December 19, 2018.

ordinances,[2] by the City of North Charleston ("North Charleston"), of land owned by Defendant, Millbrook Plantation, LLC ("Millbrook"), were illegal. Millbrook filed a Motion to Dismiss, pursuant to SCRCP 12(b)(6), arguing that City has no standing to challenge a 100% annexation because the State of South Carolina, through the Attorney General, is the only party who can challenge a 100% annexation. At oral argument, Millbrook also argued, assuming City had standing, the 2017 Ordinance never included the 100' strip of land, previously annexed by City; thus, the complaints fail to state any valid claim for relief. Millbrook also seeks its attorneys' fees and costs pursuant to S.C. Ann. § 15-77-300.

Based on the allegations of the Complaint, which include and rely on the two ordinances, and the laws of this state, Millbrook's motion is granted.

LEGAL STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). "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." *Id.* at 395, 645 S.E.2d at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). *Patterson v. Witter*, Opinion No. 27841, Supreme Court of SC (September 5, 2018).

ALLEGATIONS OF COMPLAINTS

In the two complaints, City outlines many of the same allegations. This court has, for ease of identifying ordinances and separating parcels of land, changed some of the identifiers while retaining the substance of each allegation. As required, the court assumes all City's allegations to be true.

[2] This court refers to these as 2017 Ordinance and 2018 Ordinance. Because they are essential to each cause of action of City, they are attached as **Exhibit 1** and **Exhibit 2.**

1. May 10, 2005: City adopted Ordinance No. 2005-93, annexing the following property into City, which is a portion of the Millbrook Parcel:

> [A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.[3]

2. December 19, 2017: City's Council accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which included the Millbrook Parcel.

3. December 19, 2017: City's Council voted to have a public hearing on the above-referenced petition.

4. December 21, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of City.

5. December 21, 2017: North Charleston's Council gave first reading to 2017 Ordinance, purporting to annex the Millbrook Parcel, including that portion of the Millbrook Parcel previously annexed into City.

6. December 28, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of City.

7. December 28, 2017: North Charleston's Council adopted 2017 Ordinance.

8. January 23, 2018: City's Council held a public hearing on the (75%)

[3] City later identifies this 100' strip as TMS 361-00-00-006-1 and alleges Charleston County records showed this by December 21, 2017, which is the date on which North Charleston gave first reading to 2017 Ordinance.

annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

9. March 22, 2018: North Charleston's Council adopted 2018 Ordinance, purporting to amend or supplement 2017 Ordinance by removing from 2017 Ordinance the portion of the Millbrook Parcel annexed into the City in 2005.

10. April 10, 2018: City's Council adopted an ordinance annexing the Millbrook Parcel into City.

11. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of City before Millbrook executed the annexation petition to annex the Millbrook Parcel into North Charleston.

12. North Charleston did not request information from City about whether City's municipal limits included a portion of the Millbrook Parcel on or before December 19, 2017.

13. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2017 Ordinance, adopted by the North Charleston's Council on December 28, 2017, purporting to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance.

14. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2018 Ordinance, adopted by North Charleston's Council on March 22, 2018, purporting to amend and supplement 2017 Ordinance, whereby North Charleston purported to annex, upon petition of Millbrook that certain tract of land previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel").

15. 2017 Ordinance and 2018 Ordinance violate the statutory and proprietary rights of City in that they purportedly annex land within the City's corporate limits and land over which the City had previously begun the process of annexation.

16. 2018 Ordinance purports to correct North Charleston's defective annexation of the Millbrook Parcel in the 2017 Ordinance, which included a portion of the Millbrook Parcel annexed to the City in 2005.

STANDING

> Standing refers to a "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." Black's Law Dictionary 1413 (7th ed.1999). "Standing is . . . that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." 1A C.J.S. Actions § 101 (2005). It concerns an individual's "sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*
>
> Standing is comprised of three elements:
>
> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."
>
> *Smiley v. South Carolina Dep't of Health & Envt'l Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (alteration in original)). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. South Carolina Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).
>
> "As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). "One must be a real party in interest, i.e., a party who has a real, material, or substantial interest in the subject matter

> of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.*

Powell v. Bank of America, 379 S.C. 437, ___, 665 S.E.2d 237, 241 (S.C. App. 2008).

City has the burden of proving it has standing. *Vicary v. Town of Awendaw*, Opinion No. 27855 (S.C. Dec. 19, 2018). This standing issue, in the context of annexation cases, has been directly addressed in *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991). *Quinn's* facts are very similar to the present action. City of Columbia, like North Charleston, had adopted an ordinance approving a 100% annexation of land in the Harbison area. The town of Irmo,[4] like City, attempted to adopt an ordinance annexing the same land through the 75% method. Columbia filed a 12(b)(6) motion to dismiss. The *Quinn* court stated, "The sole issue we need address is that of Respondents' *standing*." *Id.*, at 406, 401 S.E.2d at 166 (emphasis added). The court then analyzed the allegations as follows:

> City's annexation of this property was pursuant to subsection (3) of S. C. Code Ann. § 5-3-150, the "100% method," which provides, in part: any area or property which is contiguous to a city or town may be annexed to the city or town by filing with the municipal governing body a petition signed [***3] by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed . . . the annexation shall be complete and [an] . . . election. . . shall not be required.
>
> Unlike subsection (1) of § 5-3-150, the "75% method," subsection (3) makes no provision for aggrieved *residents* to challenge an annexation.

Id., at 406-07, 401 S.E.2d at 166.

Thus, just like Columbia's annexation was complete upon the enactment of the ordinance, Millbrook's annexation into North Charleston was complete on December 28, 2017. All of this was completed prior to City adopting its ordinance on April 10, 2018.

---

[4] Irmo was a respondent with *Quinn*.

South Carolina courts made the standing issue even clearer in a later action in which City was a party. Not only has the South Carolina Supreme Court ruled that a municipality has no standing to challenge a 100% annexation, but held "the only non-statutory party which may challenge a municipal annexation is the State, through a *quo warranto* action." *St. Andrews Pub. Serv. Dist. v. City Council of the City of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002). City acknowledged that the State has challenged neither the 2017 Ordinance nor the 2018 Ordinance.

The South Carolina Supreme Court again addressed the standing issue in another 100% annexation in *Campbell v. Town of Yemassee*, 391 .C 565, 707 S.E.2d 402 (2011).

> We reject the suggestion that the perceived merits of the underlying claim may influence the standing determination. This basic principle defeats the Private Party Appellants' claim.
>
> The ordinance recites that the annexation was achieved using the 100% petition method. If we went behind that assertion without a proper plaintiff, we would be inviting a sliding scale for standing: the more meritorious a claim appears, the more relaxed the standing requirement would be. We rejected such reasoning when we overruled *Quinn v. City of Columbia. See St. Andrews Public Service District*, 349 S.C. at 605, 564 S.E.2d at 648 (overruling the *Quinn* rule that a stranger to an annexation may challenge the annexation if the ordinance is "absolutely void"). **Adhering to our precedent, we must determine standing without regard to the merits of the underlying claim.**

Id., at 573-74, 707 S.E. 2d at 407 (emphasis added).

In a very recent decision, the South Carolina Supreme Court reaffirmed the holdings of *St. Andrews* and *Town of Yemassee* in stating, "[T]he Court's rejection of a 'sliding scale' approach to a standing analysis remains good law when there is no allegation of nefarious conduct by the annexing body." *Vicary v. Town of Awendaw*, Opinion No. 27855 (S.C. Dec. 19, 2018). In *Vicary*, the Supreme Court noted a new exception in the 100% annexation – when "there is a credible allegation that the annexing body engaged in deceitful conduct." *Id.* In

Vicary, the court also noted the public importance exception to standing. More importantly, the court failed to note an exception, which City argues, that when a party alleges an infringement of a statutory and proprietary right.

Thus, it appears to this court that City not only lacks the essential requirement of standing in this action, but the only party to challenge the annexation by North Charleston is the State of South Carolina.

CITY'S CLAIM TO STANDING

City alleges it has standing based on two (2) separate allegations,[5] both of which this court assumes to be true for purposes of this motion:

1. A portion of Millbrook (the 100' tract) was annexed into City in 2005. Complaint No. 846, ¶ 5; and

2. City had begun process of annexing the remainder of Millbrook before North Charleston begun the process of the 2017 Ordinance. *Id.*

Two key allegations made by City:

- 2017 Ordinance purported to annex real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1, which is more particularly described in the 2017 Ordinance. Complaint No. 846, ¶ 4; and
- Prior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of City. Complaint No. 2539, ¶ 21.

Examining the complaints, it is clear that the 100' strip of land was identified by the county records, prior to and on December 21, 2017, as TMS 361-00-00-006-1. This is the land City had

[5] City makes other allegations for standing, but these are consumed in these two. Complaint No. 2539, ¶¶ 8 – 10.

annexed in 2005. To succeed under any of City's causes of action, this court must interpret the 2017 Ordinance that it was annexing TMS 361-00-00-006-1.

1. City Alleges 2017 Ordinance Attempted to Annex the 100' Strip.

In the complaints, City makes numerous references to the 2017 Ordinance and the 2018 Ordinance. Although City does not attach these to the Complaint, City makes them, through its arguments, an essential element of each of its causes of action. "[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *See Brazell v Windsor*, 384 S.C. 512, ___, 682 S.E. 2d 824, 826 (2009). The 2017 Ordinance and the 2018 Ordinance are statutes of North Charleston. "[T]he interpretation of a statute is a question of law . . . ." *Vicary, citing, Catawba Indian Tribe of S.C. v State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Thus, this court can take City's allegations, which it considers to be true, interpret the Ordinances, and apply the law.

City alleges that the 2017 Ordinance purports to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance. According to City, the 100' strip that City annexed in 2005 is TMS 361-00-00-006-1. City makes no claim that it annexed in 2005 the portion known as TMS 361-00-00-006.

In examining 2017 Ordinance, North Charleston stated, "An ordinance . . . annexing an area known as 52-S in Charleston County (**TMS #361-00-00-006**) . . . as shown on a map dated November 30, 2017 . . . . Exhibit 1 (emphasis added). Following the legal language of the ordinance, the property description is given. Included in the description are six (6) references to

"TMS #361-00-00-006" while there are no references to TMS #361-00-00-006-1, which is the 100' strip that had been annexed into City in 2005. At the end of the description, it ends with the phrase "all distances being more or less." *Id.* The 2017 Ordinance then states, "**The area proposed for annexation includes the parcel designated TMS #361-00-00-006.**"[6] Exhibit 1 (emphasis added). The map that is part of Ordinance 2017 shows TMS #361-00-00-006, but fails to include TMS #361-00-00-006-1.

The 2017 Ordinance never makes any claim to annex TMS # 361-00-00-006-1. This court finds that North Charleston did not attempt, in the 2017 Ordinance,[7] to annex property (the 100' strip) which was part of City. Without this, City's claim fails to state any valid claim for relief.

2. City Alleges Standing based on the Prior Pending Proceedings Rule.

City claims that it began the annexation of TMS #361-00-00-006 before North Charleston began its annexation proceedings. City argues this under what has been called the "prior pending proceedings" rule. "The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority. 1 Antieau Municipal Corporation Law § 1 A. 16 (1993); 2 McQuillan Municipal Corporation § 7.22A (1966)." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). The Supreme Court of South Carolina declined to rule on its efficacy, explaining: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." *Id.* at 196, 447 S.E.2d at 857. The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise

[6] The map that is part of 2017 Ordinance also states, "Area to be annexed includes TMS # 361-00-00-006." It makes no reference to TMS #361-00-00-006-1.

[7] City alleges that 2018 Ordinance purports to correct the 2017 defective Ordinance. Because this court has found the 2017 Ordinance not to be defective, this argument is moot.

declines. Without this, North Charleston properly annexed TMS 361-00-00-006 on December 28, 2017 with the 2017 Ordinance.

CONCLUSION

South Carolina Supreme Court has made clear that City has no standing to challenge the completed annexation by North Charleston. The only party able to challenge this annexation is the State of South Carolina. The South Carolina Supreme Court has declined to adopt the prior pending proceedings rule and this court likewise declines. Finally, assuming City has standing, the 2017 Ordinance fails to attempt to annex TMS 361-00-00-006-1, therefore, City fails to state a valid claim.

This court grants Millbrook's motion to dismiss and will consider an award to Millbrook of its reasonable attorneys' fees pursuant to S.C. Ann. § 15-77-300. Millbrook shall submit its motion, with supporting documentation, within thirty (30) days of the filing of this Order.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Circuit Judge

Newberry, SC
March 1, 2019

Ordinance #2017-083

AN ORDINANCE

ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-S IN CHARLESTON COUNTY (TMS #361-00-00-006) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9 AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED NOVEMBER 30, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S".

IT IS FOUND BY THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON AS FOLLOWS:

THE FREEHOLDERS OF AN AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, CONTIGUOUS AND ADJACENT TO THE CITY OF NORTH CHARLESTON HAVE PETITIONED THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON TO ANNEX THAT AREA PURSUANT TO SECTION 5-3-150 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED;

THROUGH LEGAL COUNSEL, SAID PETITION HAS BEEN PLACED BEFORE CITY COUNCIL, HAS BEEN EXAMINED AS TO FORM, REGULARITY AND AUTHENTICITY AND IT HAS BEEN FOUND THAT 100% OF THE FREEHOLD PROPERTY OWNERS OF RECORD ACCORDING TO THE ASSESSMENT AND TAX ROLLS OF THE ASSESSOR AND AUDITOR OF CHARLESTON COUNTY REPRESENTING 100% OF THE ASSESSED VALUE OF PROPERTY LOCATED IN SAID AREA HAVE SIGNED SAID PETITION FOR ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED NOVEMBER 30, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S."

THE CITY COUNCIL OF NORTH CHARLESTON REPRESENTS THE INTERESTS OF THE CITIZENS OF THE CITY OF NORTH CHARLESTON AND HAS DETERMINED THAT IT IS IN THE BEST INTEREST AND WELFARE OF BOTH THE PRESENT CITY AND THE AREA PROPOSED FOR ANNEXATION THAT SAID PETITION BE ACCEPTED AND AGREED TO AND THAT THE AREA SHOULD BE ANNEXED AND MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH CHARLESTON, IN COUNCIL ASSEMBLED, THAT THE CORPORATE LIMITS OF THE CITY OF NORTH CHARLESTON SHALL HEREAFTER INCLUDE THE FOLLOWING DESCRIBED PROPERTY, MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

The property to be annexed, consisting of approximately 50.1 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated November 30, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S", a copy of same being attached hereto for purposed of this annexation, with the property being further described by reference to said map as follows:

Exhibit 1

Beginning at Point A, at the intersection of a perpendicular line as extended from the southeasternmost corner of parcel designated TMS #181-00-00-046 with the middle of the Ashley River, which point is on the present city limits line of the City of North Charleston; thence, in a generally westerly direction a distance of 1,122 feet along the present city limits line of the City of North Charleston to Point B, which point is on the intersection of a perpendicular line as extended from the northwesternmost corner of parcel designated TMS #361-00-00-006 and the middle of the Ashley River which point is on the present city limits of the City of North Charleston; thence, in a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS #361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of way of Ashley River Road to Point D, which point is on the southeasternmost corner of parcel designated TMS #361-00-00-006; thence, in a generally northeasterly and northerly direction a distance of 2,812 feet along the easternmost property line of parcel designated TMS #361-00-00-006 t to Point A, which is the point of beginning and is on the present city limits line of the City of North Charleston, with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #361-00-00-006

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS ADOPTION BY CITY COUNCIL.

Ordained in City Council this 28th day of December, in the Year of Our Lord, 2017 and in the 241st year of Independence of the United States of America.

R. KEITH SUMMEY, MAYOR

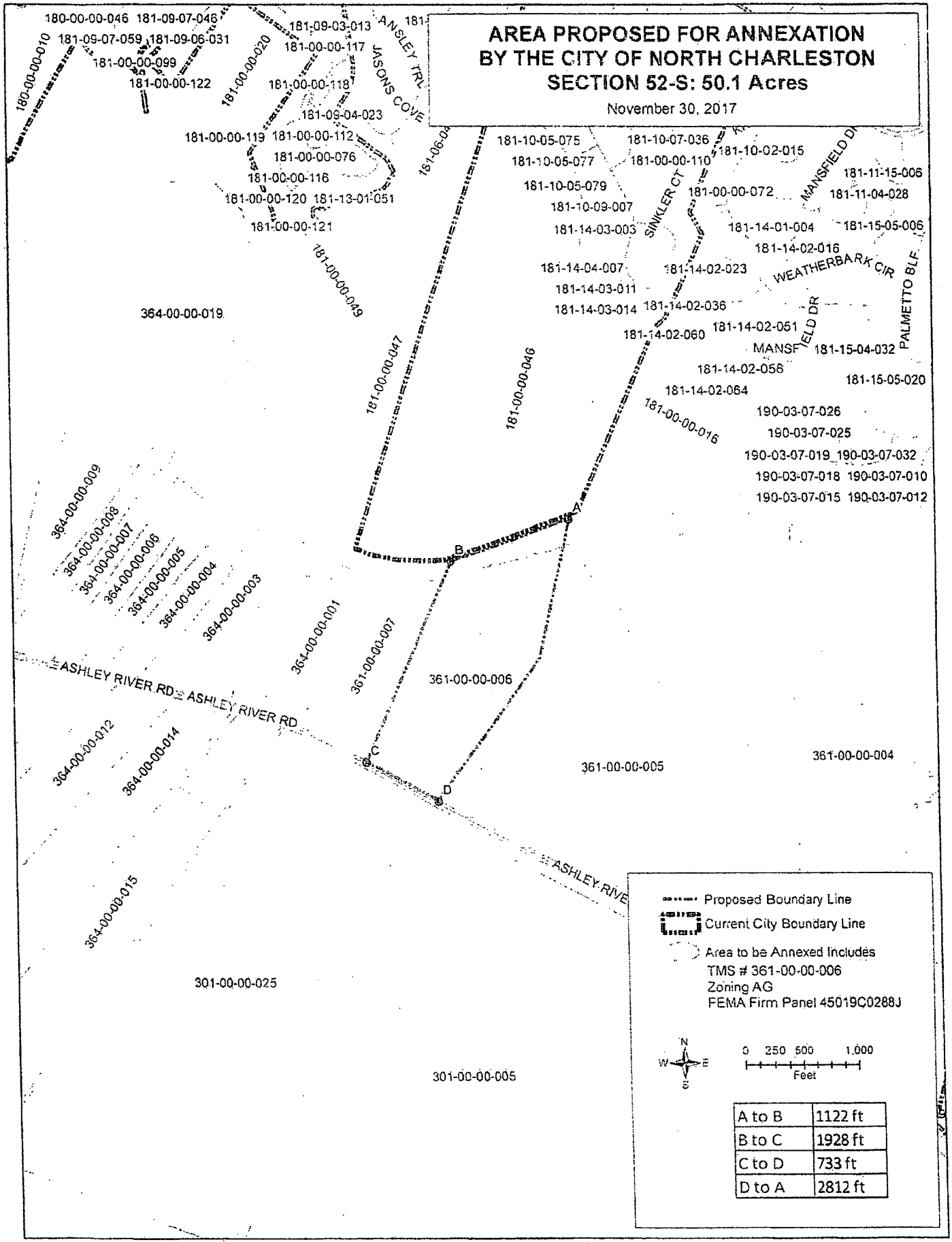
APPROVED AS TO FORM:

01-11-2018

LEGAL COUNSEL

ATTEST:

ELLEN CLARK, MUNICIPAL CLERK


AREA PROPOSED FOR ANNEXATION
BY THE CITY OF NORTH CHARLESTON
SECTION 52-S: 50.1 Acres
November 30, 2017
180-00-00-046
181-09-07-046
181-09-07-059
181-09-06-031
181-00-00-099
181-00-00-122
181-00-00-020
181-09-03-013
181-00-00-117
181-00-00-118
JASONS COVE
181-09-04-023
181-00-00-119
181-00-00-112
181-00-00-076
181-00-00-116
181-00-00-120
181-13-01-051
181-00-00-121
181-00-00-049
364-00-00-019
181-00-00-047
181-00-00-046
181-10-05-075
181-10-05-077
181-10-05-079
181-10-09-007
181-14-03-003
181-10-07-036
181-00-00-110
181-10-02-015
181-00-00-072
SINKLER CT
MANSFIELD DR
181-11-15-006
181-11-04-028
181-14-01-004
181-15-05-006
181-14-02-016
181-14-04-007
181-14-02-023
181-14-03-011
181-14-03-014
181-14-02-036
WEATHERBARK CIR
PALMETTO BLF
181-14-02-060
181-14-02-051
MANSFIELD DR
181-15-04-032
181-14-02-056
181-15-05-020
181-14-02-064
181-00-00-016
190-03-07-026
190-03-07-025
190-03-07-019
190-03-07-032
190-03-07-018
190-03-07-010
190-03-07-015
190-03-07-012
364-00-00-009
364-00-00-008
364-00-00-007
364-00-00-006
364-00-00-005
364-00-00-004
364-00-00-003
364-00-00-001
361-00-00-007
361-00-00-006
ASHLEY RIVER RD
ASHLEY RIVER RD
364-00-00-012
364-00-00-014
361-00-00-005
361-00-00-004
ASHLEY RIVE
364-00-00-015
301-00-00-025
301-00-00-005
A
B
C
D
Proposed Boundary Line
Current City Boundary Line
Area to be Annexed Includes
TMS # 361-00-00-006
Zoning AG
FEMA Firm Panel 45019C0288J
N
W
E
S
0 250 500 1,000
Feet
A to B 1122 ft
B to C 1928 ft
C to D 733 ft
D to A 2812 ft

NORTH CHARLESTON CITY COUNCIL
SPECIAL MEETING
AGENDA ITEM

Meeting of December 28, 2017

DATE: December 27, 2017

ITEM TITLE: Ordinance – Final Reading & Report
An Ordinance Annexing an Area Known as Section 52-S Charleston County (TMS #361-00-00-006), Ashley River Rd and make it part of present City Council District 9, Proposed Zoning AG, Agricultural District

SUBMITTED BY: Julie Elmore, Executive Department
Adam MacConnell, Executive Department

CONTACT PERSON: Adam MacConnell, 740-5821

SUMMARY EXPLANATION:
This annexation is for a 50 acre parcel identified as TMS #361-00-00-006, in Charleston County located on Ashley River Road and known as Millbrook Plantation. This property is in the vicinity of the City's recently annexed Runneymede Planation. Proposed City zoning is AG. 100% of the freeholders representing 100% of the assessed value have signed a petition for this annexation; therefore, no public hearing is required. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9.

STAFF RECOMMENDATION:
Approval of the Annexation

CITY COUNCIL COMMITTEE RECOMMENDATIONS:

CITY COUNCIL ACTION:
On December 21, 2017 the City Council voted to approve the Ordinance for first reading and moved it to final reading. (7-1-0)

Exhibits
_____Resolution ____Ordinance____Contract____Minutes___Plan/Map___Transfer of Funds____Other

Ordinance #2018-017

AN ORDINANCE

CORRECTING ORDINANCE #2017-083 TO CONFORM TO A RECENT CHANGE IN THE COUNTY TMS MAPPING

Whereas, The City of North Charleston recently annexed Parcel TMS #361-00-00-006; and

Whereas, the clearly expressed intent of the ordinance was to annex parcel 006; and

Whereas, based upon then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road; and

Whereas, County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, TMS #361-00-00-0061; and

Whereas, it was North Charleston's intent to annex unincorporated parcel TMS #361-00-00-006, not TMS #361-00-00-061; and

Whereas, the attached ordinance would amend Ordinance #2017-083 to make the boundaries consistent with this intent and consistent with the now-corrected County data for parcel -006.

Now, Therefore, Be it Ordained by the Mayor and Council, in Council assembled, that Ordinance #2017-083 be hereby amended to clarify the *exclusion* from annexation of any portion of property now shown on County tax map records as TMS #361-00-00-0061 (a 100' deep strip parallel to Ashley River Road as shown on the map herein), with all other portions of Ordinance #2017-083 to remain unchanged.

THE WITHIN ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION BY CITY COUNCIL.

Ordained in City Council this 22nd day of March, in the Year of Our Lord, 2018, and in the 241st year of Independence of the United States of America.

R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:

LEGAL COUNSEL

ATTEST:

ELLEN CLARK, MUNICIPAL CLERK

NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM

Meeting of March 22, 2018

Date: March 19, 2018

Item Title: Ordinance – Final Reading
An Ordinance Correcting Ordinance 2017-083 to conform to a recent change in County TMS mapping.

Submitted by: Derk Van Raalte, Legal Department 843-740-2550

Contact Person: Derk Van Raalte, 843-740-2550

SUMMARY EXPLANATION:
The City of North Charleston recently annexed Parcel 361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

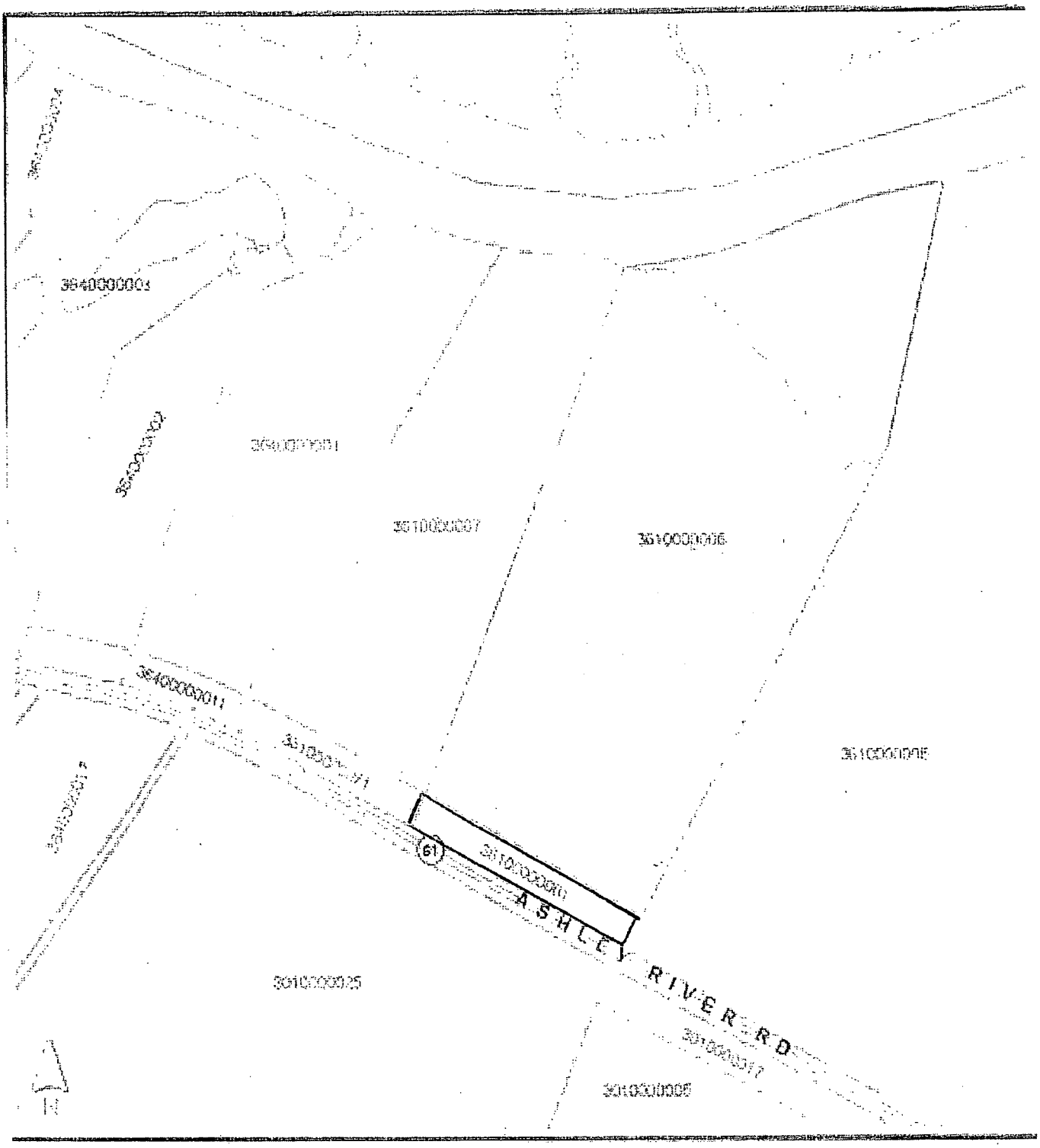
STAFF RECOMMENDATION:
Staff recommends approval.

BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:

COUNCIL COMMITTEE RECOMMENDATION:

COUNCIL ACTION:
At a special meeting on March 15, 2018 the City Council voted unanimously to approve the Ordinance for first reading and moved it to final reading. (8-0-0)

Exhibits
___Resolution_X__Ordinance_ Contract__Minutes__X_Plan/Map___Transfer of Funds __Other



Charleston County SC

0 237.5 475 950 Feet

1 Inch = 374 feet

Parcel ID: 3610000006
OWNER1: MILLBROOK PLANTATION LLC
PROP_ST_NO: 4056
PROP_ST_NAME: ASHLEY RIVER
PROP_TYPE: RD
ACREAGE: 31.00

CLASS_CODE: 800 - AGRICULTURAL
PLAT_BOOK_PAGE: L17- 0511
DEED_BOOK_PAGE: 0834-213
Jurisdiction: CITY OF NORTH CHARLESTON

CHARLESTON COUNTY

Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	CASE NO. 18-CP-10-846
MILLBROOK PLANTATION, LLC, Plaintiff, vs. CITY OF CHARLESTON, Defendant.	)	CASE NO. 18-CP-10-2131
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	CASE NO. 18-CP-10-2539 **ORDER GRANTING MILLBROOK'S MOTION TO DISMISS**

FILED
2019 MAR -5 PM 12: 34
JULIE J. ARMSTRONG
CLERK OF COURT

NATURE OF CASE

Plaintiff City of Charleston ("City") filed two actions[1] alleging that the two annexation

[1] Pursuant to a consent motion by all parties, these two actions, along with the action filed by Millbrook challenging City's annexation of its property, were consolidated by court order, which was filed December 19, 2018.

ordinances,[2] by the City of North Charleston ("North Charleston"), of land owned by Defendant, Millbrook Plantation, LLC ("Millbrook"), were illegal. Millbrook filed a Motion to Dismiss, pursuant to SCRCP 12(b)(6), arguing that City has no standing to challenge a 100% annexation because the State of South Carolina, through the Attorney General, is the only party who can challenge a 100% annexation. At oral argument, Millbrook also argued, assuming City had standing, the 2017 Ordinance never included the 100' strip of land, previously annexed by City; thus, the complaints fail to state any valid claim for relief. Millbrook also seeks its attorneys' fees and costs pursuant to S.C. Ann. § 15-77-300.

Based on the allegations of the Complaint, which include and rely on the two ordinances, and the laws of this state, Millbrook's motion is granted.

LEGAL STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). "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." *Id.* at 395, 645 S.E.2d at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). *Patterson v. Witter*, Opinion No. 27841, Supreme Court of SC (September 5, 2018).

ALLEGATIONS OF COMPLAINTS

In the two complaints, City outlines many of the same allegations. This court has, for ease of identifying ordinances and separating parcels of land, changed some of the identifiers while retaining the substance of each allegation. As required, the court assumes all City's allegations to be true.

---

[2] This court refers to these as 2017 Ordinance and 2018 Ordinance. Because they are essential to each cause of action of City, they are attached as **Exhibit 1** and **Exhibit 2**.

1. May 10, 2005: City adopted Ordinance No. 2005-93, annexing the following property into City, which is a portion of the Millbrook Parcel:

> [A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.[3]

2. December 19, 2017: City's Council accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which included the Millbrook Parcel.

3. December 19, 2017: City's Council voted to have a public hearing on the above-referenced petition.

4. December 21, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of City.

5. December 21, 2017: North Charleston's Council gave first reading to 2017 Ordinance, purporting to annex the Millbrook Parcel, including that portion of the Millbrook Parcel previously annexed into City.

6. December 28, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of City.

7. December 28, 2017: North Charleston's Council adopted 2017 Ordinance.

8. January 23, 2018: City's Council held a public hearing on the (75%)

[3] City later identifies this 100' strip as TMS 361-00-00-006-1 and alleges Charleston County records showed this by December 21, 2017, which is the date on which North Charleston gave first reading to 2017 Ordinance.

annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

9. March 22, 2018: North Charleston's Council adopted 2018 Ordinance, purporting to amend or supplement 2017 Ordinance by removing from 2017 Ordinance the portion of the Millbrook Parcel annexed into the City in 2005.

10. April 10, 2018: City's Council adopted an ordinance annexing the Millbrook Parcel into City.

11. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of City before Millbrook executed the annexation petition to annex the Millbrook Parcel into North Charleston.

12. North Charleston did not request information from City about whether City's municipal limits included a portion of the Millbrook Parcel on or before December 19, 2017.

13. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2017 Ordinance, adopted by the North Charleston's Council on December 28, 2017, purporting to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance.

14. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2018 Ordinance, adopted by North Charleston's Council on March 22, 2018, purporting to amend and supplement 2017 Ordinance, whereby North Charleston purported to annex, upon petition of Millbrook that certain tract of land previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel").

15. 2017 Ordinance and 2018 Ordinance violate the statutory and proprietary rights of City in that they purportedly annex land within the City's corporate limits and land over which the City had previously begun the process of annexation.

16. 2018 Ordinance purports to correct North Charleston's defective annexation of the Millbrook Parcel in the 2017 Ordinance, which included a portion of the Millbrook Parcel annexed to the City in 2005.

STANDING

> Standing refers to a "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." Black's Law Dictionary 1413 (7th ed.1999). "Standing is . . . that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." 1A C.J.S. Actions § 101 (2005). It concerns an individual's "sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*
>
> Standing is comprised of three elements:
>
> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not `conjectural' or `hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."
>
> *Smiley v. South Carolina Dep't of Health & Envt'l Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (alteration in original)). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. South Carolina Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).
>
> "As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). "One must be a real party in interest, i.e., a party who has a real, material, or substantial interest in the subject matter

> of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.*

Powell v. Bank of America, 379 S.C. 437, ___, 665 S.E.2d 237, 241 (S.C. App. 2008).

City has the burden of proving it has standing. *Vicary v. Town of Awendaw*, Opinion No. 27855 (S.C. Dec. 19, 2018). This standing issue, in the context of annexation cases, has been directly addressed in *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991). *Quinn's* facts are very similar to the present action. City of Columbia, like North Charleston, had adopted an ordinance approving a 100% annexation of land in the Harbison area. The town of Irmo,[4] like City, attempted to adopt an ordinance annexing the same land through the 75% method. Columbia filed a 12(b)(6) motion to dismiss. The *Quinn* court stated, "The sole issue we need address is that of Respondents' *standing*." *Id.*, at 406, 401 S.E.2d at 166 (emphasis added). The court then analyzed the allegations as follows:

> City's annexation of this property was pursuant to subsection (3) of S. C. Code Ann. § 5-3-150, the "100% method," which provides, in part: any area or property which is contiguous to a city or town may be annexed to the city or town by filing with the municipal governing body a petition signed [***3] by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed . . . the annexation shall be complete and [an] . . . election. . . shall not be required.
>
> Unlike subsection (1) of § 5-3-150, the "75% method," subsection (3) makes no provision for aggrieved *residents* to challenge an annexation.

Id., at 406-07, 401 S.E.2d at 166.

Thus, just like Columbia's annexation was complete upon the enactment of the ordinance, Millbrook's annexation into North Charleston was complete on December 28, 2017. All of this was completed prior to City adopting its ordinance on April 10, 2018.

---

[4] Irmo was a respondent with *Quinn*.

South Carolina courts made the standing issue even clearer in a later action in which City was a party. Not only has the South Carolina Supreme Court ruled that a municipality has no standing to challenge a 100% annexation, but held "the only non-statutory party which may challenge a municipal annexation is the State, through a *quo warranto* action." *St. Andrews Pub. Serv. Dist. v. City Council of the City of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002). City acknowledged that the State has challenged neither the 2017 Ordinance nor the 2018 Ordinance.

The South Carolina Supreme Court again addressed the standing issue in another 100% annexation in *Campbell v. Town of Yemassee*, 391 .C 565, 707 S.E.2d 402 (2011).

> We reject the suggestion that the perceived merits of the underlying claim may influence the standing determination. This basic principle defeats the Private Party Appellants' claim.
>
> The ordinance recites that the annexation was achieved using the 100% petition method. If we went behind that assertion without a proper plaintiff, we would be inviting a sliding scale for standing: the more meritorious a claim appears, the more relaxed the standing requirement would be. We rejected such reasoning when we overruled *Quinn v. City of Columbia*. *See St. Andrews Public Service District*, 349 S.C. at 605, 564 S.E.2d at 648 (overruling the *Quinn* rule that a stranger to an annexation may challenge the annexation if the ordinance is "absolutely void"). **Adhering to our precedent, we must determine standing without regard to the merits of the underlying claim.**

Id., at 573-74, 707 S.E. 2d at 407 (emphasis added).

In a very recent decision, the South Carolina Supreme Court reaffirmed the holdings of *St. Andrews* and *Town of Yemassee* in stating, "[T]he Court's rejection of a 'sliding scale' approach to a standing analysis remains good law when there is no allegation of nefarious conduct by the annexing body." *Vicary v. Town of Awendaw*, Opinion No. 27855 (S.C. Dec. 19, 2018). In *Vicary*, the Supreme Court noted a new exception in the 100% annexation – when "there is a credible allegation that the annexing body engaged in deceitful conduct." *Id.* In

Vicary, the court also noted the public importance exception to standing. More importantly, the court failed to note an exception, which City argues, that when a party alleges an infringement of a statutory and proprietary right.

Thus, it appears to this court that City not only lacks the essential requirement of standing in this action, but the only party to challenge the annexation by North Charleston is the State of South Carolina.

CITY'S CLAIM TO STANDING

City alleges it has standing based on two (2) separate allegations,[5] both of which this court assumes to be true for purposes of this motion:

1. A portion of Millbrook (the 100' tract) was annexed into City in 2005. Complaint No. 846, ¶ 5; and

2. City had begun process of annexing the remainder of Millbrook before North Charleston begun the process of the 2017 Ordinance. *Id.*

Two key allegations made by City:

- 2017 Ordinance purported to annex real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1, which is more particularly described in the 2017 Ordinance. Complaint No. 846, ¶ 4; and
- Prior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of City. Complaint No. 2539, ¶ 21.

Examining the complaints, it is clear that the 100' strip of land was identified by the county records, prior to and on December 21, 2017, as TMS 361-00-00-006-1. This is the land City had

[5] City makes other allegations for standing, but these are consumed in these two. Complaint No. 2539, ¶¶ 8 – 10.

annexed in 2005. To succeed under any of City's causes of action, this court must interpret the 2017 Ordinance that it was annexing TMS 361-00-00-006-1.

1. City Alleges 2017 Ordinance Attempted to Annex the 100' Strip.

In the complaints, City makes numerous references to the 2017 Ordinance and the 2018 Ordinance. Although City does not attach these to the Complaint, City makes them, through its arguments, an essential element of each of its causes of action. "[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *See Brazell v Windsor*, 384 S.C. 512, ___, 682 S.E. 2d 824, 826 (2009). The 2017 Ordinance and the 2018 Ordinance are statutes of North Charleston. "[T]he interpretation of a statute is a question of law . . . ." *Vicary, citing, Catawba Indian Tribe of S.C. v State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Thus, this court can take City's allegations, which it considers to be true, interpret the Ordinances, and apply the law.

City alleges that the 2017 Ordinance purports to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance. According to City, the 100' strip that City annexed in 2005 is TMS 361-00-00-006-1. City makes no claim that it annexed in 2005 the portion known as TMS 361-00-00-006.

In examining 2017 Ordinance, North Charleston stated, "An ordinance . . . annexing an area known as 52-S in Charleston County (**TMS #361-00-00-006**) . . . as shown on a map dated November 30, 2017 . . . . Exhibit 1 (emphasis added). Following the legal language of the ordinance, the property description is given. Included in the description are six (6) references to

"TMS #361-00-00-006" while there are no references to TMS #361-00-00-006-1, which is the 100' strip that had been annexed into City in 2005. At the end of the description, it ends with the phrase "all distances being more or less." *Id.* The 2017 Ordinance then states, "**The area proposed for annexation includes the parcel designated TMS #361-00-00-006.**"[6] Exhibit 1 (emphasis added). The map that is part of Ordinance 2017 shows TMS #361-00-00-006, but fails to include TMS #361-00-00-006-1.

The 2017 Ordinance never makes any claim to annex TMS # 361-00-00-006-1. This court finds that North Charleston did not attempt, in the 2017 Ordinance,[7] to annex property (the 100' strip) which was part of City. Without this, City's claim fails to state any valid claim for relief.

2. City Alleges Standing based on the Prior Pending Proceedings Rule.

City claims that it began the annexation of TMS #361-00-00-006 before North Charleston began its annexation proceedings. City argues this under what has been called the "prior pending proceedings" rule. "The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority. 1 Antieau Municipal Corporation Law § 1 A. 16 (1993); 2 McQuillan Municipal Corporation § 7.22A (1966)." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). The Supreme Court of South Carolina declined to rule on its efficacy, explaining: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." *Id.* at 196, 447 S.E.2d at 857. The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise

---

[6] The map that is part of 2017 Ordinance also states, "Area to be annexed includes TMS # 361-00-00-006." It makes no reference to TMS #361-00-00-006-1.

[7] City alleges that 2018 Ordinance purports to correct the 2017 defective Ordinance. Because this court has found the 2017 Ordinance not to be defective, this argument is moot.

declines. Without this, North Charleston properly annexed TMS 361-00-00-006 on December 28, 2017 with the 2017 Ordinance.

CONCLUSION

South Carolina Supreme Court has made clear that City has no standing to challenge the completed annexation by North Charleston. The only party able to challenge this annexation is the State of South Carolina. The South Carolina Supreme Court has declined to adopt the prior pending proceedings rule and this court likewise declines. Finally, assuming City has standing, the 2017 Ordinance fails to attempt to annex TMS 361-00-00-006-1, therefore, City fails to state a valid claim.

This court grants Millbrook's motion to dismiss and will consider an award to Millbrook of its reasonable attorneys' fees pursuant to S.C. Ann. § 15-77-300. Millbrook shall submit its motion, with supporting documentation, within thirty (30) days of the filing of this Order.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Circuit Judge

Hanahan, SC
March 1, 2019

Ordinance #2017-083

AN ORDINANCE

ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-S IN CHARLESTON COUNTY (TMS #361-00-00-006) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9 AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED NOVEMBER 30, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S".

IT IS FOUND BY THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON AS FOLLOWS:

THE FREEHOLDERS OF AN AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, CONTIGUOUS AND ADJACENT TO THE CITY OF NORTH CHARLESTON HAVE PETITIONED THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON TO ANNEX THAT AREA PURSUANT TO SECTION 5-3-150 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED;

THROUGH LEGAL COUNSEL, SAID PETITION HAS BEEN PLACED BEFORE CITY COUNCIL, HAS BEEN EXAMINED AS TO FORM, REGULARITY AND AUTHENTICITY AND IT HAS BEEN FOUND THAT 100% OF THE FREEHOLD PROPERTY OWNERS OF RECORD ACCORDING TO THE ASSESSMENT AND TAX ROLLS OF THE ASSESSOR AND AUDITOR OF CHARLESTON COUNTY REPRESENTING 100% OF THE ASSESSED VALUE OF PROPERTY LOCATED IN SAID AREA HAVE SIGNED SAID PETITION FOR ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED NOVEMBER 30, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S."

THE CITY COUNCIL OF NORTH CHARLESTON REPRESENTS THE INTERESTS OF THE CITIZENS OF THE CITY OF NORTH CHARLESTON AND HAS DETERMINED THAT IT IS IN THE BEST INTEREST AND WELFARE OF BOTH THE PRESENT CITY AND THE AREA PROPOSED FOR ANNEXATION THAT SAID PETITION BE ACCEPTED AND AGREED TO AND THAT THE AREA SHOULD BE ANNEXED AND MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH CHARLESTON, IN COUNCIL ASSEMBLED, THAT THE CORPORATE LIMITS OF THE CITY OF NORTH CHARLESTON SHALL HEREAFTER INCLUDE THE FOLLOWING DESCRIBED PROPERTY, MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

The property to be annexed, consisting of approximately 50.1 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated November 30, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S", a copy of same being attached hereto for purposed of this annexation, with the property being further described by reference to said map as follows:

Beginning at Point A, at the intersection of a perpendicular line as extended from the southeasternmost corner of parcel designated TMS #181-00-00-046 with the middle of the Ashley River, which point is on the present city limits line of the City of North Charleston; thence, in a generally westerly direction a distance of 1,122 feet along the present city limits line of the City of North Charleston to Point B, which point is on the intersection of a perpendicular line as extended from the northwesternmost corner of parcel designated TMS #361-00-00-006 and the middle of the Ashley River which point is on the present city limits of the City of North Charleston; thence, in a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS #361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of way of Ashley River Road to Point D, which point is on the southeasternmost corner of parcel designated TMS #361-00-00-006; thence, in a generally northeasterly and northerly direction a distance of 2,812 feet along the easternmost property line of parcel designated TMS #361-00-00-006 t to Point A, which is the point of beginning and is on the present city limits line of the City of North Charleston, with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #361-00-00-006

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS ADOPTION BY CITY COUNCIL.

Ordained in City Council this 28th day of December, in the Year of Our Lord, 2017 and in the 241st year of Independence of the United States of America.

R. KEITH SUMMEY, MAYOR

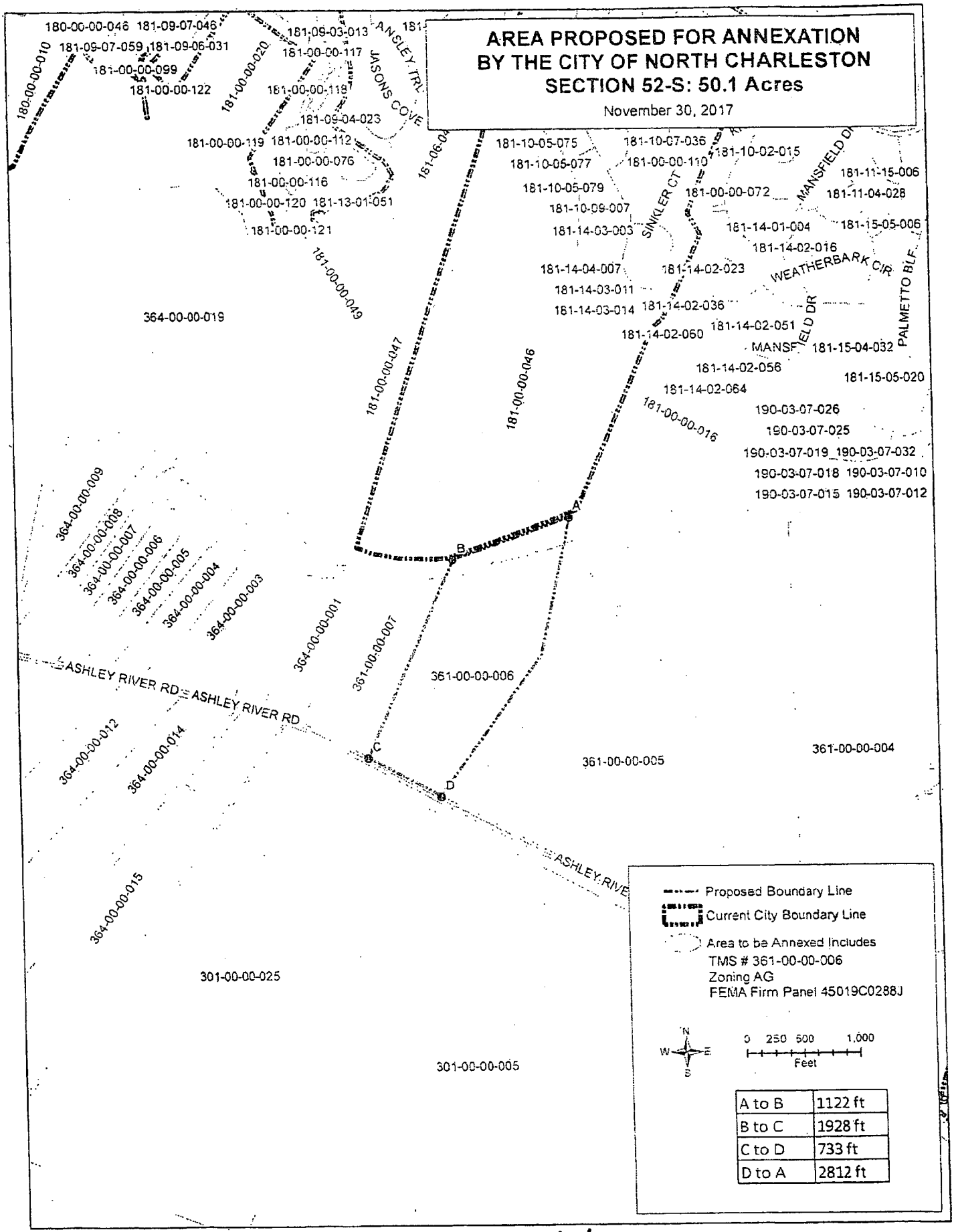
APPROVED AS TO FORM:

01-11-2018

LEGAL COUNSEL

ATTEST:

ELLEN CLARK, MUNICIPAL CLERK


AREA PROPOSED FOR ANNEXATION
BY THE CITY OF NORTH CHARLESTON
SECTION 52-S: 50.1 Acres
November 30, 2017
180-00-00-046
181-09-07-046
181-09-07-059
181-09-06-031
181-00-00-099
181-00-00-122
181-09-03-013
181-00-00-117
181-00-00-118
181-09-04-023
181-00-00-119
181-00-00-112
181-00-00-076
181-00-00-116
181-00-00-120
181-13-01-051
181-00-00-121
181-00-00-049
364-00-00-019
181-00-00-047
181-00-00-046
181-00-00-016
181-10-05-075
181-10-05-077
181-10-05-079
181-10-09-007
181-14-03-003
181-10-07-036
181-00-00-110
181-10-02-015
181-00-00-072
181-14-01-004
181-14-02-016
181-14-04-007
181-14-03-011
181-14-03-014
181-14-02-023
181-14-02-036
181-14-02-060
181-14-02-051
181-14-02-056
181-14-02-064
181-11-15-006
181-11-04-028
181-15-05-006
181-15-04-032
181-15-05-020
190-03-07-026
190-03-07-025
190-03-07-019
190-03-07-032
190-03-07-018
190-03-07-010
190-03-07-015
190-03-07-012
MANSFIELD DR
SINKLER CT
WEATHERBARK CIR
PALMETTO BLF
JASONS COVE
364-00-00-009
364-00-00-008
364-00-00-007
364-00-00-006
364-00-00-005
364-00-00-004
364-00-00-003
364-00-00-001
361-00-00-007
361-00-00-006
ASHLEY RIVER RD
364-00-00-012
364-00-00-014
364-00-00-015
361-00-00-005
361-00-00-004
301-00-00-025
301-00-00-005
A
B
C
D
Proposed Boundary Line
Current City Boundary Line
Area to be Annexed Includes
TMS # 361-00-00-006
Zoning AG
FEMA Firm Panel 45019C0288J
N
W
E
S
0 250 500 1,000
Feet
A to B 1122 ft
B to C 1928 ft
C to D 733 ft
D to A 2812 ft

NORTH CHARLESTON CITY COUNCIL
SPECIAL MEETING
AGENDA ITEM

Meeting of December 28, 2017

DATE: December 27, 2017

ITEM TITLE: Ordinance – Final Reading & Report
An Ordinance Annexing an Area Known as Section 52-S Charleston County (TMS #361-00-00-006), Ashley River Rd and make it part of present City Council District 9, Proposed Zoning AG, Agricultural District

SUBMITTED BY: Julie Elmore, Executive Department
Adam MacConnell, Executive Department

CONTACT PERSON: Adam MacConnell, 740-5821

SUMMARY EXPLANATION:
This annexation is for a 50 acre parcel identified as TMS #361-00-00-006, in Charleston County located on Ashley River Road and known as Millbrook Plantation. This property is in the vicinity of the City's recently annexed Runneymede Planation. Proposed City zoning is AG. 100% of the freeholders representing 100% of the assessed value have signed a petition for this annexation; therefore, no public hearing is required. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9.

STAFF RECOMMENDATION:
Approval of the Annexation

CITY COUNCIL COMMITTEE RECOMMENDATIONS:

CITY COUNCIL ACTION:
On December 21, 2017 the City Council voted to approve the Ordinance for first reading and moved it to final reading. (7-1-0)

Exhibits
_____Resolution ____Ordinance____Contract____Minutes__Plan/Map___Transfer of Funds____Other

Ordinance #2018-017

AN ORDINANCE

CORRECTING ORDINANCE #2017-083 TO CONFORM TO A RECENT CHANGE IN THE COUNTY TMS MAPPING

Whereas, The City of North Charleston recently annexed Parcel TMS #361-00-00-006; and

Whereas, the clearly expressed intent of the ordinance was to annex parcel 006; and

Whereas, based upon then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road; and

Whereas, County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, TMS #361-00-00-0061; and

Whereas, it was North Charleston's intent to annex unincorporated parcel TMS #361-00-00-006, not TMS #361-00-00-061; and

Whereas, the attached ordinance would amend Ordinance #2017-083 to make the boundaries consistent with this intent and consistent with the now-corrected County data for parcel -006.

Now, Therefore, Be it Ordained by the Mayor and Council, in Council assembled, that Ordinance #2017-083 be hereby amended to clarify the *exclusion* from annexation of any portion of property now shown on County tax map records as TMS #361-00-00-0061 (a 100' deep strip parallel to Ashley River Road as shown on the map herein), with all other portions of Ordinance #2017-083 to remain unchanged.

THE WITHIN ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION BY CITY COUNCIL.

Ordained in City Council this 22nd day of March, in the Year of Our Lord, 2018, and in the 241st year of Independence of the United States of America.

R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:

LEGAL COUNSEL

ATTEST:

ELLEN CLARK, MUNICIPAL CLERK

NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM

Meeting of March 22, 2018

Date: March 19, 2018

Item Title: Ordinance – Final Reading
An Ordinance Correcting Ordinance 2017-083 to conform to a recent change in County TMS mapping.

Submitted by: Derk Van Raalte, Legal Department 843-740-2550

Contact Person: Derk Van Raalte, 843-740-2550

SUMMARY EXPLANATION:
The City of North Charleston recently annexed Parcel 361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

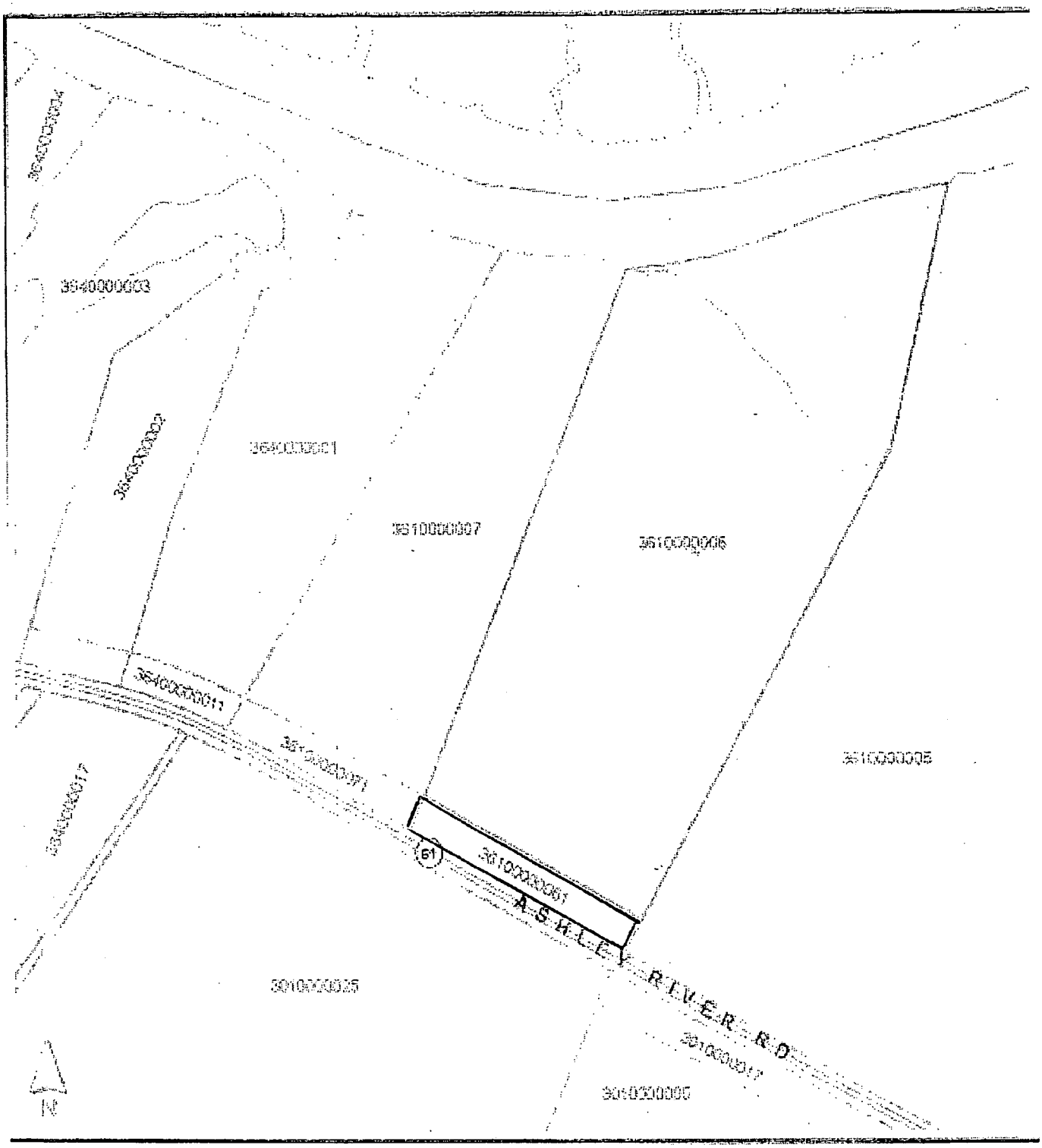
STAFF RECOMMENDATION:
Staff recommends approval.

BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:

COUNCIL COMMITTEE RECOMMENDATION:

COUNCIL ACTION:
At a special meeting on March 15, 2018 the City Council voted unanimously to approve the Ordinance for first reading and moved it to final reading. (8-0-0)

Exhibits
___Resolution_X__Ordinance_ Contract__Minutes__X_Plan/Map___Transfer of Funds __Other



Charleston County SC

0 237.5 475 950 Feet

1 inch = 374 feet

Parcel ID: 3610000006
OWNER1: MILLBROOK PLANTATION LLC
PROP_ST_NO: 4056
PROP_ST_NAME: ASHLEY RIVER
PROP_TYPE: RD
ACREAGE: 31.00

CLASS_CODE: 800 - AGRICULTURAL
PLAT_BOOK_PAGE: L17- 0511
DEED_BOOK_PAGE: 0834-213
Jurisdiction: CITY OF NORTH CHARLESTON

CHARLESTON COUNTY

Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-00~~846; 2131;~~
	)	-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFFS,	)	ORDER DENYING MOTION TO RECONSIDER, ALTER, OR AMEND UNDER RULE 59(e)
v.	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION	)	
DEFENDANT.	)	

FILED
2019 MAY -1 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT

Considering the issues raised by Charleston in its motion for reconsideration pursuant to Rule 59(e) SCRCP, this Court declines to alter its judgement with regard to each of the finding and conclusions as set forth in Paragraphs I, II, III, IV, and V.

To the extent that the motion in Paragraph VI states that the Court did not rule upon the statutory bases for standing of Charleston, this Court finds that Charleston did not have standing to challenge the annexation under S. C. Code Ann. Section 5-3-280 or 285 (1976 as amended). This Court also finds that Charleston did not have standing to challenge the annexation under S. C. Code Ann. Section 5-7-30 (1976 as amended).

To the extent that the Order of the Court did not address any other statutory or common law bases as to the issue of standing, this Court respectfully declines to modify or amend its order.

IT IS SO ORDERED.

Eugene C. Griffith, Jr., Judge

Dated this 25th of April, 2019

At Newberry, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 18-CP-10-846
MILLBROOK PLANTATION, LLC, Plaintiff, vs. CITY OF CHARLESTON, Defendant.	)	CASE NO. 18-CP-10-2131
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	CASE NO. 18-CP-10-2539

2018 DEC 19 P1 2:32
CLERK OF COURT

CONSENT ORDER TO CONSOLIDATE CASES

Upon motion of the parties, and pursuant to South Carolina Rules of Civil Procedure Rule 42(a), it is hereby ordered that the above-captioned matters be consolidated for all purposes.

IT IS SO ORDERED!

[SIGNATURE PAGE TO FOLLOW]

Eugene C. Griffith, Jr.
Circuit Court Judge

Lexington, SC
Dec. 10th, 2018

WE SO MOVE:

Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR MILLBROOK PLANTATION, LLC

Date: December 10, 2018

WE CONSENT:

Frances I. Cantwell, Esq. (SC Bar No. 1121)
Daniel S. McQueeney, Jr., Esq. (SC Bar No. 6802)
50 Broad Street
Charleston, SC 29401
T: (843) 724-3730
cantwellf@charleston-sc.gov
mcqueeneyd@charleston-sc.gov

ATTORNEYS FOR THE CITY OF CHARLESTON

Date: December 10, 2018

J. Brady Hair, Esq. (SC Bar No. 9040)
Derk Van Raalte IV, Esq. (SC Bar No. 9286)
Legal Department
2500 City Hall Lane
N. Charleston, SC 29406
T: (843) 572-8700
brady@bradyhair.com
derk@bradyhair.com

ATTORNEYS FOR THE CITY OF NORTH CHARLESTON
Date: December 10, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-846
CITY OF CHARLESTON,	)	
	)	
Plaintiff-Challenger,	)	
	)	
v.	)	**NOTICE OF INTENT TO CONTEST ANNEXATION**
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC	)	
	)	
Defendants.	)	

FILED
2018 FEB 15 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

YOU WILL PLEASE TAKE NOTICE that the City of Charleston hereby gives notice under section 5-3-270 of the South Carolina Code of its intent to contest the purported annexation by the City of North Charleston, upon petition of Millbrook Plantation, LLC, of a tract consisting of approximately 31 acres (TMS 361-00-00-006) in a meeting by the City Council of North Charleston on December 28, 2017.

In accordance with section 5-3-270, this notice is being filed within sixty (60) days of the purported annexation, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located.

By: _____

Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

ATTORNEYS FOR PLAINTIFF-CHALLENGER
CITY OF CHARLESTON

February 15, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	**SUMMONS**
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
	)	
DEFENDANTS.	)	

FILED
2018 MAR 27 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the counsel for the above-named plaintiff at 50 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

CITY OF CHARLESTON

By: _____

Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

ATTORNEYS FOR PLAINTIFF
CITY OF CHARLESTON

March 27, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	**COMPLAINT**
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

FILED
2018 MAR 27 PM 4:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff City of Charleston ("Plaintiff" or the "City"), complaining against Defendants City of North Charleston and Millbrook Plantation LLC (collectively, "Defendants"), alleges and states as follows:

PARTIES

1. Plaintiff City of Charleston ("City") is a municipal corporation organized and existing under the laws of the State of South Carolina.

2. Defendant City of North Charleston ("North Charleston") is a municipal corporation organized and existing under the laws of the State of South Carolina.

3. Defendant Millbrook Plantation LLC is a limited liability company organized and existing under the laws of the State of South Carolina, which owns property within the area subject to this lawsuit and described in detail below.

JURISDICTION AND VENUE

4. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging an annexation ordinance (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on December 28, 2017, purporting to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-

00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the Contested Ordinance.

5. The City of Charleston has standing to bring this action because a portion of the Millbrook Parcel was previously annexed into the City of Charleston in 2005 and because the City of Charleston had begun the process of annexing the remainder of the Millbrook Parcel before the City of North Charleston began the process of attempting to annex the Millbrook Parcel.

6. The purported annexation violates the statutory and proprietary rights of the City, as will more fully be set forth herein.

7. The Millbrook Parcel is located in Charleston County, South Carolina.

8. This Court has jurisdiction over the subject matter of this action, and Charleston County is the proper venue for this action.

FACTS

9. On May 10, 2005, the City of Charleston adopted Ordinance No. 2005-93, annexing the following property into the City of Charleston, which is a portion of the Millbrook Parcel:

> [A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

10. On December 19, 2017, the City Council of Charleston accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which includes the Millbrook Parcel.

11. On December 19, 2017, the City Council of Charleston voted to have a public hearing on the above-referenced petition.

12. On January 23, 2018, the City Council of Charleston held a public hearing on the annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

13. On April 10, 2018, the City Council of Charleston will consider final reading and adoption of the ordinance annexing the Millbrook Parcel into the City of Charleston.

14. In the meantime, on December 21, 2018, the City Council of North Charleston gave first reading to the Contested Ordinance.

15. On December 28, 2018, the City Council of North Charleston adopted the Contested Ordinance.

16. The Contested Ordinance violates the statutory and proprietary rights of the City in that it purportedly annexes land within the City's corporate limits and land over which the City has previously begun the process of annexation.

17. Plaintiff filed its notice of intent to contest the purported annexation of the Millbrook Parcel with the Clerk of Court for Charleston County on February 15, 2018, and with the Clerk of Council for the City of North Charleston on February 16, 2018.

FOR A FIRST CAUSE OF ACTION

(RELIEF UNDER SECTION 5-3-270 OF THE SOUTH CAROLINA CODE)

18. Plaintiff re-alleges its previous allegations as if fully set forth herein.

19. Pursuant to section 5-3-270 of the South Carolina Code, Plaintiff is entitled to a judgment declaring the Ordinance invalid, void, and of no force or effect for each of the following reasons:

a. A portion of the Millbrook Parcel was previously annexed into the City of Charleston in 2005.

b. At the time that the City of North Charleston began the process of annexing the Millbrook Parcel, the City of Charleston had already taken the first step toward annexing remainder of the Millbrook Parcel.

FOR A SECOND CAUSE OF ACTION (DECLARATORY JUDGMENT)

20. Plaintiff re-alleges its previous allegations as if fully set forth herein.

21. Pursuant to section 15-53-10 to -140 of the South Carolina Code (the "Uniform Declaratory Judgments Act"), Plaintiff is entitled to an Order of the Court declaring the Contested Ordinance to be void and of no force or effect for the reasons stated in Paragraph 19 of this Complaint.

FOR A FOURTH CAUSE OF ACTION

(TEMPORARY INJUNCTION/PERMANENT INJUNCTION)

22. Plaintiff re-alleges its previous allegations as if fully set forth herein.

23. Plaintiff is entitled to an Order of this Court preliminarily and permanently enjoining North Charleston from exercising any governmental authority over the Millbrook Parcel.

WHEREFORE, having set forth its Complaint, Plaintiff prays for an Order of this Court finding the Contested Ordinance to be invalid and declaring the Contested Ordinance void and of no force and effect, enjoining the City of North Charleston from exercising any governmental authority over the property subject to the Contested Ordinance, awarding Plaintiff its attorneys' fees as well as the costs and disbursements of this matter and such other and further relief as the Court may deem appropriate.

CITY OF CHARLESTON

By: _____

Frances I. Cantwell
S.C. Bar No. 0001121

Corporation Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff City of Charleston

March 27, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
	)	
The City of Charleston	)	Case No. 2018-CP-10-846
	)	
Plaintiffs,	)	Answer, Affirmative Defenses, and Counterclaims by the City of North Charleston
v	)	
	)	(Millbrook)
City of North Charleston and Millbrook Plantation, LLC	)	
Defendant.	)	

FILED
2018 APR 17 PM 1:26
JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

The City of North Charleston, in response to the Complaint filed against it, comes forward to present the following answer, affirmative defenses and counterclaims. All allegations made by the Plaintiffs that are not expressly admitted herein are hereby expressly denied.[1]

Answer

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. Regarding Paragraph 4, North Charleston admits only that the Plaintiffs seek to challenge North Charleston's annexation of TMS 361-00-00-006 ("Millbrook") and 361-00-00-006-1 ("the Invisible SubParcel") pursuant to SC Code Ann. 5-3-270 and admits that the Plaintiffs met the deadlines described

[1] Any and all references to the City of Charleston's purported annexation of property should be interpreted to include the word "purported" whether expressly stated or not.

therein, but denies that Section 5-3-270 or any other law authorizes the Plaintiffs' challenge in this instance.

5. Regarding the allegations of Paragraph 5, North Charleston admits that the Invisible Subparcel was previously annexed into the City of Charleston, but denies that this fact conveys standing as North Charleston's corrective ordinance 2018- 17 clarifies that North Charleston does not claim the Invisible Subparcel to have been annexed as North Charleston territory. Further, North Charleston denies that the Plaintiff's unlawful acts regarding Millbrook establish standing.
6. The allegations of Paragraph 6 are denied.
7. The allegations of Paragraph 7 are admitted.
8. Regarding Paragraph 8, the City admits that the Court of Common Pleas of the Ninth Circuit (Charleston County) would generally be the proper venue and court to hear annexation challenges regarding the Acre, but denies that the Plaintiffs have any standing to present a claim. The aforementioned Court is thus without a case or controversy over which to exercise jurisdiction such that Paragraph 8 must be denied as pled.
9. Regarding Paragraph 9, North Charleston generally admits that the City of Charleston annexed the Invisible Subparcel in 2005.
10. Regarding the allegations of Paragraph 10, North Charleston denies that the City of Charleston lawfully accepted a 75% annexation petition for properties including the Millbrook property. North Charleston would admit that the City

of Charleston purported to take such action, despite the same being a legal impossibility.

11. Regarding the allegations of Paragraph 11, North Charleston denies that the City of Charleston lawfully voted to have a public hearing on the previously referenced petition. North Charleston would admit that the City of Charleston purported to take such action, despite the same being a legal impossibility.
12. Regarding the allegations of Paragraph 12, North Charleston denies that the City of Charleston was able to lawfully take such action, but admits that on that date the City of Charleston purported to take such action as if the same were authorized by law.
13. Regarding the allegations of Paragraph 13, North Charleston admits that the City of Charleston intends to give final reading on April 10, 2018 to an ordinance seeking to unlawfully annex the Millbrook property
14. Regarding Paragraph 14, North Charleston admits it gave first reading to what Plaintiffs' have termed the Contested Ordinance.
15. Regarding Paragraph 15, North Charleston admits it gave final reading to, and ratified, what the Plaintiffs describe as the Contested Ordinance.
16. The allegations of Paragraph 16 are denied.
17. The allegations of Paragraph 17 are admitted.
18. Regarding Paragraph 18, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers
19. The allegations of Paragraph 19 are denied.

20. Regarding Paragraph 20, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers

21. The allegations of paragraph 21 are denied.

22. Regarding Paragraph 22, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.

23. The allegations of Paragraph 23 are denied.

Defenses

Lack of Standing

24. The Plaintiffs lack standing to be heard challenging the disputed annexations of The City of North Charleston. All of the challenged annexations were completed with the consent of one hundred (100%) percent of the freehold property owners. In such instances, the only party who has standing to challenge is the Attorney General for the State of South Carolina. See Vicary v. Town of Awendaw, 417 S.C. 631, 639 (SC App. 2016) ("Here, Respondents have failed to show any infringement of their own proprietary interests or statutory rights. In addition, because none of Respondents are the State of South Carolina, they are prohibited from challenging the Town's annexations pursuant to *St. Andrews* and *Yemassee*.").

Failure to State a Claim (Rule 12(b)(6))

25. Plaintiffs have failed to state a cause of action for which relief can be granted. Further, this Complaint should therefore be dismissed for all applicable reasons in accordance with Rule 12 of the South Carolina Rules of Civil Procedure.

Reservation of Rights

26. The City of North Charleston hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pre-trial proceedings in this case and hereby reserves its rights to amend this Answer and to assert such defenses.

Counterclaims

27. The City of North Charleston ("North Charleston") is a lawfully organized municipality within the State of South Carolina.

28. The City of Charleston ("Charleston") is a lawfully organized municipality within the State of South Carolina.

29. This Court has jurisdiction in this suit over the subject matter hereof and the parties hereto.

30. The City of North Charleston has standing to be heard.

31. The City of North Charleston completed annexation of Area 52-S (Millbrook)(TMS 361-00-00-006) on December 28, 2017 by way of Ordinance No. 2017- 083.

32. Thereafter, the City of North Charleston has the responsibility for providing services to the parcels as well as the right to receive tax revenue associated with the parcel.

33. The City of Charleston subsequently voted on or about April 10, 2018, an ordinance entitled "An Ordinance to annex to the City of Charleston properties located West of the Ashley on or near Highway 61 bearing Charleston County Tax Map Nos. 361-00-00-006, 361-00-00-007, 364-00-00-001, and 364-00-00-002 as shown on the map attached to this ordinance labeled 'annexation exhibit' and to make said properties a part of District 10" (hereinafter, sometimes, the "Disputed Annexation.")

34. The Disputed Annexation purports to annex the same parcel TMS 361-00-00-006 (Millbrook Tract) (hereinafter, sometimes, the "Disputed Parcel") that is already within the jurisdiction of the City of North Charleston.

35. The City of North Charleston filed an objection to the Disputed Annexation as required by Title 5, Chapter 3 of the South Carolina Code of Laws.

FIRST CAUSE OF ACTION
(Violation of South Carolina Freedom of Information Act)
(Declaratory and Injunctive Relief)

36. The City of Charleston Council convened for a meeting the evening of December 19, 2017.

37. The City of Charleston published a meeting agenda more than twenty-four hours in advance of that meeting.

38. The published meeting agenda did not contain any reference to annexation of the Millbrook property or any other property in the vicinity of Runneymede Plantation.

39. The published meeting agenda did not contain any reference to acceptance of an annexation petition regarding the Millbrook property or any other property in the vicinity of Runneymede Plantation.

40. The City of Charleston videotaped the December 19, 2017, council meeting. (Hereinafter, "the Video".)

41. The Video is posted by the City of Charleston to its online channel and may be accessed via navigational links the City of Charleston provides on the City's website.

42. In the last five (5) minutes of the videotaped Council meeting Mayor Tecklenberg called for an Amendment to the Agenda to Accept an Annexation Petition. (Approximately 2:50 mark on The Video).

43. The Video accurately depicts the actions of the City of Charleston Council, Mayor and staff during the time periods it recorded.

44. In the video, members of the City of Charleston City Council "move" and "second" the Amendment. The motion was never voted upon.

45. In the video, the City Attorney of Charleston reported to Council that she had received two "seventy-five percent" annexation petitions.

46. In the Video, the City Attorney of Charleston advised her City Council that both of the petitions required advertisement and public hearing and that "both of these annexations will require a public hearing that has to be noticed on thirty days, thirty days notice and no action on the petition can be taken until that public hearing has been noticed and held. So tonight I just wanted to advise you of the petition. It is a substantial amount of acreage West of the

Ashley in the Plantation District. Uhmm, the maps that I gave you show where the location[s] are.... The purpose of bringing these forward tonight is to ask you to accept the petitions and to provide authorization for the public hearing to be noticed."

47. Thereafter, in the Video a member of Council moved "I move that we accept the petition and move forward." This motion was seconded. Council then unanimously voted to approve the motion.

48. The Council Agenda for the December 19th meeting was not amended more than twenty-four hours in advance of the December 19th meeting in order to lawfully add the annexation related issue to the items Council could consider or act upon.

49. The Council Agenda for the December 19th meeting was not formally amended during the meeting because, though an amendment motion was made, no vote was ever taken to amend the agenda.

50. The Council Agenda for the December 19th meeting never included any reference to annexation or acceptance of an annexation petition for property in the Plantation District.

51. S.C. Code Ann. 30-4-80(a) states in pertinent part:

"Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any statutorily required public hearing."

52. The City of Charleston violated the South Carolina Freedom of Information Act by voting to accept the previously described annexation petitions when the agenda contained no mention of such an item of business.

53. The City of Charleston violated the South Carolina Freedom of Information Act by moving to amend its meeting agenda and proceeding in contravention of S.C. Code Ann. 30-4-80(a).

54. The City of Charleston further violated the Freedom of Information Act by later seeking to consummate the Disputed Annexation and by pleading in this and other lawsuits the legitimacy of the Disputed Annexation as a bar to the City of North Charleston's annexations.

55. North Charleston respectfully seeks a Declaration that the City of Charleston took no lawful action on December 19, 2017, regarding the previously described annexation or annexation petitions and that any such attempted

action is void nunc pro tunc, void ab initio, and further, that the same invalidates any further action by the City of Charleston regarding the Disputed Annexation.

56. North Charleston respectfully seeks a Declaration that the City of Charleston violated the South Carolina Freedom of Information Act on December 19, 2017, when it attempted to take action, discuss, or consider annexation or annexation petitions.

57. North Charleston respectfully seeks an injunction prohibiting the Defendants from asserting any action attempted at the City of Charleston's December 19th meeting as "action" for purposes of annexation or determining priority of the City of Charleston compared to others seeking to annex the property in question.

58. North Charleston is entitled to expedited scheduling and determination of this matter pursuant to S.C. Code Ann. 30-4-100

SECOND CAUSE OF ACTION
(Violation of SC Code Title 5, Chapter 3)
(Declaratory and Injunctive Relief)

59. All preceding paragraphs are hereby restated and incorporated by reference as if set forth fully herein.

60. South Carolina Code Title 5, Chapter 3 sets forth the universe of lawful ways in which a municipality may annex property.

61. The City of Charleston on or about April 10, 2018, passed ordinances entitled "An Ordinance to annex to the City of Charleston properties located West of the Ashley on or near Highway 61 bearing Charleston County Tax Map Nos. 361-00-00-006, 361-00-00-007, 364-00-00-001, and 364-00-00-002 as shown on the map attached to this ordinance labeled 'annexation exhibit' and to make said properties a part of District 10" (the "Disputed Annexation.")

62. The City of Charleston elected to proceed under the rules of S.C. Code 5-3-150 with respect to the Disputed Annexation.

63. The Disputed Annexation is invalid for one or more of the following reasons:

a. TMS 361-00-00-006 (Millbrook tract) was already incorporated into the City of North Charleston's City Limits prior to the City of Charleston's purported annexation; and/or

b. The City of Charleston's claim to priority regarding Disputed Annexation was / is predicated on activity that violated the South Carolina Freedom of Information Act at a December 19, 2017 meeting; and/or

c. The City of Charleston violated S.C. Code Ann. 5-3-150(1)(2) by refusing to make available on demand of a resident a copy of the annexation petition.

64. The Disputed Annexation, if left undisturbed, would deprive the City of North Charleston of both tax revenue and jurisdiction, thus inflicting a direct and concrete harm upon the City of North Charleston and its citizens.

65. The Disputed Annexation, if left undisturbed, would violate the rights of the owners of TMS 361-00-00-006 (Millbrook) and subject them to the jurisdiction of and the payment of taxes to the City of Charleston in violation of their rights.

66. North Charleston is entitled to relief including, but not limited to:

a. A Declaration that the Disputed Annexation is void;

b. A Declaration that TMS 361-00-00-006 (Millbrook) is within the municipal limits of the City of North Charleston and thus ineligible for future annexation by the City of Charleston;

c. An injunction prohibiting the City of Charleston from taxing or asserting jurisdiction over the properties contained within the Disputed Annexation;

d. Costs and attorneys fees associated with this action.

THIRD CAUSE OF ACTION
(Declaration of City Limit Line)

67. That the City of North Charleston reiterates and realleges all above allegations and pleadings as if the same were repeated herein verbatim.

68. The City of North Charleston annexed the Millbrook property initially on or about December 28, 2017, in faithful compliance with the public records of Charleston County.

69. North Charleston's annexation of the property described the property as TMS-361-00-00-006 and, additionally, gave a general boundary description based upon the then-existing County parcel.

70. Subsequent to North Charleston's completion of the annexation Charleston County amended its records to effectively reduce the size of TMS-361-00-00-006 and create a never-before-seen sub-parcel designated as TMS 361-00-00-006-1.

71. As a result of its own discovery of Charleston County's record change, the City of North Charleston passed on March 22, 2018, Ordinance 2018-017 (the "Corrective Ordinance.")

72. The Corrective Ordinance confirmed the intent stated in North Charleston's original annexation – namely to annex only TMS 361-00-00-006. The Corrective Ordinance further confirmed that, to the extent Charleston County records had been updated to reduce the size of TMS 361-00-006, that the City's annexation was similarly reduced. Finally, the Corrective Ordinance confirms that the City's original Millbrook annexation ordinance never stated a desire to annex the then-not-existing TMS 361-00-00-006-1 and that the subsequent creation of TMS 361-00-00-006-1 had not changed North Charleston's intent

in that regard – North Charleston never laid and still lays no claim to that subparcel.

73. The City of Charleston was aware of Charleston County's TMS mapping error in advance of North Charleston's notice of its intent to annex TMS 361-00-00-006.

74. The City of Charleston had knowledge of North Charleston's intent to annex TMS 361-00-00-006 at a time when the City of Charleston also knew of the County's mapping error.

75. The City of Charleston did not notify the City of North Charleston of the error prior to North Charleston's passage of the Millbrook annexation ordinance.

76. The City of Charleston is barred by the doctrines of estoppel and laches from disputing the City of North Charleston's Millbrook annexation (as clarified by the Corrective Ordinance.)

77. Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston Millbrook annexation encroaches into or upon the Invisible Subparcel (361-00-00-006-1) previously annexed by the City of Charleston.

78. North Charleston seeks declaration that its City Limit line in the disputed area lies on the shared boundary between TMS 361-00-00-006 and the Invisible Subparcel (TMS 361-00-00-006-1.)

WHEREFORE, Defendant City of North Charleston prays for judgment as follows:

a) having answered all allegations of the Complaint the City of North Charleston respectfully requests that this Court dismiss the Complaint and that all of Plaintiff's requested relief be denied; and

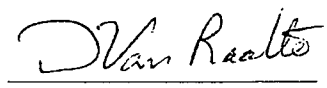
b) That this Honorable Court inquire into the facts alleged and declare that Millbrook is the sole owner of the North Charleston annexed TMS 361-00-00-006 (distinct from TMS 361-00-00-006-1) free and clear of any and all claims of the Plaintiffs; and

c) That this Honorable Court declare and confirm that the City of North Charleston's annexation TMS 361-00-00-006 (distinct from TMS 361-00-00-006-1) is lawful and binding; and

d) That this Honorable Court declare the Annexations of the City of Charleston described hereinabove (completed on or about April 10, 2018) null and void ab initio.

e) That the City of North Charleston be awarded costs and attorney's fees from The City of Charleston in accordance with South Carolina statute; and

f) Such other and further relief as this Court may deem just and proper.



J. Brady Hair, Esquire
Derk Van Raalte
Legal Department
2500 City Hall Lane
North Charleston, SC 29406
(843) 572-8700

Attorneys for the Defendant,
City of North Charleston

This 16th day of April, 2018
North Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CITY OF CHARLESTON, Plaintiff, v. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2018-CP-10-0846 <u>ANSWER AND COUNTERCLAIM OF MILLBROOK PLANTATION, LLC</u>

2018 APR 23 PM 1:55
CLERK OF COURT

Defendant Millbrook Plantation, LLC, by and through its counsel, Austen & Gowder, LLC, answers the complaint of the plaintiff City of Charleston and states its counterclaim against the City of Charleston, as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the complaint not specifically admitted, modified or explained is denied.
2. Millbrook Plantation, LLC admits the allegations of the following paragraphs of the complaint: 1, 2, 3, 7, 8, 11, 12, 13, 14, 15 and 17.
3. Millbrook Plantation, LLC lacks sufficient knowledge or information to admit or deny the allegations of the following paragraph of the complaint, so denies them: 9.
4. Millbrook Plantation, LLC denies the allegations of the following paragraphs of the complaint: 5, 6, 10, 16, 19(a) and (b), 21 and 23.

5. Millbrook Plantation, LLC repeats the responses of this answer to each of the paragraphs of the complaint re-alleged in the following paragraphs of the complaint: 18, 20 and 22.

6. Millbrook Plantation, LLC admits so much of paragraph 4 as states that the City of Charleston brought the action to contest an annexation ordinance of the City of North Charleston, but denies the rest of the paragraph.

FOR A SECOND DEFENSE

(Lack of Standing)

7. The City of Charleston lacks standing to challenge an annexation of this property under the 100% petition method set forth in S.C. Code Ann. § 5-3-150(3), as it is a non-statutory party that is an "outsider" to the annexation.

FOR A THIRD DEFENSE

(Prior Annexation)

8. The City of North Charleston had completed its annexation of the property owned by Millbrook Plantation, LLC identified as TMS 361-00-00-006 ("Millbrook Property") prior to first reading of the City of Charleston's ordinance attempting to annex the Millbrook Property, so that the Millbrook Property was no longer eligible for annexation by the City of Charleston and any attempted annexation at that time was invalid, void and of no effect.

9. The City of North Charleston began the annexation process of the Millbrook Property before the City of Charleston.

FOR A FOURTH DEFENSE

(Waiver, Estoppel, Laches and Unclean Hands)

10. The City of Charleston is barred from the relief it seeks in the complaint by the equitable doctrines of waiver, estoppel, laches and unclean hands.

FOR A FIFTH DEFENSE AND COUNTERCLAIM

(Challenge to 75% Annexation Under S. C. Code Ann. § 5-3-150(1))

(Declaratory and Injunctive Relief)

11. The allegations of the complaint that are admitted by Millbrook Plantation, LLC in this answer and counterclaim are re-alleged and incorporated in this counterclaim as if fully set forth herein.

12. Millbrook Plantation, LLC has standing to challenge the purported annexation by the City of Charleston of the Millbrook Property by the 75% method of S. C. Code Ann. § 5-3-150(1).

13. The City Council of the City of Charleston passed an ordinance on April 10, 2018, purportedly annexing the Millbrook Property as part of a larger annexation of property through the 75% method of S. C. Code Ann. § 5-3-150(1).

14. The purported annexation of the Millbrook Property by the City of Charleston is invalid, void, and of no force or effect for the following reasons:

    a. The Millbrook Property was previously annexed by the City of North Charleston by petition under S. C. Code Ann. § 5-3-150(3) by ordinance of the City Council of North Charleston on December 28, 2017, and as amended and supplemented by ordinance of the City Council of North Charleston on March 22, 2018.

b. The attempted annexation of the Millbrook Property by the City of Charleston was not accomplished before the annexation by the City of North Charleston was completed on December 28, 2017. The attempt at annexation by the City of Charleston was of no force or effect once the City of North Charleston completed its annexation of the same property.

c. S. C. Code Ann. § 5-3-150(1) requires that a petition must be signed by 75% of the freeholders of the territory to be annexed. The Millbrook Property is an area entirely separate from the three parcels owned by the freeholders signing the petition and not part of the "territory to be annexed." 75% of the freeholders of the territory including the Millbrook Property did not sign a petition to be annexed.

d. The purported and ineffective inclusion of the Millbrook Property in the annexation petition under S. C. Code Ann. § 5-3-150(1) by the City of Charleston was not necessary to provide contiguity for the petitioning parcels, all of which could have petitioned to annex into the City of Charleston under the voluntary, 100% method of S. C. Code Ann. § 5-3-150(3). Upon information and belief, the only reason to include the Millbrook Property in the annexation was to attempt to control the use of the property through City of Charleston zoning which could not otherwise be accomplished.

15. Millbrook Plantation, LLC is entitled to an Order of the Court declaring the City of Charleston's purported annexation by S. C. Code Ann. § 5-3-150(1) to be void and of no force or effect.

16. Millbrook Plantation, LLC is entitled to an Order of the Court preliminarily and permanently enjoining the City of Charleston's purported annexation by S. C. Code Ann. § 5-3-150(1) and from exercising any governmental authority over the Millbrook Property.

WHEREFORE, having fully answered the complaint and having stated its affirmative defenses and having set forth its Counterclaim against the City of Charleston, Defendant Millbrook Plantation, LLC prays for an Order declaring that its annexation into the City of North Charleston was accomplished and final as of the adoption of the City of North Charleston's ordinance dated December 28, 2017 as amended and supplemented on March 22, 2018 and that the purported later annexation by the City of Charleston of this property is invalid, void and of no force or effect, enjoining the City of Charleston from exercising any governmental authority over the Millbrook Property, awarding its attorneys' fees as well as the costs and disbursements of this matter and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

AUSTEN & GOWDER, LLC

W. Andrew Gowder, Jr. (SC Bar No. 7895)
1629 Meeting Street, Suite A
Charleston, S.C. 29405
T: (843) 727-2229
andy@austengowder.com
ATTORNEYS FOR MILLBROOK PLANTATION, LLC

April 18, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	**PLAINTIFF CITY OF CHARLESTON'S REPLY TO COUNTERCLAIMS OF DEFENDANT CITY OF NORTH CHARLESTON**
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

FILED
2018 MAY 17 PM 4:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff City of Charleston ("Plaintiff" or "City"), in reply to the counterclaims (the "Counterclaims") of Defendant City of North Charleston ("Defendant" or "North Charleston"), alleges and states as follows:

FOR A FIRST DEFENSE

1. The City reaffirms and incorporates herein by reference all matters and allegations contained in the City's complaint in this action (the "Complaint").

2. The City denies each and every allegation of the Counterclaims not hereinafter specifically admitted or modified.

3. The City admits the allegations in Paragraph 27 of the Counterclaims.

4. The City admits the allegations in Paragraph 28 of the Counterclaims.

5. The City admits the allegations in Paragraph 29 of the Counterclaims.

6. The allegations in Paragraph 30 of the Counterclaims set forth a conclusion of law, to which no response is required. To the extent a response may be required, the City demands strict proof of such allegations. Without limiting the foregoing, the City specifically denies that North Charleston has standing with respect to its first counterclaim under the South Carolina Freedom of Information Act ("FOIA").

7. As set forth more fully in the Complaint, the City denies the allegations in Paragraph 31 of the Counterclaims.

8. As set forth more fully in the Complaint, the City denies the allegations in Paragraph 32 of the Counterclaims.

9. With respect to the allegations in Paragraph 33 of the Counterclaims, the City admits that it passed the referenced ordinance on April 10, 2018, and that the terms of the referenced ordinances speak for itself and provides the best evidence of its content.

10. With respect to the allegations in Paragraph 34 of the Counterclaims, the referenced ordinance speaks for itself and provides the best evidence of its contents. The City specifically denies that the referenced ordinance annexed an area which was already within the jurisdiction of North Charleston, as set forth more fully in the Complaint. The City also affirmatively alleges that a portion of the referenced property has been previously annexed into the City, as set forth more fully in the Complaint.

11. Paragraph 35 of the Counterclaims state a conclusion of law to which no response is required. To the extent a response may be required, the City admits that North Charleston filed a notice of its intent to challenge the 2018 annexation ordinance for the subject property, but denies that North Charleston ever filed an objection to the previous ordinance annexing a portion of the subject property.

12. With respect to the allegations in Paragraph 36 of the Counterclaims, the City admits that the City Council of Charleston ("City Council") held a regularly-scheduled meeting on Tuesday, December 19, 2017, which began at 5:18pm, immediately after the scheduled meeting of the City's Committee on Ways and Means.

13. The City admits the allegations in Paragraph 37 of the Counterclaims.

14. The City admits the allegations in Paragraph 38 of the Counterclaims.

15. The City admits the allegations in Paragraph 39 of the Counterclaims.

16. With respect to the allegations in Paragraph 40 of the Counterclaims, the City admits that the City Council meeting on December 19, 2017 was videotaped, but denies that the City or any staff or employee of the City videotaped the meeting.

17. With respect to the allegations in Paragraph 41 of the Counterclaims, the City admits that the referenced video is posted on the City's YouTube Channel through a livestream from the cable company taking the video. The City further admits that the videos may be accessed via navigational links from the City's official website.

18. The City admits the allegations in Paragraph 42 of the Counterclaims, except that the City affirmatively alleges that, at the same meeting, City Council unanimously voted upon motion properly seconded to amend the agenda to consider the annexation petition as reflected at approximately the 1:21:00 to 1:22:00 mark on the referenced video. In further reply to the allegations in Paragraph 42 of the Counterclaims, the City affirmatively alleges that the approved minutes of the City Council meeting on December 19, 2017, reflect the motion, second, and vote to amend the agenda, and that the extrinsic evidence is not admissible to contradict such minutes.

19. With respect to the allegations in Paragraph 43 of the Counterclaims, the City affirmatively alleges that extrinsic evidence is not admissible to contradict the approved minutes of the City Council meeting on December 19, 2017. Subject to the foregoing and without waiving the same, the City admits that the video accurately reflects any actions of the Mayor, members of City Council, and members of City staff captured on the video, but denies that the video captures all actions of the Mayor, City Council, or City staff at the meeting due to the limits associated with video recordings. Subject to the foregoing and without limiting or waiving the same, the City

admits that there does not appear to be any conflict between what is shown on the referenced video and what appears in the official minutes with respect to the issues relevant to this dispute.

20. With respect to the allegations in Paragraph 44 of the Counterclaims, the City affirmatively alleges that extrinsic evidence is not admissible to contradict the approved minutes of the City Council meeting on December 19, 2017. Subject to the foregoing and without waiving the same, the City admits the allegations in Paragraph 44 of the Counterclaims, except that the City affirmatively alleges that, at the same meeting, City Council unanimously voted upon motion properly seconded to amend the agenda to consider the annexation petition as reflected at approximately the 1:21:00 to 1:22:00 mark on the referenced video.

21. With respect to the allegations in Paragraph 45 of the Counterclaims, the City responds that the referenced video speaks for itself, but affirmatively asserts that the video may not be admitted to contradict the approved minutes of the December 19, 2017 meeting.

22. With respect to the allegations in Paragraph 46 of the Counterclaims, the City responds that the referenced video speaks for itself, but affirmatively asserts that the video may not be admitted to contradict the approved minutes of the December 19, 2017 meeting.

23. With respect to the allegations in Paragraph 47 of the Counterclaims, the City responds that the referenced video speaks for itself, but affirmatively asserts that the video may not be admitted to contradict the approved minutes of the December 19, 2017 meeting.

24. The City denies the allegations in Paragraph 48 of the Counterclaims, as worded. The City admits that the agenda for the City Council meeting on December 19, 2017, was not amended more than 24 hours in advance of the meeting, but affirmatively alleges that the item was added to the agenda at the meeting in accordance with applicable laws, including without limitation section 30-4-80(A) of the South Carolina Code.

25. The City denies the allegations in Paragraph 49 of the Counterclaims.

26. The City denies the allegations in Paragraph 50 of the Counterclaims, as worded. The agenda was properly amended at the meeting to reference the annexation petition for the properties described therein.

27. With respect to the allegations in Paragraph 51 of the Counterclaims, the City incorporates section 30-4-80(A) of the South Carolina Code herein by reference and admits that section 30-4-80(A) states what it states.

28. The City denies the allegations in Paragraph 52 of the Counterclaims.

29. The City denies the allegations in Paragraph 53 of the Counterclaims.

30. The City denies the allegations in Paragraph 54 of the Counterclaims.

31. With respect to the allegations in Paragraph 55 of the Counterclaims, the City admits that North Charleston seeks the relief stated, but denies that North Charleston is entitled to such relief. In further reply to the allegations in Paragraph 55 of the Counterclaims, the City alleges by affirmative defenses that the relief requested goes beyond the scope of the relief permitted under FOIA and that North Charleston lacks standing to enforce the provisions of FOIA against the City.

32. With respect to the allegations in Paragraph 56 of the Counterclaims, the City admits that North Charleston seeks the relief stated, but denies that North Charleston is entitled to such relief. In further reply to the allegations in Paragraph 56 of the Counterclaims, the City alleges by affirmative defenses that the relief requested goes beyond the scope of the relief permitted under FOIA and that North Charleston lacks standing to enforce the provisions of FOIA against the City.

33. With respect to the allegations in Paragraph 57 of the Counterclaims, the City admits that North Charleston seeks the relief stated, but denies that North Charleston is entitled to such relief. In further reply to the allegations in Paragraph 57 of the Counterclaims, the City alleges

by affirmative defenses that the relief requested goes beyond the scope of the relief permitted under FOIA and that North Charleston lacks standing to enforce the provisions of FOIA against the City.

34. With respect to the allegations in Paragraph 58 of the Counterclaims, the City denies that North Charleston is entitled to expedited scheduling and determination of its counterclaim under FOIA. In further reply to the allegations in Paragraph 58 of the Counterclaims, the City alleges by affirmative defense that North Charleston lacks standing to enforce the provisions of FOIA against the City.

35. With respect to Paragraph 59 of the Counterclaims, the City reiterates and alleges the allegations of the Complaint and of Paragraphs 1 through 34 of this reply.

36. Paragraph 60 of the Counterclaims states a conclusion of law to which no response is required. To the extent a response may be required, the City demands strict proof of the allegations made in Paragraph 60 of the Counterclaims.

37. With respect to the allegations in Paragraph 61 of the Counterclaims, the City admits that, on April 10, 2018, the City adopted an ordinance annexing the property described in such ordinance into the City. The referenced ordinance speaks for itself and provides the best evidence of its contents. The City also alleges that a portion of Charleston County TMS No. 361-00-00-006, recently designated as Charleston County TMS No. 361-00-00-006-1, was previously annexed into the City, as set forth more fully in the Complaint.

38. With respect to the allegations in Paragraph 62 of the Counterclaims, the City admits that the referenced annexation ordinance was adopted on April 10, 2018 pursuant to the so-called "75% annexation method" set forth in section 5-3-150(1) of the South Carolina Code, but also affirmatively alleges that a portion of Charleston County TMS No. 361-00-00-006, recently designated as TMS No. 361-00-00-006-1, was previously annexed into the City under section 5-

3-150(3) of the South Carolina Code, commonly known as the "100% annexation method," as set forth more fully in the Complaint.

39. The City denies the allegations in Paragraph 63 of the Counterclaims, including all subparagraphs thereof. In further reply to the allegations in Paragraph 63 of the Counterclaims, the City alleges by affirmative defenses that the relief requested goes beyond the scope of the relief permitted under FOIA and that North Charleston lacks standing to enforce the provisions of FOIA against the City.

40. The City denies the allegations of Paragraph 64 of the Counterclaims. The City's annexation of the subject property leaves North Charleston and its citizens in exactly the same position it and they held prior to the annexation.

41. The City denies the allegations of Paragraph 65 of the Counterclaims, except that the City's 2018 annexation of the referenced parcel and the City's previous annexation of a portion of the referenced parcel has or will subject the referenced parcel to the jurisdiction of and payment of taxes to the City.

42. The City denies the allegations in Paragraph 66 of the Counterclaims, including all subparagraphs thereof.

43. With respect to Paragraph 67 of the Counterclaims, the City reiterates and incorporates herein the allegations of the Complaint and of Paragraphs 1 through 42 of this reply.

44. The City denies the allegations in Paragraph 68 of the Counterclaims, as set forth more fully in the Complaint.

45. With respect to the allegations in Paragraph 69 of the Counterclaims, the referenced ordinance speaks for itself and provides the best evidence of its contents. The City admits that the annexation ordinance references TMS 361-00-00-006, but affirmatively alleges that Charleston

County's records showed a portion of TMS 361-00-00-006 within the municipal limits of the City of Charleston at this time.

46. With respect to the allegations in Paragraph 70 of the Counterclaims, the City lacks sufficient information or belief to admit or deny when Charleston County amended its records to show TMS 361-00-00-006-1 as a separate tax map parcel from TMS 361-00-00-006, but the City affirmatively alleges that, on and before December 28, 2017, Charleston County's records showed a portion of TMS 361-00-00-006 within the municipal limits of the City of Charleston by accessing the "GIS Parcel Viewer" on Charleston County's official website and selecting the box labeled "Municipal Boundaries" in the "Boundaries" section of the "Table of Contents" on the GIS Parcel Viewer. The City lacks sufficient information or belief to know if this was shown as a separate parcel prior to this time with respect to other Charleston County records, unrelated to the GIS Parcel Viewer.

47. With respect to the allegations in Paragraph 71 of the Counterclaims, the City admits North Charleston attempted to cure its defective attempt to annex TMS No. 361-00-00-006, but the City asserts that such attempt was to no avail because, by that time, the City had accepted an annexation petition for the subject parcel, scheduled a public hearing on the petition, given first reading to an ordinance on the annexation, and held a public hearing on the annexation of TMS No. 361-00-00-006 into the City's corporate limits, thus acquiring prior jurisdiction of the parcel. Pursuant to section 5-3-270 of the South Carolina Code, the City hereby gives notice of its intent to challenge Ordinance No. 2018-017.

48. The City denies the allegations in Paragraph 72 of the Counterclaims. Ordinance No. 2017-083 speaks for itself and provides the best evidence of its contents, and the legal description and map attached to Ordinance No. 2017-083 clearly establish North Charleston's

intent to annex the entire parcel owned by Defendant Millbrook Plantation LLC ("Millbrook"), currently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1. To the extent North Charleston subsequently attempts to reduce the amount of property annexed by a "corrective ordinance," the City hereby gives notice of its intent to challenge Ordinance No. 2018-017 and denies that such ordinance was effective. Further, the City asserts that North Charleston's characterization of a purported "mapping error" by the County of Charleston states a conclusion of law to which no response is required. To the extent a response may be required, the City lacks sufficient information or belief as to whether there was any "mapping error." The City lacks sufficient information or belief to determine whether the fact that the GIS Parcel Viewer showed what is now TMS 361-00-00-006-1 as part of TMS 361-00-00-006 was the result of an error or for some other reason, such as clarification of the boundaries.

49. The City denies the allegations in Paragraph 73 of the Counterclaims. The City was not aware of any alleged "mapping error" prior to North Charleston's attempt to annex TMS 361-00-00-006. At the time, the City knew that the GIS Parcel Viewer showed a portion of TMS 361-00-00-006 as being within the municipal limits of the City of Charleston and that this portion of TMS 361-00-00-006 was not given a separate TMS number. However, North Charleston did not notify the City of Charleston of North Charleston's intent to annex TMS 361-00-00-006 until after the City of Charleston had taken the first steps toward its own annexation of this parcel, and North Charleston did not notify or contact the City about this parcel at any time prior to North Charleston's actual attempt to annex TMS 361-00-00-006 in December 2017 to determine if the City had already annexed any portion of such parcel.

50. The City denies the allegations in Paragraph 74 of the Counterclaims for the reasons set forth in the City's reply to Paragraphs 72 and 73 of the Counterclaims.

51. The City admits the allegations in Paragraph 75 of the Counterclaims, but incorporates herein the City's reply to Paragraphs 72 and 73 of the Counterclaims.

52. The City denies the allegations in Paragraph 76 of the Counterclaims.

53. The City denies the allegations in Paragraph 77 of the Counterclaims.

54. With respect to the allegations in Paragraph 78 of the Counterclaims, the City admits that North Charleston seeks the relief requested, but denies that North Charleston is entitled to such relief.

55. The City denies that North Charleston is entitled to the relief requested in its prayer for relief on Page 16 of the Counterclaims.

FOR A SECOND DEFENSE

56. The Counterclaims should be dismissed for failure to state a claim.

FOR A THIRD DEFENSE

57. North Charleston lacks standing to assert a violation of FOIA by way of counterclaim against the City.

FOR A FOURTH DEFENSE

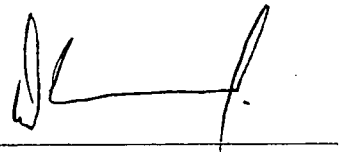
58. North Charleston's requested relief under its counterclaim for violation of FOIA goes beyond the scope of the relief permitted under FOIA.

RESERVATION

59. The City reserves its right to supplement its defenses to the Counterclaims on the basis of matters revealed during the course of discovery and/or pretrial proceedings.

WHEREFORE, having set forth its reply, the City prays for an Order granting the relief requested in the Complaint, dismissing the Counterclaims, and awarding the City costs and

disbursements in this action, and for such other and further relief as the Court may deem appropriate.



Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
E-mail: mcqueeneyd@charleston-sc.gov

CITY OF CHARLESTON
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff City of Charleston

May 17, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	**PLAINTIFF CITY OF CHARLESTON'S REPLY TO COUNTERCLAIMS OF DEFENDANT MILLBROOK PLANTATION LLC**
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

JULIE J. ARMSTRONG
CLERK OF COURT
2018 MAY 17 PM 4:04
FILED

Plaintiff City of Charleston ("Plaintiff" or "City"), in reply to the counterclaims (the "Counterclaims") of Defendant Millbrook Plantation LLC ("Defendant" or "Millbrook"), alleges and states as follows:

FOR A FIRST DEFENSE

1. The City reaffirms and incorporates herein by reference all matters and allegations in contained in the City's complaint in this action (the "Complaint").

2. The City denies each and every allegation of the Counterclaims not hereinafter specifically admitted or modified.

3. With respect to the allegations in Paragraph 11 of the Counterclaims, the City reaffirms and incorporates herein by reference all matters and allegations contained in the Complaint and denies any assertions in Paragraph 11 inconsistent therewith.

4. The allegations in Paragraph 12 of the Counterclaims state a conclusion of law to which no response is required. To the extent a response may be required, the City demands strict proof of such allegations.

5. With respect to the allegations in Paragraph 13 of the Counterclaims, the referenced ordinance speaks for itself and provides the best evidence of its contents. The City admits that City

Council adopted an ordinance annexing a portion of the Millbrook Property on April 10, 2018, but affirmatively alleges that City Council adopted a previous ordinance annexing the remainder of the Millbrook Property in 2005.

6. The City denies the allegations in Paragraph 14 of the Counterclaims, including all subparagraphs thereof.

7. The City denies the allegations in Paragraph 15 of the Counterclaims.

8. The City denies the allegations in Paragraph 16 of the Counterclaims.

9. The City denies that Millbrook is entitled to the relief requested in its prayer for relief on Page 5 of the Counterclaims.

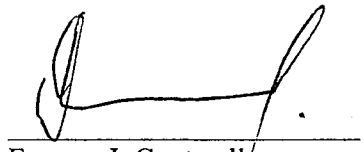
FOR A SECOND DEFENSE

10. The Counterclaims should be dismissed for failure to state a claim.

RESERVATION

11. The City reserves its right to supplement its defenses to the Counterclaims on the basis of matters revealed during the course of discovery and/or pretrial proceedings.

WHEREFORE, having set forth its reply, the City prays for an Order granting the relief requested in the Complaint, dismissing the Counterclaims, and awarding the City costs and disbursements in this action, and for such other and further relief as the Court may deem appropriate.



Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
E-mail: mcqueeneyd@charleston-sc.gov

CITY OF CHARLESTON
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff City of Charleston

May 17, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MILLBROOK PLANTATION, LLC, Plaintiff, v. CITY OF CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2018-CP-10-2131 **NOTICE OF INTENT TO CONTEST ANNEXATION** **(S.C. CODE ANN. § 5-3-270)**

2018 APR 24 PM 12:25
CLERK OF COURT
FILED

YOU WILL PLEASE TAKE NOTICE that Millbrook Plantation, LLC hereby gives notice of its intent to contest under S.C. Code Ann. § 5-3-270 the purported annexation of its property, TMS Number 361-00-00-006 by the City of Charleston by ordinance passed on the City Council of the City of Charleston on April 10, 2018.

In accordance with S.C. Code Ann. § 5-3-270, this notice is being filed within sixty (60) days of the purported annexation, with both the clerk of the City of Charleston, South Carolina and the Clerk of the Court of Common Pleas for the County of Charleston, South Carolina.

Respectfully submitted,

AUSTEN & GOWDER, LLC

W. Andrew Gowder, Jr. (SC Bar No. 7895)
1629 Meeting Street, Suite A
Charleston, S.C. 29405
T: (843) 727-2229
andy@austengowder.com

April 17, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MILLBROOK PLANTATION, LLC, Plaintiff, v. CITY OF CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2018-CP-10-2131 **SUMMONS**

FILED
2018 APR 24 PM 12:25
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you and to serve a copy of your answer to this complaint upon the counsel for the above-named plaintiff at 1629 Meeting Street, Suite A, Charleston, South Carolina 29405, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint or otherwise plead as allowed the South Carolina Rules of Civil Procedure, judgment by default will be rendered against you for the relief demanded in the complaint.

AUSTEN & GOWDER, LLC

W. Andrew Gowder, Jr. (SC Bar No. 7895)
1629 Meeting Street, Suite A
Charleston, S.C. 29405
T: (843) 727-2229
andy@austengowder.com
ATTORNEYS FOR PLAINTIFF

April 17, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2018-CP-10-2131
MILLBROOK PLANTATION, LLC, Plaintiff, v. CITY OF CHARLESTON, Defendant.	**COMPLAINT** **(CHALLENGE TO 75% ANNEXATION UNDER S.C. CODE ANN. § 5-3-150(1))** **(DECLARATORY AND INJUNCTIVE RELIEF)**

Plaintiff Millbrook Plantation, LLC ("Plaintiff" or "Millbrook Plantation, LLC"), through its undersigned counsel, states its complaint against the City of Charleston ("Defendant" or "City of Charleston") as follows:

FILED
2018 APR 24 PM 12:25
CHARLESTON COUNTY
CLERK OF COURT

PARTIES

1. Plaintiff Millbrook Plantation, LLC is a South Carolina limited liability company organized under the laws of the State of South Carolina.
2. Defendant City of Charleston, South Carolina is a municipal corporation organized under the laws of the State of South Carolina.

JURISDICTION AND VENUE

3. This action is brought pursuant to S.C. Code Ann. § 5-3-150(1) challenging an annexation ordinance adopted by the City Council of Charleston, South Carolina on April 10, 2018, purporting to annex real property owned by Millbrook Plantation, LLC currently designated as Charleston County TMS Number 361-00-00-006 ("Millbrook Property").

4. Millbrook Plantation, LLC has standing to challenge the purported annexation by the City of Charleston of its property by the 75% method of S. C. Code Ann. § 5-3-150(1).

5. The purported annexation violates the rights of Millbrook Plantation, LLC as the owner of the Millbrook Property under South Carolina constitutional, statutory and common law.

6. The Millbrook Property is located in Charleston County, South Carolina.

7. This court has jurisdiction over the subject matter of this action, and Charleston County is the proper venue for this action,

FACTS

8. The City Council of the City of Charleston passed an ordinance on April 10, 2018, purportedly annexing the Millbrook Property as part of a larger annexation of property through the 75% method of S. C. Code Ann. § 5-3-150(1).

9. The purported annexation of the Millbrook Property by the City of Charleston is invalid, void, and of no force or effect.

10. Millbrook Plantation, LLC filed its notice of intent to contest the purported annexation of the Millbrook Property with the Clerk of Court for Charleston County and the Clerk of Council for the City of Charleston on or before the date this complaint was filed.

FOR A FIRST CAUSE OF ACTION

(RELIEF UNDER S.C. CODE ANN. §§ 5-3-150 (1) AND 5-3-270)

11. The Millbrook Property was previously annexed by the City of North Charleston by petition under S. C. Code Ann. § 5-3-150(3) by ordinance of the City Council of North Charleston on December 28, 2017, and as amended and supplemented by ordinance of the City Council of North Charleston on March 22, 2018.

12. The City of North Charleston began annexing the Millbrook Property before the City of Charleston.

13. The attempted annexation of the Millbrook Property by the City of Charleston was not accomplished before the annexation by the City of North Charleston was completed on December 28, 2017. The attempt at annexation by the City of Charleston was of no force or effect once the City of North Charleston completed its annexation of the same property.

14. S. C. Code Ann. § 5-3-150(1) requires that a petition must be signed by 75% of the freeholders of the territory to be annexed. The Millbrook Property is an area entirely separate from the three parcels owned by the freeholders signing the petition and not part of the "territory to be annexed." 75% of the freeholders of the territory including the Millbrook Property did not sign a petition to be annexed.

15. The purported and ineffective inclusion of the Millbrook Property in the annexation petition under S. C. Code Ann. § 5-3-150(1) by the City of Charleston was not necessary to provide contiguity for the petitioning parcels, all of which could have petitioned to annex into the City of Charleston under the voluntary, 100% method of S. C. Code Ann. § 5-3-150(3). Upon information and belief, the only reason to include the Millbrook Property in the annexation was to attempt to control the use of the property through City of Charleston zoning which could not otherwise be accomplished.

FOR A SECOND CAUSE OF ACTION

(DECLARATORY JUDGMENT)

16. Millbrook Plantation, LLC re-alleges its previous allegations as if fully set forth herein.

17. Pursuant to S.C. Code Ann. § 15-53-10 to -140 ("South Carolina Uniform Declaratory Judgements Act") Millbrook Plantation, LLC is entitled to an Order of the Court declaring the City of Charleston's purported annexation of the Millbrook Property by S. C. Code Ann. § 5-3-150(1) to be void and of no force or effect.

FOR A THIRD CAUSE OF ACTION

(PRELIMINARY / PERMANENT INJUNCTIVE RELIEF)

18. Millbrook Plantation, LLC re-alleges its previous allegations as if fully set forth herein.

19. Millbrook Plantation, LLC is entitled to an Order of the Court preliminarily and permanently enjoining the City of Charleston's purported annexation of the Millbrook Property by S. C. Code Ann. § 5-3-150(1) and from exercising any governmental authority over the Millbrook Property.

WHEREFORE, having fully set forth its Complaint, Millbrook Plantation, LLC prays for an Order of this Court finding the purported annexation of the Millbrook Property described herein to be invalid, void and of no force and effect, enjoining the City of Charleston from exercising any governmental authority over the Millbrook Property, awarding it attorneys' fees as well as the costs and disbursements of this matter and such other and further relief as the Court may find just and appropriate.

Respectfully submitted,

AUSTEN & GOWDER, LLC

W. Andrew Gowder, Jr. (SC Bar No. 7895)
1629 Meeting Street, Suite A
Charleston, S.C. 29405
T: (843) 727-2229
andy@austengowder.com
ATTORNEYS FOR MILLBROOK PLANTATION, LLC

April 18, 2018
Charleston, South Carolina

2018-CP-10-2131

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-2131
MILLBROOK PLANTATION, LLC,)	
)	
PLAINTIFF,)	
)	
vs.)	**ANSWER AND COUNTERCLAIM OF DEFENDANT CITY OF CHARLESTON**
)	
CITY OF CHARLESTON,)	
)	
DEFENDANT.)	
)	

2018 MAY 23 PM 1:37
CHARLESTON COUNTY CLERK OF COURT

Defendant City of Charleston ("City" or "Defendant"), answering the complaint (the "Complaint") of Plaintiff Millbrook Plantation, LLC ("Millbrook" or "Plaintiff"), alleges and states as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The City denies each and every allegation of the Complaint not hereinafter specifically admitted or modified.

2. The City reaffirms and incorporates herein by reference all matters and allegations contained in the complaints filed by the City in Case No. 2018-CP-10-0846, City of Charleston v. City of North Charleston and Millbrook Plantation LLC, and Case No. 2018-CP-10-2539, City of Charleston v. City of North Charleston and Millbrook Plantation LLC, in which the City challenges the purported annexation of Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 into the City of North Charleston ("North Charleston"). The City denies any allegations in the Complaint which are inconsistent or contrary to such matters and allegations.

3. The City also reaffirms and incorporates herein by reference all matters and allegations contained in the City's reply to the counterclaims asserted by Millbrook in Case No. 2018-CP-10-0846. The City denies any allegations in the Complaint which are inconsistent or contrary to such matters and allegations.

4. The City admits the allegations in Paragraph 1 of the Complaint.

5. The City admits the allegations in Paragraph 2 of the Complaint.

6. The allegations in Paragraph 3 of the Complaint state conclusions of law to which no response is required. To the extent a response may be required, the referenced ordinance speaks for itself and provides the best evidence of its terms. The City further responds to the allegations in Paragraph 3 of the Complaint by admitting such allegations, but denies that the referenced ordinance "purportedly" annexed the Millbrook Property because such ordinance legally and validly annexed the Millbrook Property. The City also denies that Plaintiff is entitled to the relief requested in Paragraph 3 of the Complaint.

7. The allegations in Paragraph 4 of the Complaint state conclusions of law to which no response is required. To the extent a response may be required, the City demands strict proof of such allegations.

8. The City denies the allegations in Paragraph 5 of the Complaint.

9. The City admits the allegations in Paragraph 6 of the Complaint.

10. The City admits the allegations in Paragraph 7 of the Complaint.

11. With respect to the allegations in Paragraph 8 of the Complaint, the referenced ordinance speaks for itself and provides the best evidence of its contents. Subject to the foregoing, the City admits the allegations in Paragraph 8 of the Complaint, but denies that the referenced

ordinance "purportedly" annexed the Millbrook Property because such ordinance legally and validly annexed the Millbrook Property.

12. The City denies the allegations in Paragraph 9 of the Complaint.

13. The City admits the allegations in Paragraph 10 of the Complaint, but denies that the referenced ordinance "purportedly" annexed the Millbrook Property because such ordinance legally and validly annexed the Millbrook Property.

14. The City denies the allegations in Paragraph 11 of the Complaint.

15. The City denies the allegations in Paragraph 12 of the Complaint.

16. The City denies the allegations in Paragraph 13 of the Complaint.

17. With respect to the allegations in Paragraph 14 of the Complaint, the City incorporates section 5-3-150(1) of the South Carolina Code herein by reference and admits only that section 5-3-150(1) of the South Carolina Code says what it says. The City denies the remaining allegations in Paragraph 14 of the Complaint.

18. With respect to the allegations in Paragraph 15 of the Complaint, the City admits only that the other parcels annexed into the City under the referenced ordinance were contiguous to one another and the Millbrook Property. The City denies the remaining allegations in Paragraph 15 of the Complaint.

19. With respect to the allegations in Paragraph 16 of the Complaint, the City reiterates and incorporates the allegations of Paragraphs 1 through 18 of this answer.

20. The City denies the allegations in Paragraph 17 of the Complaint.

21. With respect to the allegations in Paragraph 18 of the Complaint, the City reiterates and incorporates the allegations of Paragraphs 1 through 20 of this answer.

22. The City denies the allegations in Paragraph 19 of the Complaint.

23. The City denies the allegations in the prayer for relief in Millbrook's Complaint.

FOR A SECOND DEFENSE (MOTION TO DISMISS UNDER RULE 12(B)(6), SCRCP)

24. Pursuant to Rule 12(b)(6), SCRCP, the Complaint should be dismissed for failure to state a claim.

FOR A THIRD DEFENSE (MOTION TO DISMISS UNDER RULE 12(B)(8), SCRCP)

25. Pursuant to Rule 12(b)(8), SCRCP, the Complaint should be dismissed because another action is pending between the same parties for the same claim. Specifically, Millbrook's counterclaim in Case No. 2018-CP-0846 asserts the same claims against the City as that set forth in the Complaint.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM

(DECLARATORY JUDGMENT)

26. The City reasserts and incorporates herein by reference the City's previous responses to the Complaint as if fully set forth herein by reference.

27. The City reaffirms and incorporates herein by reference all matters and allegations contained in the complaints filed by the City in Case No. 2018-CP-10-0846, City of Charleston v. City of North Charleston and Millbrook Plantation LLC, and Case No. 2018-CP-10-2539, City of Charleston v. City of North Charleston and Millbrook Plantation LLC, in which the City challenges the purported annexation of Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (collectively, the "Millbrook Parcel") into the City of North Charleston ("North Charleston").

28. The City also reaffirms and incorporates herein by reference all matters and allegations contained in the City's reply to the counterclaims asserted by Millbrook in Case No. 2018-CP-10-0846.

29. On May 10, 2005, the City Council of Charleston ("City Council") adopted Ordinance No. 2005-93, annexing the following portion of the Millbrook Parcel into the City:

> [A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

30. On December 19, 2017, City Council accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which includes the Millbrook Parcel.

31. On December 19, 2017, City Council voted to have a public hearing on the above-referenced petition.

32. On January 23, 2018, City Council held a public hearing on the annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

33. On April 10, 2018, City Council adopted an ordinance annexing the Millbrook Parcel into the City.

34. In the meantime, on December 21, 2017, the City Council of North Charleston gave first reading to Ordinance No. 2017-083, purporting to annex the Millbrook Parcel, including that portion of the Millbrook Parcel previously annexed into the City.

35. On December 28, 2017, the City Council of North Charleston adopted Ordinance No. 2017-083.

36. The City acquired prior jurisdiction over a portion of the Millbrook Parcel through the 2005 ordinance, and the City acquired prior jurisdiction over the remainder of the Millbrook Parcel by taking the first step in annexing the Millbrook Parcel prior to North Charleston beginning the process to purportedly annex the Millbrook Parcel per Ordinance No. 2017-083.

37. Prior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston.

38. Prior to and on December 28, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston.

39. Millbrook did not notify the City of its intent to annex the Millbrook Parcel into North Charleston on or before December 19, 2017.

40. Millbrook did not notify the City of its intent to annex the Millbrook Parcel into North Charleston on or before December 21, 2017.

41. Millbrook did not notify the City of its intent to annex the Millbrook Parcel into North Charleston on or before December 28, 2017.

42. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City before December 19, 2017.

43. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City before December 21, 2017.

44. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City before December 28, 2017.

45. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City before Millbrook executed the annexation petition to annex the Millbrook Parcel into North Charleston.

46. On March 22, 2018, the City Council of North Charleston adopted Ordinance No. 2018-017, purporting to amend or supplement Ordinance No. 2017-083 by removing from Ordinance No. 2017-083 the portion of the Millbrook Parcel annexed into the City in 2005.

47. There is no state enabling legislation permitting a municipality to annex property by amendment or supplement to a previously defective annexation ordinance or to remove property from a previously defective annexation ordinance.

48. North Charleston has no authority to annex property by amending or supplementing a previously defective annexation ordinance or to remove property purportedly annexed by a previously defective annexation ordinance.

49. The City obtained prior jurisdiction over the Millbrook Parcel by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing the Millbrook Parcel into the City prior to North Charleston's beginning the process of passing Ordinance No. 2018-017.

50. Pursuant to section 15-53-10 to -140 of the South Carolina Code (the "Uniform Declaratory Judgments Act"), the City is entitled to an Order of the Court declaring the City's annexation of the Millbrook Parcel on April 10, 2018, to be valid and declaring that the Millbrook Parcel lies within the City's municipal limits.

RESERVATION

51. The City reserves its right to supplement its answer and defenses to the Complaint on the basis of matters revealed during the course of discovery and/or pretrial proceedings.

WHEREFORE, having set forth its answer and counterclaim, the City prays for an Order of this Court finding the City's annexation of the Millbrook Parcel to be valid, finding that the Millbrook Parcel lies within the City's municipal limits, denying the relief requested by Millbrook in the Complaint, awarding the City its costs and disbursements in this action, and providing such other and further relied as the Court may deem appropriate.

Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
E-mail: mcqueeneyd@charleston-sc.gov

CITY OF CHARLESTON
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff City of Charleston

May 23, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MILLBROOK PLANTATION, LLC, Plaintiff, v. CITY OF CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2018-CP-10-2131 **PLAINTIFF'S REPLY TO COUNTERCLAIMS OF DEFENDANT CITY OF CHARLESTON**

FILED
2018 JUL 31 PM 2:48
JULIE J ARMSTRONG
CLERK OF COURT
BY

Plaintiff Millbrook Plantation, LLC ("Plaintiff" or "Millbrook Plantation, LLC"), through its undersigned counsel, states its reply to the counterclaim of the City of Charleston ("Defendant/Counterclaimant" or "City of Charleston") as follows:

Except as specifically admitted, modified or explained herein, each and every allegation in the Plaintiff's Complaint is expressly denied.

1. Upon information and belief, Plaintiff denies the allegations in Paragraphs 36, 42, 43, 44, 45, 48, 49 and 50 of Defendant/Counterclaimant's Counterclaim.
2. Plaintiff lacks sufficient information and knowledge to answer the allegations of Paragraphs 37 and 38 of Defendant/Counterclaimant's Counterclaim and so denies them.
3. Paragraphs 39, 40, 41 and 47 purport to set forth procedural and / or legal conclusions which require no response from Plaintiff. To the extent a response is required, those allegations are denied.

4. Responding to Paragraphs 29, 30, 31, 32 and 33, Plaintiff admits these events took place on the dates given, but denies they were lawful, valid or enforceable.
5. Responding to Paragraph 34, Plaintiff admits that on December 21, 2017, the City Council of North Charleston gave first reading to Ordinance No. 2017-083.
6. Responding to Paragraph 35, Plaintiff admits that the City Council of North Charleston adopted Ordinance No. 2017-083 on December 28, 2017.
7. Responding to Paragraph 46, Plaintiff admits the City Council of North Charleston adopted Ordinance No. 2018-017 on March 22, 2018.
8. Responding to Paragraphs 26, 27 and 28 Plaintiff reiterates its earlier responses and affirmative allegations in this matter and in companion cases 2018-CP-10-2539 and 2018-CP-10-0846.
9. Plaintiff denies the allegations in the Defendant/ Counterclaimant's prayer for relief.

FURTHER RESPONDING AND
AS A FIRST AFFIRMATIVE DEFENSE

10. The City of Charleston lacks standing to challenge any annexation of this property under the 100% petition method set forth in S.C. Code Ann. § 5-3-150(3), as it is a non-statutory party that is an "outsider" to the annexation.

FURTHER RESPONDING AND
AS A SECOND AFFIRMATIVE DEFENSE

11. The City of North Charleston had completed its annexation of the property owned by Millbrook Plantation, LLC prior to first reading of the City of

Charleston's ordinance attempting to annex the property owned by Millbrook Plantation, LLC, so that the Millbrook Plantation, LLC property was no longer eligible for annexation by the City of Charleston and any attempted annexation at that time was invalid, void and of no effect.

12. The City of North Charleston began the annexation process of the property of Millbrook Plantation, LLC before the City of Charleston.

FURTHER RESPONDING AND
AS A THIRD AFFIRMATIVE DEFENSE

13. The Defendant/ Counterclaimant fails to state facts sufficient to constitute a cause of action and, therefore, its claims should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FURTHER RESPONDING AND
AS A FOURTH AFFIRMATIVE DEFENSE

14. The Defendant/ Counterclaimant's claims are barred, in whole or in part, by the equitable doctrine of Unclean Hands.

FURTHER RESPONDING AND
AS A FIFTH AFFIRMATIVE DEFENSE

15. To the extent that the Defendant/ Counterclaimant failed to comply with the applicable statute of limitations, its claims are barred against Plaintiff.

FURTHER RESPONDING AND
AS A SIXTH AFFIRMATIVE DEFENSE

16. The Defendant/ Counterclaimant's claims may be barred by the equitable

doctrines of Waiver, Estoppel, and/or Laches.

FURTHER RESPONDING AND
AS A SEVENTH AFFIRMATIVE DEFENSE

17. By using the 75% method to include the Millbrook Parcel, over the objections of Plaintiff Millbrook, when the three property owners could have annexed into the City of Charleston using the 100% annexation method, the Defendant/ Counterclaimant took the property of Plaintiff Millbrook for purposes other than public use, without justification, without due process and without just compensation.

FURTHER RESPONDING AND
AS AN EIGHTH AFFIRMATIVE DEFENSE

18. To the extent applicable, Plaintiff raises all affirmative defenses required by Rule 8(c), SCRCP.

FURTHER RESPONDING AND
AS AN NINTH AFFIRMATIVE DEFENSE

19. Plaintiff reserves and specifically does not waive any and all such affirmative defenses which may become apparent through the course of discovery.

WHEREFORE, having fully replied to the Counterclaim of the City of Charleston, Millbrook Plantation, LLC prays for an Order declaring that its annexation into the City of North Charleston was accomplished and final as of the adoption of the City of North Charleston's ordinance dated December 28, 2017 and as amended and supplemented on March 22, 2018 and that the purported later

annexation by the City of Charleston of this property is invalid, void and of no force or effect, enjoining the City of Charleston from exercising any governmental authority over the Millbrook Plantation, LLC property, awarding its attorneys' fees as well as the costs and disbursements of this matter and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

AUSTEN & GOWDER, LLC

W. Andrew Gowder, Jr.
(SC Bar No. 7895)
1629 Meeting Street, Suite A
Charleston, S.C. 29405
T: (843) 727-2229
andy@austengowder.com
ATTORNEYS FOR MILLBROOK PLANTATION, LLC

July 25, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF-CHALLENGER,	)	
	)	
v.	)	**NOTICE OF INTENT TO CONTEST ANNEXATION**
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC	)	
	)	
DEFENDANTS.	)	

2018 MAY 18 AM 11:1
JULIE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that, pursuant to section 5-3-270 of the South Carolina Code, the City of Charleston intends to contest Ordinance No. 2018-017, adopted by the City Council of North Charleston on March 22, 2018, purporting to amend and supplement Ordinance No. 2017-083, adopted by the City Council of North Charleston on December 28, 2017, whereby the City of North Charleston purports to annex, upon petition of Millbrook Plantation LLC, that certain tract of land previously designated as Charleston County TMS No. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and TMS 361-00-00-006-1.

In accordance with section 5-3-270, this notice is being filed within sixty (60) days of the date Ordinance No. 2018-017 was adopted with both the clerk of the municipality and the clerk of court of the county in which the municipality is located. This notice is not intended to supersede or replace that certain notice of intent to contest Ordinance No. 2017-083 filed by the City of Charleston in Case No. 2018-CP-10-0846.

By: _____
Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel

E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff-Challenger City of Charleston

May 18, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	**SUMMONS**
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
	)	
DEFENDANTS.	)	

2018 MAY 18 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the counsel for the above-named plaintiff at 50 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

CITY OF CHARLESTON

By: _____

Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

ATTORNEYS FOR PLAINTIFF
CITY OF CHARLESTON

May 18, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	**COMPLAINT**
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

FILED
2018 MAY 18 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff City of Charleston ("Plaintiff" or "City"), complaining against Defendants City of North Charleston and Millbrook Plantation LLC (collectively, "Defendants"), alleges and states as follows:

PARTIES

1. Plaintiff City of Charleston ("City") is a municipal corporation organized and existing under the laws of the State of South Carolina.

2. Defendant City of North Charleston ("North Charleston") is a municipal corporation organized and existing under the laws of the State of South Carolina.

3. Defendant Millbrook Plantation LLC ("Millbrook") is a limited liability company organized and existing under the laws of the State of South Carolina, which owns property within the area subject to this lawsuit and described in detail below.

JURISDICTION AND VENUE

4. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging Ordinance No. 2018-017 (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on March 22, 2018, purporting to amend and supplement Ordinance No. 2017-083, adopted by the City of North Charleston on December 28, 2017,

whereby the City of North Charleston purported to annex, upon petition of Millbrook that certain tract of land previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel").

5. Ordinance No. 2018-017 purports to correct North Charleston's defective annexation of the Millbrook Parcel in Ordinance No. 2017-083, which included a portion of the Millbrook Parcel annexed to the City in 2005.

6. On May 18, 2018, the City filed its notice of intent to challenge North Charleston Ordinance No. 2018-017 with both the Clerk of Council for North Charleston and the Clerk of Court for Charleston County, South Carolina.

7. The City has standing to bring this action because the City took the first steps toward annexing the Millbrook Parcel prior to the time that North Charleston had taken the first steps to annex the same parcel, either under Ordinance No. 2017-083 or Ordinance No. 2018-017.

8. The City also has standing to bring this action because Ordinance No. 2018-017 creates a dispute about the correct boundary between the municipal limits of the City of Charleston and the municipal limits of North Charleston.

9. The City also has standing to bring this action because of the confusion created by North Charleston's annexation of property over which the City had already acquired jurisdiction.

10. The City also has standing to bring this action because, upon information and belief, under the auspices of Ordinance No. 2018-017, Millbrook will refuse to comply with the City's laws, including without limitation, zoning laws, taxing laws, land development regulations, and other laws.

11. The purported annexation violates the statutory and proprietary rights of the City, which obtained prior jurisdiction over the Millbrook Parcel and, as a result, has the ability to provide serves, tax, zone, and otherwise exercise governmental authority over the Millbrook Parcel.

12. The Millbrook Parcel is located in Charleston County, South Carolina.

13. This Court has jurisdiction over the subject matter of this action, and Charleston County is the proper venue for this action.

FACTS

14. On May 10, 2005, the City adopted Ordinance No. 2005-93, annexing the following property into the City, which is a portion of the Millbrook Parcel:

> [A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

15. On December 19, 2017, the City Council of Charleston ("City Council") accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which includes the Millbrook Parcel.

16. On December 19, 2017, City Council voted to have a public hearing on the above-referenced petition.

17. On January 23, 2018, City Council held a public hearing on the annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

18. On April 10, 2018, City Council adopted an ordinance annexing the Millbrook Parcel into the City.

19. In the meantime, on December 21, 2017, the City Council of North Charleston gave first reading to Ordinance No. 2017-083, purporting to annex the Millbrook Parcel, including that portion of the Millbrook Parcel previously annexed into the City.

20. On December 28, 2017, the City Council of North Charleston adopted Ordinance No. 2017-083.

21. Prior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston.

22. Prior to and on December 28, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston.

23. Neither North Charleston nor Millbrook notified the City of their intent to annex the Millbrook Parcel into North Charleston on or before December 19, 2017.

24. Neither North Charleston nor Millbrook notified the City of their intent to annex the Millbrook Parcel into North Charleston on or before December 21, 2017.

25. Neither North Charleston nor Millbrook notified the City of their intent to annex the Millbrook Parcel into North Charleston on or before December 28, 2017.

26. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City of Charleston before December 19, 2017.

27. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City of Charleston before December 21, 2017.

28. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City of Charleston before December 28, 2017.

29. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of the City of Charleston before Millbrook executed the annexation petition to annex the Millbrook Parcel into North Charleston.

30. North Charleston did not request information from the City about whether the City's municipal limits included a portion of the Millbrook Parcel on or before December 19, 2017.

31. North Charleston did not request information from the City about whether the City's municipal limits included a portion of the Millbrook Parcel on or before December 21, 2017.

32. North Charleston did not request information from the City about whether the City's municipal limits included a portion of the Millbrook Parcel on or before December 28, 2017.

33. On February 15, 2018, the City filed a notice of intent to challenge Ordinance No. 2017-083 with the Clerk of Court for Charleston County, South Carolina.

34. On February 16, 2018, the City filed and served its notice of intent to challenge Ordinance No. 2017-083 with the Clerk of Council for North Charleston.

35. On March 27, 2018, the City filed its summons and complaint challenging Ordinance No. 2017-083 with the Clerk of Court for Charleston County, South Carolina, which is designated as Case No. 2018-CP-10-0846, City of Charleston v. City of North Charleston and Millbrook Properties LLC (the "Case 0846").

36. On March 28, 2018, the City served its summons and complaint in Case 0846 on Defendants.

37. In the meantime, on March 22, 2018, the City Council of North Charleston adopted Ordinance No. 2018-017, purporting to amend or supplement Ordinance No. 2017-083 by removing from Ordinance No. 2017-083 the portion of the Millbrook Parcel annexed into the City in 2005.

38. There is no state enabling legislation permitting a municipality to annex property by amendment or supplement to a previously defective annexation ordinance or to remove property from a previously defective annexation ordinance.

39. North Charleston has no authority to annex property by amending or supplementing a previously defective annexation ordinance or to remove property purportedly annexed by a previously defective annexation ordinance.

40. The City obtained prior jurisdiction over the Millbrook Parcel by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing the Millbrook Parcel into the City prior to North Charleston's beginning the process of passing Ordinance No. 2018-017.

41. On May 18, 2018, the City filed a notice of intent to challenge Ordinance 2018-017 with the Clerk of Court for Charleston County, South Carolina, and with the Clerk of Council for North Charleston, in accordance with section 5-3-270 of the South Carolina Code.

42. This complaint is intended to comply with the requirements of section 5-3-270 of the South Carolina Code, which requires, in pertinent part: "When the limits of a municipality are ordered extended, no contest thereabout shall be allowed . . . unless, within ninety days from the time the result has been published or declared an action is begun and *the original summons and complaint* filed with the clerk of court of the county in which the municipality is located." (Emphasis added).

43. The City has no objection to consolidating this action with Case 0846 upon the filing and service of the original summons and complaint in this action.

44. Ordinance No. 2018-017 violates the statutory and proprietary rights of the City in that it purportedly annexes land within the City's corporate limits and for the other reasons stated herein.

FOR A FIRST CAUSE OF ACTION

(RELIEF UNDER SECTION 5-3-270 OF THE SOUTH CAROLINA CODE)

45. The City alleges and incorporates by reference its previous allegations as if fully set forth herein.

46. Pursuant to section 5-3-270 of the South Carolina Code, the City is entitled to a judgment declaring Ordinance No. 2018-017 invalid, void, and of no force or effect for each of the following reasons:

a. At the time that North Charleston began the process of purportedly annexing the Millbrook Parcel through Ordinance No. 2018-017, the City of Charleston had already taken the first step toward annexing the Millbrook Parcel.

b. There is no state enabling legislation permitting a municipality to annex property by amendment or supplement to a previously defective annexation ordinance or to remove property from a previously defective annexation ordinance.

c. North Charleston has no authority to annex property by amending or supplementing a previously defective annexation ordinance or to remove property purportedly annexed by a previously defective annexation ordinance.

FOR A SECOND CAUSE OF ACTION (DECLARATORY JUDGMENT)

47. The City re-alleges its previous allegations as if fully set forth herein.

48. Pursuant to section 15-53-10 to -140 of the South Carolina Code (the "Uniform Declaratory Judgments Act"), the City is entitled to an Order of the Court declaring Ordinance No.

2018-017 to be void and of no force or effect for the reasons stated in Paragraph 46 of this Complaint.

FOR A THIRD CAUSE OF ACTION

(TEMPORARY INJUNCTION/PERMANENT INJUNCTION)

49. The City re-alleges its previous allegations as if fully set forth herein.

50. The City is entitled to an Order of this Court preliminarily and permanently enjoining North Charleston from exercising any governmental authority over the Millbrook Parcel for the reasons set forth in Paragraph 46 of this Complaint.

WHEREFORE, having set forth its Complaint, Plaintiff prays for an Order of this Court finding Ordinance No. 2018-017 to be invalid and declaring the Ordinance No. 2018-017 void and of no force and effect, enjoining the City of North Charleston from exercising any governmental authority over the property subject to Ordinance No. 2018-017, awarding the City its attorneys' fees as well as the costs and disbursements of this matter and such other and further relief as the Court may deem appropriate.

CITY OF CHARLESTON

By: _____

Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff City of Charleston

May 18, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
	)	
The City of Charleston	)	Case No. 2018-CP-10-2539
	)	
	)	Answer, Affirmative Defenses,
Plaintiffs,	)	and Counterclaims by the
	)	City of North Charleston
v	)	
	)	(Millbrook)
City of North Charleston and	)	
Millbrook Plantation, LLC	)	
Defendant.	)	

FILED
2018 MAY 30 AM 11:03
CLERK OF COURT

The City of North Charleston (hereinafter, sometimes "North Charleston"), in response to the Complaint filed against it, comes forward to present the following answer, affirmative defenses and counterclaims. All allegations made by the Plaintiffs that are not expressly admitted herein are hereby expressly denied.[1]

Answer

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. Regarding the allegations of Paragraph 4, North Charleston admits only that the City of Charleston desires to challenge its annexation of TMS 361-00-00-006.

[1] Any and all references to the City of Charleston's purported annexation of property should be interpreted to include the word "purported" whether expressly stated or not.

5. North Charleston denies Paragraph 5 as written and would admit only that Ordinance 2018-017 conforms North Charleston's prior annexation of TMS 361-00-00-006 to a recently issued Charleston County mapping correction.
6. The allegations of Paragraph 6 of the Complaint are admitted.
7. The allegations of Paragraph 7 are denied.
8. The allegations of Paragraph 8 are denied. North Charleston makes no claim to TMS 301-00-00-006-1.
9. The allegations of Paragraph 9 are denied. North Charleston makes no claim to TMS 301-00-00-006-1.
10. The allegations of Paragraph 10 are denied. North Charleston makes no claim to TMS 301-00-00-006-1 and, upon information and belief, Millbrook does not claim that TMS 301-00-00-006-1 is annexed into North Charleston.
11. The allegations of Paragraph 11 are denied.
12. Regarding Paragraph 12, North Charleston admits that Millbrook is located within Charleston County, SC.
13. Regarding the allegations of Paragraph 13, North Charleston admits that this Court has jurisdiction generally over annexation dispute matters, but denies that the present matter is justiciable in this court because the Plaintiff lacks standing to present such claims.
14. Regarding the allegations of Paragraph 14, City of Charleston Ordinance 2005-93 must speak for itself and any contrary pleading herein is denied. North Charleston would, however, admit generally that the City of Charleston

annexed in 2005 what is now known in Charleston County records as subparcel TMS 301-00-00-006-1.

15. Regarding the allegations of Paragraph 15, North Charleston denies that the City of Charleston lawfully and/or validly accepted the described petition.

16. Regarding Paragraph 16, North Charleston admits that the Charleston City Council, in violation of law, voted to proceed with a public hearing regarding its purported annexation of Millbrook (TMS 361-00-00-006).

17. North Charleston is without sufficient information so as to form a belief regarding the dates alleged in Paragraph 17 and would deny in favor of strict proof thereof, but would generally admit that Charleston City Council held public hearing and gave first reading (both of which were legally defective) to an ordinance to annex Millbrook (TMS 361-00-00-006).

18. Regarding Paragraph 18, North Charleston denies that the City of Charleston validly adopted an ordinance annexing Millbrook, but would admit that the City of Charleston purported to do the same on or about April 10, 2018.

19. Regarding Paragraph 19, North Charleston would admit only that it gave a legally valid first reading to an annexation ordinance for the Millbrook parcel on or about December 21, 2017, and that such ordinance correctly conformed with Charleston County's available parcel mapping. Any other allegation or insinuation within Paragraph 19 is denied.

20. The allegation of Paragraph 20 is admitted.

21. The allegations of Paragraph 21 are denied regarding publicly available County records, though North Charleston would admit that the City of

Charleston had previously notified Charleston County privately of an error in the County's public records and neglected to similarly notify North Charleston.

22. The allegations of Paragraph 22 are denied regarding publicly available County records, though North Charleston would admit that the City of Charleston had previously notified Charleston County privately of an error in the County's public records and neglected to similarly notify North Charleston.

23. North Charleston denies the allegations of Paragraph 23, as North Charleston publicly noticed and advertised the proposed annexation.

24. North Charleston denies the allegations of Paragraph 24, as North Charleston publicly noticed and advertised the proposed annexation.

25. North Charleston denies the allegations of Paragraph 25, as North Charleston publicly noticed and advertised the proposed annexation.

26. The allegations of Paragraph 26 are denied.

27. The allegations of Paragraph 27 are denied.

28. The allegations of Paragraph 28 are denied.

29. The allegations of Paragraph 29 are denied.

30. The allegations of Paragraph 30 are admitted, though such inquiry is not required.

31. The allegations of Paragraph 31 are admitted, though such inquiry is not required.

32. The allegations of Paragraph 32 are admitted, though such inquiry is not required.

33. The allegations of Paragraph 33 are admitted.

34. The allegations of Paragraph 34 are admitted.

35. The allegations of Paragraph 35 are admitted.

36. The allegations of Paragraph 36 are admitted.

37. Regarding the allegations of Paragraph 37, North Charleston denies that its actions were "purported", but would admit that it adopted Ordinance 2018-017 clarifying that its prior annexation of TMS 301-00-00-006 was limited to TMS 301-00-00-006 and did not include subparcel TMS 301-00-00-006-1.

38. The allegations of Paragraph 38 constitute conclusions of law to which no response is required and, to the extent a response might be required, are denied.

39. The allegations of Paragraph 39 constitute conclusions of law to which no response is required and, to the extent a response might be required, are denied.

40. The allegations of Paragraph 40 of the Complaint are denied.

41. The allegations of Paragraph 41 are admitted.

42. North Charleston admits that the City of Charleston intends this Complaint to comply with SC Code Ann. 5-3-270.

43. The allegations of Paragraph 43 are admitted as far as being a statement of the City of Charleston's desires.

44. The allegations of Paragraph 44 are denied.

45. Regarding Paragraph 45, North Charleston admits that the City of Charleston seeks to re-allege paragraph 1 – 44 of the Complaint.

46. The allegations of Paragraph 46 are denied.

47. Regarding Paragraph 47, North Charleston admits that the City of Charleston seeks to re-allege paragraph 1 – 46 of the Complaint.

48. The allegations of Paragraph 48 are denied.

49. Regarding Paragraph 49, North Charleston admits that the City of Charleston seeks to re-allege paragraph 1 – 48 of the Complaint.

50. The allegations of Paragraph 50 are denied.

Defenses

Lack of Standing

51. The Plaintiff lacks standing to be heard challenging the disputed annexations of The City of North Charleston. All of the challenged annexations were completed with the consent of one hundred (100%) percent of the freehold property owners. In such instances, the only party who has standing to challenge is the Attorney General for the State of South Carolina. See Vicary v. Town of Awendaw, 417 S.C. 631, 639 (SC App. 2016) ("Here, Respondents have failed to show any infringement of their own proprietary interests or statutory rights. In addition, because none of Respondents are the State of South Carolina, they are prohibited from challenging the Town's annexations pursuant to *St. Andrews* and *Yemassee*.").

Failure to State a Claim (Rule 12(b)(6))

52. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should therefore be dismissed for all applicable reasons in accordance with Rule 12 of the South Carolina Rules of Civil Procedure.

Reservation of Rights

53. The City of North Charleston hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pre-trial proceedings in this case and hereby reserves its rights to amend this Answer and to assert such defenses.

Counterclaims

54. The City of North Charleston ("North Charleston") is a lawfully organized municipality within the State of South Carolina.

55. The City of Charleston ("Charleston") is a lawfully organized municipality within the State of South Carolina.

56. This Court has jurisdiction in this suit over the subject matter hereof and the parties hereto.

57. The City of North Charleston has standing to be heard.

58. The City of North Charleston completed annexation of Area 52-S (Millbrook)(TMS 361-00-00-006) on December 28, 2017 by way of Ordinance No. 2017- 083.

59. Thereafter, the City of North Charleston has the responsibility for providing services to the parcels as well as the right to receive tax revenue associated with the parcel.

60. The City of Charleston subsequently voted on or about April 10, 2018, an ordinance entitled "An Ordinance to annex to the City of Charleston properties located West of the Ashley on or near Highway 61 bearing Charleston County Tax Map Nos. 361-00-00-006, 361-00-00-007, 364-00-00-001, and 364-00-00-002 as shown on the map attached to this ordinance labeled 'annexation exhibit' and to make said properties a part of District 10" (hereinafter, sometimes, the "Disputed Annexation.")

61. The Disputed Annexation purports to annex the same parcel TMS 361-00-00-006 (Millbrook Tract) (hereinafter, sometimes, the "Disputed Parcel") that is already within the jurisdiction of the City of North Charleston.

62. The City of North Charleston filed an objection to the Disputed Annexation as required by Title 5, Chapter 3 of the South Carolina Code of Laws.

FIRST CAUSE OF ACTION
(Violation of SC Code Title 5, Chapter 3)
(Declaratory and Injunctive Relief)

63. All preceding paragraphs are hereby restated and incorporated by reference as if set forth fully herein.

64. South Carolina Code Title 5, Chapter 3 sets forth the universe of lawful ways in which a municipality may annex property.

65. The City of Charleston on or about April 10, 2018, passed ordinances entitled "An Ordinance to annex to the City of Charleston properties located West of the Ashley on or near Highway 61 bearing Charleston County Tax Map Nos. 361-00-00-006, 361-00-00-007, 364-00-00-001, and 364-00-00-002 as shown on the map attached to this ordinance labeled 'annexation exhibit' and to make said properties a part of District 10" (the "Disputed Annexation.")

66. The City of Charleston elected to proceed under the rules of S.C. Code 5-3-150 with respect to the Disputed Annexation.

67. The Disputed Annexation is invalid for one or more of the following reasons:

a. TMS 361-00-00-006 (Millbrook tract) was already incorporated into the City of North Charleston's City Limits prior to the City of Charleston's purported annexation; and/or

b. The City of Charleston violated S.C. Code Ann. 5-3-150(1)(2) by refusing to make available on demand of a resident a copy of the annexation petition.

68. The Disputed Annexation, if left undisturbed, would deprive the City of North Charleston of both tax revenue and jurisdiction, thus inflicting a direct and concrete harm upon the City of North Charleston and its citizens.

69. The Disputed Annexation, if left undisturbed, would violate the rights of the owners of TMS 361-00-00-006 (Millbrook) and subject them to the jurisdiction of and the payment of taxes to the City of Charleston in violation of their rights.

70. North Charleston is entitled to relief including, but not limited to:

a. A Declaration that the Disputed Annexation is void;

b. A Declaration that TMS 361-00-00-006 (Millbrook) is within the municipal limits of the City of North Charleston and thus ineligible for future annexation by the City of Charleston;

c. An injunction prohibiting the City of Charleston from taxing or asserting jurisdiction over the properties contained within the Disputed Annexation;

d. Costs and attorneys fees associated with this action.

SECOND CAUSE OF ACTION
(Declaration of City Limit Line)

71. That the City of North Charleston reiterates and realleges all above allegations and pleadings as if the same were repeated herein verbatim.

72. The City of North Charleston annexed the Millbrook property initially on or about December 28, 2017, in faithful compliance with the public records of Charleston County.

73. North Charleston's annexation of the property described the property as TMS-361-00-00-006 and, additionally, gave a general boundary description based upon the then-existing County parcel.

74. Subsequent to North Charleston's completion of the annexation Charleston County amended its records to effectively reduce the size of TMS-361-00-00-006 and create a never-before-seen sub-parcel designated as TMS 361-00-00-006-1.

75. As a result of its own discovery of Charleston County's record change, the City of North Charleston passed on March 22, 2018, Ordinance 2018-017 (the "Corrective Ordinance.")

76. The Corrective Ordinance confirmed the intent stated in North Charleston's original annexation – namely to annex only TMS 361-00-00-006. The Corrective Ordinance further confirmed that, to the extent Charleston County

records had been updated to reduce the size of TMS 361-00-006, that the City's annexation was similarly reduced. Finally, the Corrective Ordinance confirms that the City's original Millbrook annexation ordinance never stated a desire to annex the then-not-existing TMS 361-00-00-006-1 and that the subsequent creation of TMS 361-00-00-006-1 had not changed North Charleston's intent in that regard – North Charleston never laid and still lays no claim to that subparcel.

77. The City of Charleston was aware of Charleston County's TMS mapping error in advance of North Charleston's notice of its intent to annex TMS 361-00-00-006.

78. The City of Charleston had knowledge of North Charleston's intent to annex TMS 361-00-00-006 at a time when the City of Charleston also knew of the County's mapping error.

79. The City of Charleston did not notify the City of North Charleston of the error prior to North Charleston's passage of the Millbrook annexation ordinance.

80. The City of Charleston is barred by the doctrines of estoppel and laches from disputing the City of North Charleston's Millbrook annexation (as clarified by the Corrective Ordinance.)

81. Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston Millbrook annexation encroaches into or upon the Invisible Subparcel (361-00-00-006-1) previously annexed by the City of Charleston.

82. North Charleston seeks declaration that its City Limit line in the disputed area lies on the shared boundary between TMS 361-00-00-006 and the Invisible Subparcel (TMS 361-00-00-006-1.)

WHEREFORE, Defendant City of North Charleston prays for judgment as follows:

a) having answered all allegations of the Complaint the City of North Charleston respectfully requests that this Court dismiss the Complaint and that all of Plaintiff's requested relief be denied; and

b) That this Honorable Court inquire into the facts alleged and declare that Millbrook is the sole owner of the North Charleston annexed TMS 361-00-00-006 (distinct from TMS 361-00-00-006-1) free and clear of any and all claims of the Plaintiffs; and

c) That this Honorable Court declare and confirm that the City of North Charleston's annexation TMS 361-00-00-006 (distinct from TMS 361-00-00-006-1) is lawful and binding; and

d) That this Honorable Court declare the Annexations of the City of Charleston described hereinabove (completed on or about April 10, 2018) null and void ab initio.

e) That the City of North Charleston be awarded costs and attorney's fees from The City of Charleston in accordance with South Carolina statute; and

f) Such other and further relief as this Court may deem just and proper.

J. Brady Hair, Esquire
Derk Van Raalte
Legal Department
2500 City Hall Lane
North Charleston, SC 29406
(843) 572-8700

Attorneys for the Defendant,
City of North Charleston

This 30th day of May, 2018
North Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	**PLAINTIFF CITY OF CHARLESTON'S REPLY TO COUNTERCLAIMS OF DEFENDANT CITY OF NORTH CHARLESTON**
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

Plaintiff City of Charleston ("City" or "Plaintiff"), in reply to the counterclaims (the "Counterclaims") of Defendant City of North Charleston ("North Charleston" or "Defendant"), alleges and states as follows:

2018 JUN -7 PM 3:15
JULIE J. ARMSTRONG
CLERK OF COURT

FOR A FIRST DEFENSE

1. The City reaffirms and incorporates herein by reference all matters and allegations contained in the City's complaint in this action (the "Complaint"); the City's pleadings in Case No. 2018-CP-10-0846, City of Charleston v. City of North Charleston and Millbrook Plantation LLC (the "Millbrook I Pleadings"); the City's pleadings in Case No. 2018-CP-10-1833, City of North Charleston v. City of Charleston (the "North Charleston I Pleadings"); and the City's pleadings in Case No. 2018-CP-10-2131, Millbrook Plantation LLC v. City of Charleston (the "Millbrook II Pleadings"). The Complaint, the Millbrook I Pleadings, the North Charleston I Pleadings, and the Millbrook II Pleadings shall be collectively referred to herein as the "Pleadings."

2. The City denies each and every allegation of the Counterclaims not hereinafter specifically admitted or modified.

3. The City admits the allegations in Paragraph 54 of the Counterclaims.

4. The City admits the allegations in Paragraph 55 of the Counterclaims.

5. The City admits the allegations in Paragraph 56 of the Counterclaims.

6. The allegations in Paragraph 57 of the Counterclaims set forth a conclusion of law, to which no response is required. To the extent a response may be required, the City demands strict proof of such allegations. Without limiting the foregoing, the City specifically denies that North Charleston has standing to bring any claim under South Carolina Freedom of Information Act ("FOIA").

7. The City denies the allegations in Paragraph 58 of the Counterclaims.

8. The City denies the allegations in Paragraph 59 of the Counterclaims.

9. With respect to the allegations in Paragraph 60 of the Counterclaims, the City admits that it passed the referenced ordinance on April 10, 2018, and that the terms of the referenced ordinance speak for themselves and provides the best evidence of the ordinance's content.

10. With respect to the allegations in Paragraph 61 of the Counterclaims, the referenced ordinance speaks for itself and provides the best evidence of its contents. The City specifically denies that the referenced ordinance annexed an area which was already within the jurisdiction of North Charleston, as set forth more fully in the Pleadings.

11. Paragraph 62 of the Counterclaims states a conclusion of law to which no response is required. To the extent a response may be required, the City admits that North Charleston filed a notice of its intent to challenge the 2018 annexation ordinance for the subject property, but denies that North Charleston ever filed an objection to the previous ordinance annexing a portion of the subject property.

12. With respect to Paragraph 63 of the Counterclaims, the City reiterates and incorporates herein the allegations of the Pleadings and of Paragraphs 1 through 11 of this reply.

13. Paragraph 64 of the Counterclaims states a conclusion of law to which no response is required. To the extent a response may be required, the City demands strict proof of the allegations made in Paragraph 64 of the Counterclaims.

14. With respect to the allegations in Paragraph 65 of the Counterclaims, the City admits that, on April 10, 2018, the City adopted an ordinance annexing the property described in such ordinance into the City. The referenced ordinance speaks for itself and provides the best evidence of its contents. The City also alleges that a portion of Charleston County TMS No. 361-00-00-006, recently designated as Charleston County TMS No. 361-00-00-006-1, was previously annexed into the City, as set forth more fully in the Pleadings.

15. With respect to the allegations in Paragraph 66 of the Counterclaims, the City admits that the referenced annexation ordinance was adopted on April 10, 2018 pursuant to the so-called "75% annexation method" set forth in section 5-3-150(1) of the South Carolina Code, but also affirmatively alleges that a portion of Charleston County TMS No. 361-00-00-006, recently designated as TMS No. 361-00-00-006-1, was previously annexed into the City under section 5-3-150(3) of the South Carolina Code, commonly known as the "100% annexation method," as set forth more fully in the Pleadings.

16. The City denies the allegations in Paragraph 67 of the Counterclaims, including all subparagraphs thereof.

17. The City denies the allegations of Paragraph 68 of the Counterclaims. The City's annexation of the subject property leaves North Charleston and its citizens in exactly the same position it and they held prior to the annexation.

18. The City denies the allegations of Paragraph 69 of the Counterclaims, except that the City's 2018 annexation of the referenced parcel and the City's previous annexation of a portion of the referenced parcel has or will subject the referenced parcel to the jurisdiction of and payment of taxes to the City. In further responding to the allegations of Paragraph 69 of the Counterclaims, the City affirmatively asserts that North Charleston lacks standing to assert a violation of the purported rights of Millbrook Plantation LLC with respect to the subject property.

19. The City denies the allegations in Paragraph 70 of the Counterclaims, including all subparagraphs thereof.

20. With respect to Paragraph 71 of the Counterclaims, the City reiterates and incorporates herein the allegations of the Pleadings and of Paragraphs 1 through 19 of this reply.

21. The City denies the allegations in Paragraph 72 of the Counterclaims, as set forth more fully in the Pleadings.

22. With respect to the allegations in Paragraph 73 of the Counterclaims, the referenced ordinance speaks for itself and provides the best evidence of its contents. The City admits that the annexation ordinance references TMS 361-00-00-006, but affirmatively alleges that Charleston County's records showed a portion of TMS 361-00-00-006 within the municipal limits of the City of Charleston at this time.

23. With respect to the allegations in Paragraph 74 of the Counterclaims, the City lacks sufficient information or belief to admit or deny when Charleston County amended its records to show TMS 361-00-00-006-1 as a separate tax map parcel from TMS 361-00-00-006, but the City affirmatively alleges that, on and before December 28, 2017, Charleston County's records showed a portion of TMS 361-00-00-006 within the municipal limits of the City of Charleston by accessing the "GIS Parcel Viewer" on Charleston County's official website and selecting the box labeled

"Municipal Boundaries" in the "Boundaries" section of the "Table of Contents" on the GIS Parcel Viewer. The City lacks sufficient information or belief to know if this was shown as a separate parcel prior to this time with respect to other Charleston County records, unrelated to the GIS Parcel Viewer.

24. With respect to the allegations in Paragraph 75 of the Counterclaims, the City admits North Charleston attempted to cure its defective attempt to annex TMS No. 361-00-00-006, but the City asserts that such attempt was to no avail because, by that time, the City had accepted an annexation petition for the subject parcel, scheduled a public hearing on the petition, given first reading to an ordinance on the annexation, and held a public hearing on the annexation of TMS No. 361-00-00-006 into the City's corporate limits, thus acquiring prior jurisdiction of the parcel.

25. The City denies the allegations in Paragraph 76 of the Counterclaims. North Charleston Ordinance No. 2017-083 speaks for itself and provides the best evidence of its contents, and the legal description and map attached to such ordinance clearly establish North Charleston's intent to annex the entire parcel owned by Defendant Millbrook Plantation LLC ("Millbrook"), currently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1. To the extent North Charleston subsequently attempts to reduce the amount of property annexed by a "corrective ordinance," the City denies that such ordinance was effective for the reasons set forth in the Pleadings.

26. The City denies the allegations in Paragraph 77 of the Counterclaims. The City was not aware of any alleged "mapping error" prior to North Charleston's attempt to annex TMS 361-00-00-006. At the time, the City knew that the GIS Parcel Viewer showed a portion of TMS 361-00-00-006 as being within the municipal limits of the City of Charleston and that this portion of TMS 361-00-00-006 was not given a separate TMS number. However, North Charleston did not

notify the City of Charleston of North Charleston's intent to annex TMS 361-00-00-006 until after the City of Charleston had taken the first steps toward its own annexation of this parcel, and North Charleston did not notify or contact the City about this parcel at any time prior to North Charleston's actual attempt to annex TMS 361-00-00-006 in December 2017 to determine if the City had already annexed any portion of such parcel.

27. The City denies the allegations in Paragraph 78 of the Counterclaims for the reasons set forth in the City's reply to Paragraph 77 of the Counterclaims.

28. The City admits the allegations in Paragraph 79 of the Counterclaims, but incorporates herein the City's reply to Paragraph 77 of the Counterclaims.

29. The City denies the allegations in Paragraph 80 of the Counterclaims.

30. The City denies the allegations in Paragraph 81 of the Counterclaims for the reasons set forth in the Pleadings.

31. With respect to the allegations in Paragraph 82 of the Counterclaims, the City admits that North Charleston seeks the relief requested, but denies that North Charleston is entitled to such relief for the reasons set forth in the Pleadings.

32. The City denies that North Charleston is entitled to the relief requested in its prayer for relief on Pages 13-14 of the Counterclaims.

FOR A SECOND DEFENSE

33. Pursuant to Rule 12(b)(6), SCRCP, the Counterclaims should be dismissed for failure to state a claim.

FOR A THIRD DEFENSE

34. North Charleston lacks standing to assert a violation of section 5-3-150(1)(2) of the South Carolina Code by way of counterclaim against the City.

FOR A FOURTH DEFENSE

35. North Charleston is barred from recovery by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

36. North Charleston is barred from recovery by the doctrine of estoppel.

FOR A SIXTH DEFENSE

37. North Charleston is barred from recovery by the doctrine of laches.

FOR A SEVENTH DEFENSE

38. The City substantially complied with section 5-3-150(1)(2) of the South Carolina Code.

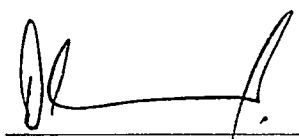
FOR AN EIGHTH DEFENSE

39. North Charleston is barred from the applicable statute of limitations from recovering under its Counterclaims.

RESERVATION

40. The City reserves its right to supplement its defenses to the Counterclaims on the basis of matters revealed during the course of discovery and/or pretrial proceedings.

WHEREFORE, having set forth its reply, the City prays for an Order granting the relief requested in the Complaint, dismissing the Counterclaims, and awarding the City costs and disbursements in this action, and for such other and further relief as the Court may deem appropriate.



Frances I. Cantwell
S.C. Bar No. 0001121
Corporation Counsel
cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr
S.C. Bar No. 0006802

E-mail: mcqueeneyd@charleston-sc.gov

CITY OF CHARLESTON
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Plaintiff City of Charleston

June 6, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THE CITY OF CHARLESTON, Plaintiff, v. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2018-CP-10-2539 **ANSWER OF MILLBROOK PLANTATION, LLC**

FILED
2018 JUL -9 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant Millbrook Plantation, LLC, ("Millbrook") answers the Complaint of the Plaintiff City of Charleston, as follows.

Except as specifically admitted, modified or explained herein, each and every allegation in the Plaintiff's Complaint is expressly denied.

1. Upon information and belief, Defendant admits the allegations in Paragraphs 1, 2, 3, 6, 12, 20, 33, 34, 35, 36 and 41 of Plaintiff's Complaint.
2. Upon information and belief, Defendant denies the allegations in Paragraphs 5, 7, 8, 9, 10, 11, 15, 23, 24, 25, 26, 27, 28, 29, 40, 44, 46, 48 and 50 of Plaintiff's Complaint.
3. Defendant lacks sufficient information to answer the allegations of Paragraphs 21, 22, 30, 31 and 32 of Plaintiff's Complaint and so denies them.
4. Paragraphs 4, 38, 39, 42 and 43 purport to set forth procedural and / or legal conclusions which require no response from Defendant. To the extent a response is required, these allegations are denied.

5. Responding to the allegations in Paragraphs 14 Defendant craves reference to the ordinance language described in the allegation and denies any allegations inconsistent with same.
6. Responding to Paragraph 16, 17 and 18, Defendant admits these events took place on the dates given, but denies they were lawful, valid or enforceable.
7. Responding to Paragraph 19, Defendant admits that on December 21, 2017, the City Council of North Charleston gave first reading to Ordinance No. 2017-083.
8. Responding to Paragraph 37, Defendant admits the City Council of North Charleston adopted Ordinance No. 2018-017 on March 22, 2018.
9. Responding to Paragraph 45, 47 and 49, Defendant reiterates its earlier responses.
10. Defendant denies the allegations in the Plaintiff's prayer for relief.

FURTHER RESPONDING AND
AS A FIRST AFFIRMATIVE DEFENSE

11. The City of Charleston lacks standing to challenge any annexation of this property under the 100% petition method set forth in S.C. Code Ann. § 5-3-150(3), as it is a non-statutory party that is an "outsider" to the annexation.

FURTHER RESPONDING AND
AS A SECOND AFFIRMATIVE DEFENSE

12. The City of North Charleston had completed its annexation of the property owned by Millbrook Plantation, LLC prior to first reading of the City of Charleston's ordinance attempting to annex the property owned by Millbrook Plantation, LLC, so that the Millbrook Plantation, LLC property was no longer eligible for annexation by the City of Charleston and any attempted annexation at that time was invalid, void and of no effect.

13. The City of North Charleston began the annexation process of the property of Millbrook Plantation, LLC before the City of Charleston.

FURTHER RESPONDING AND AS A THIRD AFFIRMATIVE DEFENSE

14. Plaintiff fails to state facts sufficient to constitute a cause of action and, therefore, Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FURTHER RESPONDING AND AS A FOURTH AFFIRMATIVE DEFENSE

15. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of Unclean Hands.

FURTHER RESPONDING AND AS A FIFTH AFFIRMATIVE DEFENSE

16. To the extent that Plaintiff failed to comply with the applicable statute of limitations, Plaintiff's claims are barred against Defendant.

FURTHER RESPONDING AND AS A SIXTH AFFIRMATIVE DEFENSE

17. Plaintiff's claims may be barred by the equitable doctrines of Waiver, Estoppel, and/or Laches.

FURTHER RESPONDING AND AS A SEVENTH AFFIRMATIVE DEFENSE

18. By using the 75% method to include the Millbrook Parcel, over the objections of Defendant Millbrook, when the three property owners could have annexed into the City of Charleston using the 100% annexation method, Plaintiff took the property of Defendant Millbrook for purposes other than public use, without justification, without due process and without just compensation.

FURTHER RESPONDING AND
AS AN EIGHTH AFFIRMATIVE DEFENSE

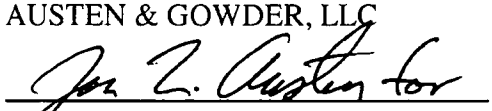
19. To the extent applicable, Defendant raises all affirmative defenses required by Rule 8(c), SCRCP.

FURTHER RESPONDING AND
AS AN NINTH AFFIRMATIVE DEFENSE

20. Defendant reserves and specifically does not waive any and all such affirmative defenses which may become apparent through the course of discovery.

WHEREFORE, having fully answered the complaint and having stated its affirmative defenses, Defendant Millbrook Plantation, LLC prays for an Order declaring that its annexation into the City of North Charleston was accomplished and final as of the adoption of the City of North Charleston's ordinance dated December 28, 2017 and as amended and supplemented on March 22, 2018 and that the purported later annexation by the City of Charleston of this property is invalid, void and of no force or effect, enjoining the City of Charleston from exercising any governmental authority over the Millbrook Plantation, LLC property, awarding its attorneys' fees as well as the costs and disbursements of this matter and for such other and further relief as the Court deems just and proper.

AUSTEN & GOWDER, LLC



W. Andrew Gowder, Jr. (S.C. Bar #7895)
1629 Meeting Street, Suite A
Charleston, South Carolina 29405
Phone: 843-727-2229
andy@austengowder.com
Counsel for Defendant

July 6, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 18-CP-10-846
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	))))))))))	**MILLBROOK PLANTATION, LLC'S MOTION TO DISMISS**

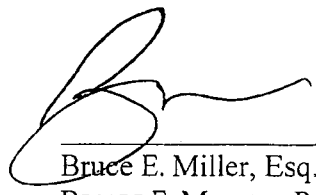
FILED
2018 OCT -4 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT

TO: FRANCES I. CANTWELL, ESQ. AND DANIEL S. MCQUEENEY, JR., ESQ.: ATTORNEYS FOR PLAINTIFF

Defendant, Millbrook Plantation, LLC, ("Millbrook"), by and through its undersigned counsel, moves pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an order dismissing this case on the grounds that Plaintiff City of Charleston ("Charleston") lacks Standing to challenge this annexation. This Motion is based upon the pleadings, a Memorandum in Support to be filed, and oral argument of counsel.

Millbrook also requests the Court to award its reasonable attorneys' fees and costs in defending this action and prosecuting this motion and for such other and further relief as the Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]



Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR MILLBROOK PLANTATION, LLC

CHARLESTON, SC

October 3, 2018

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 18-CP-10-2539 **MILLBROOK PLANTATION, LLC'S MOTION TO DISMISS**

FILED
2018 OCT -4 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT

TO: FRANCES I. CANTWELL, ESQ. AND DANIEL S. MCQUEENEY, JR., ESQ.; ATTORNEYS FOR PLAINTIFF

Defendant, Millbrook Plantation, LLC, ("Millbrook"), by and through its undersigned counsel, moves pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an order dismissing this case on the grounds that Plaintiff, City of Charleston ("Charleston") lacks Standing to challenge this annexation. This Motion is based upon the pleadings, a Memorandum in Support to be filed, and oral argument of counsel.

Millbrook also requests the Court to award its reasonable attorneys' fees and costs in defending this action and prosecuting this motion and for such other and further relief as the Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR MILLBROOK PLANTATION, LLC

CHARLESTON, SC

October 3, 2018

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 18-CP-10-846
CITY OF CHARLESTON, Plaintiff, vs. CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION, LLC, Defendants.	)	CASE NO. 18-CP-10-2539

FILED
2018 OCT 23 AM 11:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

MILLBROOK PLANTATION, LLC'S
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

Defendant, Millbrook Plantation, LLC ("Millbrook"), by and through its undersigned counsel, hereby submits its memorandum in support of its Motion to Dismiss in these two (2) actions[1] filed by the City of Charleston ("CHS").

NATURE OF CASE

CHS has filed two (2) actions against City of North Charleston ("NC") and Millbrook alleging that its annexation of Millbrook was illegal. Millbrook has filed a Motion to Dismiss,

[1] CHS, in its Answer in 2018-CP-10-2539, ¶ 43, it acknowledged that it would consent to these actions being consolidated.

pursuant to SCRCP 12(b)(6), on the grounds that CHS has no standing to challenge a 100% annexation because the State of South Carolina, through the Attorney General, is the only party who can challenge a 100% annexation.

LEGAL STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). "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." *Id.* at 395, 645 S.E.2d at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). *Patterson v. Witter*, Opinion No. 27841, Supreme Court of SC (September 5, 2018).

ALLEGATIONS OF COMPLAINTS

- 12-28-17[2]: NC adopted an ordinance annexing Millbrook. #846, ¶¶ 4, 15
- 03-22-18: NC adopted an ordinance, which modified the above ordinance / annexation of Millbrook by removing the 100' strip of land located at the street end of Millbrook. #2539, ¶¶ 4, 37
- 04-10-18: CHS adopted an ordinance annexing Millbrook pursuant to a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which includes Millbrook. #2539, ¶¶ 15, 18

[2] CHS committed several scrivener's errors in its Complaint when it noted events occurring in December 2018, when it meant 2017.

ARGUMENT

This standing issue has been directly addressed in *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991). *Quinn's* facts are very similar to the present action. City of Columbia, like NC, had adopted an ordinance approving a 100% annexation of land in the Harbison area. Irmo[3], like CHS, attempted to adopt an ordinance annexing the same land through the 75% method. Columbia filed a 12(b)(6) motion to dismiss. The court stated, "The sole issue we need address is that of Respondents' *standing*." *Id.*, at 406, 401 S.E.2d at 166 (emphasis added). The court then analyzed the allegations as follows:

> City's annexation of this property was pursuant to subsection (3) of S. C. Code Ann. § 5-3-150, the "100% method," which provides, in part: any area or property which is contiguous to a city or town may be annexed to the city or town by filing with the municipal governing body a petition signed [***3] by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed . . . the annexation shall be complete and [an] . . . election. . . shall not be required.
>
> Unlike subsection (1) of § 5-3-150, the "75% method," subsection (3) makes no provision for aggrieved *residents* to challenge an annexation.

Id., at 406-07, 401 S.E.2d at 166.

Thus, just like City's (Columbia's) annexation was complete upon the enactment of the ordinance, Millbrook's annexation into North Charleston was complete on December 28, 2017. The 100' strip was then carved out of North Charleston's property on March 22, 2018. All of this was completed prior to CHS adopting its ordinance on April 10, 2018. CHS lacks standing to challenge this 100% annexation.

South Carolina courts have even made the standing issue even clearer in a later action in

[3] Irmo was a respondent with *Quinn*.

which CHS was a party. Not only has the South Carolina Supreme Court ruled that a municipality has no standing to challenge a 100% annexation, but held "the only non-statutory party which may challenge a municipal annexation is the State, through a *quo warranto* action." *St. Andrews Pub. Serv. Dist. V. City Council of the City of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002).

In a more recent action, the South Carolina Court of Appeals followed the lead of our supreme court.

> "To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sloan v. Greenville Cty.*, 356 S.C. at 547, 590 S.E.2d at 347 (*quoting Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001)). "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception." *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).

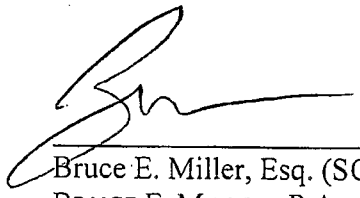
Vicary v. Town of Awendaw, 417 S.C. 631, 636, 790 S.E.2d 787, 790 (Ct. App.)

Thus, CHS not only lacks the essential requirement of standing in this action, the only party to challenge the annexation by NC is the State of South Carolina. CHS is not the State; thus, this court should grant Millbrook's motion to dismiss.

CONCLUSION

South Carolina Supreme Court has made clear that CHS has no standing to challenge the completed annexation by NC. The only party able to challenge this annexation is the State of South Carolina. CHS knew this[4] when it filed these actions. This court should grant Millbrook's motion to dismiss and award its reasonable attorneys' fees and costs for filing, briefing, and arguing this motion, along with any further relief from this court.

[4] Not only was CHS a party in *St. Andrews*, but it was also represented by Ms. Cantwell, one of its attorneys in this action.



Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR MILLBROOK PLANTATION, LLC

CHARLESTON, SC

October 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

FILED
2018 OCT 23 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

Plaintiff City of Charleston's Memorandum in Opposition to Defendant Millbrook Plantation LLC's Motion to Dismiss

In this annexation litigation, Defendant Millbrook Plantation LLC ("Millbrook") moved to dismiss the complaints filed in Case No. 2018-CP-10-0846 ("Millbrook I") and Case No. 2018-CP-10-2539 ("Millbrook II"), alleging that Plaintiff City of Charleston ("Charleston") lacks standing to challenge the purported annexation of Millbrook's property (the "Millbrook Tract") by the City of North Charleston ("North Charleston"). Charleston hereby opposes the motions to dismiss and submits this memorandum in opposition thereto.

As set forth in the complaints,[1] Charleston annexed a portion of the Millbrook Tract in 2005. (Ex. A, ¶ 9; Ex. B, ¶ 14). On December 19, 2017, Charleston began the process of annexing the remainder of the Millbrook Tract. (Ex. A, ¶ 11; Ex. B, ¶ 16). North Charleston did not commence the process of attempting to annex the Millbrook Tract until December 21, 2017. (Ex. A, ¶14; Ex. B, ¶ 19). Charleston completed its annexation of the remainder of the Millbrook Tract on April 10, 2018. (Ex. A, ¶ 13; Ex. B, ¶ 18).

In the meantime, North Charleston adopted (1) an ordinance attempting to annex the entire Millbrook Tract (the "First North Charleston Ordinance")—including the portion annexed into Charleston in 2005; and (2) an ordinance attempting to amend the First North Charleston Ordinance to omit the portion of the Millbrook Tract annexed into Charleston in 2005 (the "Second North Charleston Ordinance"). (Ex. A, ¶ 15, ¶ 19.a; Ex. B, ¶ 20, ¶ 37).

Charleston's standing to challenge North Charleston's attempted annexation of the Millbrook Tract rests upon multiple bases, including without limitation the infringement of Charleston's statutory rights to exercise sole and exclusive jurisdiction over the portion of the Millbrook Tract annexed in 2005 and Charleston's right to complete the annexation of the remainder of the Millbrook Tract. As a result, Millbrook's motions to dismiss should respectfully be denied.

STATEMENT OF FACTS

Millbrook owns approximately 31 acres of real property, referred to herein as the "Millbrook Tract," located on South Carolina Highway 61 ("Highway 61") in Charleston County, South Carolina. (Ex. A, ¶ 4; Ex. B, ¶ 4). In 1998, the General Assembly designated this portion of

[1] A copy of Charleston's complaint in Millbrook I is attached hereto as Exhibit A. A copy of Charleston's complaint in Millbrook II is attached hereto as Exhibit B.

Highway 61, which dates back to colonial times, as a South Carolina Scenic Byway, subject to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee for Scenic Byways pursuant to Sections 57-3-110 and 57-23-60. See S.C. Code Ann. § 57-23-230(A).

On May 10, 2005, the City Council of Charleston adopted Ordinance No. 2005-093, annexing a portion of the Millbrook Tract, described as "an area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of [Highway 61] . . . identified as [TMS] 361-00-00-006 . . . ." (Ex. A, ¶ 9; Ex. B, ¶ 14). There has never been any challenge to this annexation.

Pursuant to section 5-3-150(1) of the South Carolina Code, sometimes called the "75% Annexation Method," the City Council of Charleston received a petition signed by seventy-five percent (75%) of the freeholders owning at least seventy-five percent (75%) of the assessed valuation of certain properties located in the area, including the Millbrook Tract, into the City of Charleston. (Ex. A, ¶ 10; Ex. B, ¶ 15). Under the 75% Annexation Method, a public hearing is required to be held, with not less than thirty (30) days' notice of the hearing required. See S.C. Code Ann. § 5-3-150(1)(6). On December 19, 2017, the City Council of Charleston voted to accept the petition and authorized a public hearing on it. (Ex. A, ¶ 11; Ex. B, ¶ 16).

The City Council of Charleston conducted a public hearing on the annexation petition on January 23, 2018, and gave first reading to an ordinance to annex the properties described in the petition. (Ex. A, ¶ 12; Ex. B, ¶ 17). On April 10, 2018, the City Council of Charleston gave final reading to the ordinance annexing the properties (the "Charleston Annexation Ordinance"), including the Millbrook Tract. (Ex. A, ¶ 13; Ex. B, ¶ 18).

In the meantime, pursuant to section 5-3-150(3) of the South Carolina Code, known as the "100% Annexation Method," on December 21, 2017, two (2) days after Charleston had accepted the annexation petition and authorized the statutorily-prescribed public hearing on the annexation of the Millbrook Tract, the City Council of North Charleston gave first reading to an ordinance purporting to annex the Millbrook Tract, including the portion annexed by Charleston in 2005. (Ex. A, ¶ 14; Ex. B, ¶ 19). On December 28, 2017, the City Council of North Charleston gave final reading to the ordinance purporting to the First North Charleston Ordinance. (Ex. A, ¶ 15, ¶ 19.a; Ex. B, ¶ 20).

Pursuant to section 5-3-270 of the South Carolina Code, on February 15, 2018, Charleston filed a notice of intent to contest the First North Charleston Ordinance with the Charleston County Clerk of Court. (Ex. A, ¶ 17; Ex. B, ¶ 33). On February 16, 2018, Charleston filed and served the notice of intent with the North Charleston Clerk of Court. (Ex. A, ¶ 17; Ex. B, ¶34). On March 27, 2018, Charleston filed its summons and complaint in Millbrook I, challenging the First North Charleston Ordinance. (Ex. A, p. 1).

On March 22, 2018, North Charleston adopted the Second North Charleston Ordinance, purporting to amend or supplement the First North Charleston Ordinance by removing the portion of the Millbrook Tract annexed to Charleston in 2005. (Ex. B, ¶ 37). As a result, on May 18, 2018, Charleston filed a notice of intent to challenge the Second North Charleston Ordinance with the Clerk of Court for Charleston County and the Clerk of Council for the City of North Charleston. (Ex. B, ¶ 6). On the same day, Charleston filed Millbrook II, challenging the validity and efficacy of the Second North Charleston Ordinance. (Ex. B, p. 1).

A basis of the contests is that Charleston had acquired prior jurisdiction to annex the Millbrook Tract by virtue of having accepted a petition that included the Tract and having

authorized and noticed a public hearing thereon before North Charleston took any action to annex the Millbrook Tract. (Ex. A, ¶ 5; Ex. B, ¶ 7). Another basis of the contests was that the First North Charleston Ordinance included a portion of the Millbrook Tract annexed by Charleston in 2005. (Ex. A, ¶ 5). Further, as Charleston alleges, the annexations create a dispute about the correct boundaries between the City of Charleston and the City of North Charleston, and additionally create confusion due to North Charleston's purported annexation of property over which the City already acquired jurisdiction. (Ex. B, ¶¶ 8-9). With respect to the Second North Charleston Ordinance, Charleston asserts that North Charleston lacked the authority to amend or supplement an ordinance it had no authority to pass in the first place. (Ex. B, ¶ 39).

Subsequently, Millbrook filed motions to dismiss the complaints based on a purported lack of standing. For purposes of these motions to dismiss, Millbrook alleged in its answer that Charleston did not have standing to contest the First North Charleston Ordinance and that the Charleston Annexation Ordinance was invalid, because, by the time it was ratified by Charleston, the Millbrook Tract had been annexed to North Charleston.

STANDARD OF REVIEW

"Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action." Baird v. Charleston Cty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Id. "The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory." Id.

ARGUMENT

I. By alleging an infringement of its own statutory and proprietary rights, Charleston has standing to challenge North Charleston's attempted annexation of the Millbrook Tract, warranting a denial of Millbrook's motion to dismiss.

North Charleston attempted to annex the Millbrook Tract twice under the auspices of section 5-3-150(3) of the South Carolina Code, the so-called "100% Annexation Method." "[A]ny area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation." S.C. Code Ann. § 5-3-150(3).

"In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights." St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002); see also State v. City of Columbia, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992) (explaining that "the challenging party must assert an infringement of its own proprietary interests or statutory rights in order to establish standing under statutory provisions governing challenges to the one hundred percent landowner petition method of annexation."). Absent such infringement, the only party who may contest an annexation under the 100% petition method is the State, acting in the public interest. Cf. State ex rel. Condon v. City of Columbia, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000) ("We hold that the State, provided it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own.").

There is no question that, in Millbrook I and Millbrook II, Charleston alleges that the First and Second North Charleston Ordinances infringe upon Charleston's own statutory and proprietary rights over the Millbrook Tract.

The First North Charleston Ordinance included property that had been in Charleston for over ten years. (Ex. A, ¶ 9; Ex. B, ¶ 14). On May 10, 2005, Charleston ratified Ordinance No.

2005-93, annexing a corridor along Highway 61. (Ex. A, ¶ 9; Ex. B, ¶ 14). The corridor included a portion of the Millbrook Tract. (Ex. A, ¶ 9; Ex. B, ¶ 14). Thus, Charleston availed itself of the statutory authority under section 5-3-150 to expand its boundaries to include a portion of the Millbrook Track in 2005. (Ex. A, ¶ 9; Ex. B, ¶ 14). There was no challenge or other contest to Ordinance No. 2005-093, and the time by which to assert such a challenge or contest had long since passed when North Charleston sought to annex the Millbrook Tract.

Thus, since 2005, Charleston has had the statutory right to exclusive jurisdiction over this property, as well as proprietary functions and interests of governmental ominion and control over this property, to include matters pertaining to taxation, land use, and the like. See, e.g., S.C. Code Ann. § 5-7-30 (listing municipality's statutory rights with respect to property within its boundaries); S.C. Code Ann. § 5-21-110 (right to levy and collect taxes on personal and real property); S.C. Code Ann. § 5-7-80(1) (authority to abate nuisances); S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee).

North Charleston's attempt to annex the Millbrook Tract would also deprive Charleston of its constitutional right of "municipal consent." See S.C. Const. Ann. Art. VIII, § 15 ("No law shall be passed by the General Assembly granting the right to construct and operate in a public street or on public property a street or other railway, telegraph, telephone or electric plant, or to erect water, sewer or gas works for public use, or to lay mains for any purpose, or to use the streets for any other such facility, without first obtaining the consent of the governing body of the municipality in control of the streets or public places proposed to be occupied for any such or like purpose . . . ."); see also Aiken v. Aiken Elec. Coop., 305 S.C. 466, 468, 409 S.E.2d 403, 404 (1991) ("We find

that the City was within its constitutional authority to designate an electric service supplier for new customers in the annexed area and to enact ordinances affecting other suppliers of electricity.").

North Charleston's attempts to annex property already within Charleston additionally infringes upon Charleston's statutory rights protected by the annexation statutes themselves. For example, section 5-3-150(1) gives Charleston the statutory right to annex property utilizing the 75% Annexation Method. Cf. Lancaster v. Town Council of Brookland, 160 S.C. 150, 156, 158 S.E. 233, 236 (1931) (recognizing rights of freeholders who sign annexation petition against special legislation permitting annexation when less than majority of freeholders sign the petition). Moreover, section 5-7-280 of the South Carolina Code prescribes the only procedure under which a municipality's corporate limits may be reduced. North Charleston's ordinances ignore this statutory process.

North Charleston's attempts finally infringe upon the City's proprietary rights as to the Millbrook Tract. See Black's Law Dictionary, p.1219 (6th Ed.) (defining *proprietary right* to include an interest or right of one who exercises control over property and *proprietary function* being functions a city may perform when considered in the best interests of the municipality).

In short, Charleston has statutory and proprietary rights in and to the properties within its corporate limits. Consequently, Charleston has standing to protect those rights from infringement by other municipalities, such as North Charleston.

II. Millbrook's challenge to standing goes to merits of the lawsuit in that Charleston commenced the annexation of the Millbrook Tract prior to North Charleston commencing its own annexation. Thus, North Charleston's annexation was precluded by the "prior jurisdiction rule."

Both the First North Charleston Ordinance and the attempt to correct it came too late, the reason being that, by that time, Charleston had already initiated proceedings to annex the Millbrook Tract.

On December 19, 2017, Charleston received a petition to annex an area that included the Millbrook Tract. (Ex. A, ¶ 10; Ex. B, ¶ 15). On that very day, the City Council of Charleston voted to accept the petition and authorized the noticing of the public hearing as required by section 5-3-150(1)(6) of the South Carolina Code. (Ex. A, ¶ 11; Ex. B, ¶ 16). North Charleston did not take any action towards the annexation of the Millbrook Tract until the evening of December 21, 2017. (Ex. A, ¶ 14; Ex. B, ¶ 19).

When competing municipalities attempt to annex the same property at approximately the same time, the "prior jurisdiction rule" provides that the municipality which undertakes the first procedural step in the process of annexation is entitled to jurisdiction to complete that process.[2] In facts nearly identical to those before the Court, the Supreme Court of North Carolina, in City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984), held that the City of Burlington, having taken the first procedural step to annex property that the Town of Elon College also sought to annex, was entitled to the protection of the rule, despite the Town of Elon having completed its annexation before the City of Burlington did. The Court held:

> The doctrine of prior jurisdiction is discussed in 2 McQuillin, Municipal Corporations § 7.22a (3d ed. 1966), which reads, in pertinent part, as follows:

[2] The prior jurisdiction rule has not been adopted or rejected by the appellate courts of this State. The Supreme Court of South Carolina declined to rule on its efficacy in City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994), explaining: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." City of Columbia v. Town of Irmo, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994). "The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority." Id., citing 1 Antieau Municipal Corporation Law § 1A.16 (1993) and 2 McQuillan Municipal Corporation § 7.22A (1966). "Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City [of Columbia]'s Ordinances 90-30 and 90-31." Id. (emphasis in original). The application of the rule necessarily involves reaching the merits of the validity of the annexations undertaken by both Charleston and North Charleston, an exercise arguably beyond the scope of the motions before the Court.

> The rule that among separate equivalent proceedings relating to the same subject matter, that one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted, applies, generally speaking, to and among proceedings for the municipal incorporation, annexation, or consolidation of a particular territory, *i.e.*, in proceedings of this character, while the one first commenced is pending, jurisdiction to consider and determine others concerning the same territory is excluded. Thus, where two or more bodies or tribunals have concurrent jurisdiction over a subject matter, the one first acquiring jurisdiction may proceed, and subsequent purported assumptions of jurisdiction in the premises are a nullity.
>
> We note at the outset that the prior jurisdiction rule is the majority rule and is applied "universally" in "conflicts between two municipalities attempting to assert jurisdiction over the same territory." Comment, Municipal Corporations: Prior Jurisdiction Rule, 7 W.F.L. Rev. 77, 79 (1970) . . . . Additionally, we recognize that the prior jurisdiction rule is based upon priority in time and "ordinarily is determined by the time of the commencement or initiation of the proceedings, and not by the time of completion thereof." 2 McQuillin, supra at 378. The time of commencement of proceedings, for purposes of the rule, is the "taking of the first mandatory public procedural step in the statutory process for . . . annexation of territory." Id.
>
> Applying the foregoing principles to the facts of the instant case leads inevitably and undisputedly to the conclusion that the plaintiff City of Burlington, by adopting its Resolution of intent to Annex on 19 April, 1983, took the "first mandatory public procedural step in the statutory process" and thereby acquired prior jurisdiction of the disputed areas. Consequently, any attempts by Town of Elon to acquire jurisdiction were null and void.

Burlington, 314 S.E.2d at 537 (N.C. 1984).[3]

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[3] See also McCune v. Phoenix, 317 P.2d 537, 542 (Ariz. 1957) ("When a conflict in claimed jurisdiction of two municipalities over the same territory arises, the rule is that the one first acquiring jurisdiction has the right to proceed in the exercise thereof."); Couch v. Fort Worth, 287 S.W.2d 255, 258 (Tex. Civ. App. 1956); see also McCune v. Phoenix, 317 P.2d 537, 542 (Ariz. 1957) ("The municipal authority, be it one having a legal existence or in the process of organization, which first commences legal proceedings asserting authority over a given territory

While the Town of Elon College asserted that its annexation of the disputed area was "voluntary," such that it was not "equivalent" to the involuntary annexation by the City of Burlington, the Court concluded:

> . . . For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town the landowners prefer. In fact, it appears to the very essence of the *involuntary* annexation procedures that the affected landowners have not choice, as long as the annexing body complies with the applicable statutes.

Id. at 538 (emphasis in original).

As applied here, Charleston is entitled to the protection of the rule because it had taken the first mandatory public procedural steps of accepting the petition and calling for the statutorily required public hearing, all before North Charleston ever acted on the initial petition for its Annexation Ordinance. Cf. Sherman v. Reavis, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979) ("An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.").

---

thereby acquires a jurisdiction over the same which cannot thereafter be defeated by a subsequent attempted exercise of jurisdiction by a similar municipal organization."); Daytona Beach v. Port Orange, 165 So. 2d 768, 771 (Fla. Dist. Ct. App. 1964) ("Where two inconsistent petitions involving the same territory are pending, it is proper to decline to consider the later one until there is a disposition of the earlier one . . . . The same principle governs priority of annexation privileges between existing municipalities attempting to annex the same territory:"); State ex rel. Mercer v. Crestwood, 80 N.W.2d 489, 495 (Iowa 1957) ("Annexation and incorporation proceedings are clearly in the legislative field, and since the first legislative step was taken by Windsor Heights town council on September 19, 1955, 7 days before filing petition for incorporation by residents of the area, exclusive jurisdiction over the territory was established in Town of Windsor Heights."); Lincolnshire v. Highbaugh Realty Co., 278 S.W.2d 636, 637 (Ky. 1955) ("It seems to be the general rule that in the case of rivalry between two annexing municipalities the one that takes the first 'public' procedural step takes priority.").

III. Millbrook's challenge to standing goes to merits of the lawsuit in that, if North Charleston's attempt to annex is invalid, then the Charleston Annexation Ordinance is valid.

North Charleston's attempt to "cure" the defect in the First North Charleston Ordinance through an amended ordinance is both telling and for naught. It is telling in that it is an admission that the First North Charleston Ordinance was defective. It is for naught because North Charleston was without authority to cure the defect.

"If an ordinance enacted by a municipality is beyond its powers, no subsequent action in relation thereto by the municipality can give it validity." Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992). "Procedural or technical deficiencies in an ordinance may be corrected by a subsequent ordinance, but not substantive defects." Id.

The Court in Bostick allowed a curative ordinance directed at technical deficiencies, such as a date on an annexation petition. Id. However, the Court also held that errors pertaining to the property description were substantive and beyond validation by a corrective ordinance. See id. ("[T]he omission of descriptions for the area to be annexed and failure to also shade such property on the plat which shows shaded the area to be annexed is a substantive defect in the petitions.").

In this case, North Charleston exceeded its authority in including in its annexation petition and ratifying ordinance property in Charleston. No amendatory ordinance could cure the defect.

It is also well settled that North Charleston's unauthorized attempt to annex property within the corporate limits of Charleston is a substantive defect in the First North Charleston Ordinance that could not have been cured by the Second North Charleston Ordinance: "While [a] legislature may by express statutory enactment confer power upon a municipality to annex all or part of another municipality adjacent to it, in absence of legislative enactment authorizing annexation of adjacent municipal territory in direct terms, it is generally held that a municipality does not have authority to extend its limits into organized areas." Forest Acres v. Seigler, 224 S.C. 166, 174, 77

S.E.2d 900, 903 (1953). In Forest Acres, the Supreme Court of South Carolina further held that, for land in Forest Acres to be transferred to another municipality, adherence to the detachment procedure set forth in the annexation statutes was required. Id. North Charleston did not institute any detachment procedure.

IV. Charleston has "Barry Tract" standing as an annexing municipality to challenge a simultaneous or prior annexation by North Charleston.

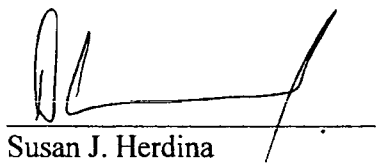
Precedent of this State also supports standing being accorded to a municipality challenging an annexation of another municipality that includes the same territory. In Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008), the Supreme Court of South Carolina considered the merits of "an annexation dispute between neighboring municipalities." "At some point in 2005, both the Town of Summerville and the City of North Charleston desired to annex a portion of real property known as the Barry Tract." Id. "In April 2005, Summerville enacted an ordinance declaring the Barry Tract annexed." Id. "Believing Summerville's annexation to be invalid, North Charleston enacted its annexation ordinance in June 2005." Id. "The municipalities sued each other, and the cases were consolidated for trial." Id.

The language of this decision does not indicate that standing was litigated; however, standing being jurisdictional, had the Supreme Court deemed standing an issue, it most assuredly would have raised it. See also Glaze v. Grooms, 324 S.C. 249, 235, 478 S.E.2d 841, 845 (1996) (finding the City of Charleston had standing to contest incorporation of the Town of James Island because areas of the Town included lands already in Charleston); St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605 n.2, 564 S.E.2d 647, 648 (2002) (recognizing, that, in Glaze, "the City had standing to challenge James Island's annexation not because James Island 'crossed' the City's property, but because that municipality purported to annex property already within the City's borders.").

As the Court in City of Elkhorn v. City of Omaha, 725 N.W.2d 792, 807 (Neb. 2007), so succinctly states: "A municipality that is the crosshairs of annexation has standing to challenge the annexation."

CONCLUSION

For the foregoing reasons, it is submitted that Charleston has standing to contest North Charleston's attempts to annex the Millbrook Tract. Millbrook's motions to dismiss should be denied.



Susan J. Herdina
Corporation Counsel

Daniel S. McQueeney, Jr.
Assistant Corporation Counsel

Frances I. Cantwell
Of Counsel

50 Broad Street
Charleston, South Carolina 29401

Attorneys for the City of Charleston

October 23, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2131
MILLBROOK PLANTATION LLC,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF CHARLESTON,	)	
	)	
DEFENDANT.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO DISMISS

Plaintiff City of Charleston ("Charleston") has instituted two actions contesting the purported annexations undertaken by Defendant City of North Charleston ("North Charleston") of a tract of land owned by Defendant Millbrook Plantation, LLC (the "Millbrook Tract"), over which Charleston claims jurisdiction.

On October 4, 2018, Defendant Millbrook Plantation LLC ("Millbrook") moved to dismiss the complaints filed in Case No. 2018-CP-10-0846 ("Millbrook I") and Case No. 2018-CP-10-2539 ("Millbrook II"), contending that Charleston lacks standing to challenge North Charleston's annexation of the Millbrook Tract.[1] A hearing on the motions was held on October 24, 2018.

After having reviewed the pleadings and the memoranda submitted to the Court and considered the argument of counsel, I deny the motions. Charleston has standing to challenge North Charleston's ordinances attempting to annex the Millbrook Tract because Charleston annexed a portion of the Millbrook Tract in 2005 and because Charleston acquired the right to complete its annexation of the remainder of the Millbrook Tract on December 19, 2017, two (2) days before North Charleston took any action toward annexing the Millbrook Tract on December 21, 2017.

Additionally, North Charleston's first attempt to annex the Millbrook Tract included the portion annexed to Charleston in 2005. While North Charleston attempted to "cure" its first annexation ordinance by passing an amended ordinance, the amended ordinance does not deprive Charleston of standing because North Charleston lacked the ability to annex the Millbrook Tract in the first place.

[1] On December 19, 2018, these cases were consolidated with Millbrook's challenge to Charleston's annexation of its property, designated as Case No. 2018-CP-10-2131.

FACTUAL ALLEGATIONS

Millbrook's motions are based on Rule 12(b)(6), SCRCP, which requires this Court to base its ruling solely upon allegations set forth on the face of the complaints. See Baird v. Charleston Cty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) ("Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint."). Consequently, the following factual allegations are taken from the Millbrook I complaint ("MIC") and the Millbrook II complaint ("MIIC").

The Millbrook Tract consists of approximately 31 acres and is located on South Carolina Highway 61 ("Highway 61") in Charleston County, South Carolina. **(MIC, ¶ 4; MIIC, ¶ 4).** In 1998, the General Assembly designated this portion of Highway 61, which dates back to colonial times, as a South Carolina Scenic Byway, subjecting it to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee for Scenic Byways pursuant to Sections 57-3-110 and 57-23-60. See S.C. Code Ann. § 57-23-230(A).

More than thirteen years ago, on May 10, 2005, the City Council of Charleston adopted Ordinance No. 2005-093, annexing the portion of the Millbrook Tract lying within 100 feet of the northern boundary of Highway 61. (MIC, ¶ 9; MIIC, ¶ 14). This hundred (100) foot strip was, and remains, part of the Millbrook Tract.

On December 19, 2017, the City Council of Charleston accepted a petition to annex the remainder of the Millbrook Tract and other properties, utilizing section 5-3-150(1) of the South Carolina Code, sometimes called the "75% petition method." **(MIC, ¶ 10; MIIC II, ¶ 15).** Under the 75% petition method, a public hearing is required to be held, with not less than thirty (30) days' notice of the hearing being required. See S.C. Code Ann. § 5-3-150(1)(6). As a result, on the same

day it accepted the petition, the City Council of Charleston voted to hold a public hearing on it. **(MIC, ¶ 11; MIIC, ¶ 16).**

On December 21, 2017, two (2) days after Charleston had accepted and authorized the statutorily-required public hearing on the annexation petition for the Millbrook Tract and other properties, the City Council of North Charleston gave first reading to an ordinance to annex the Millbrook Tract, including the portion annexed to Charleston in 2005. **(MIC, ¶ 14; MIIC, ¶ 19).** North Charleston's annexation was undertaken pursuant to section 5-3-150(3) of the South Carolina Code, known as the "100% petition method," which does not require a public hearing.

On December 28, 2017, the City Council of North Charleston gave final reading to Ordinance No. 2017-083 (the "First North Charleston Ordinance"), purporting to annex the entire Millbrook Tract, including the portion annexed into Charleston in 2005. **(MIC, ¶ 15, ¶ 19.a; MIIC, ¶ 20).**

The City Council of Charleston held a public hearing on the annexation petition for the Millbrook Tract and other properties on January 23, 2018, and gave first reading to an ordinance to annex the properties described in the petition. **(MIC, ¶ 12; MIIC, ¶ 17).** In February 2018, Charleston filed its notice of intent to challenge the First North Charleston Ordinance under section 5-3-270 of the South Carolina Code. **(MIIC, ¶¶ 33-34).**

On March 22, 2018, the City Council of North Charleston adopted Ordinance No. 2018-017 (the "Second North Charleston Ordinance"), purporting to amend or supplement the First North Charleston Ordinance by removing the portion of the Millbrook Tract previously annexed to Charleston in 2005. **(MIIC, ¶ 37).**

At its meeting held on April 10, 2018, the City Council of Charleston adopted an ordinance annexing the Millbrook Tract and other properties (the "Charleston Annexation Ordinance"). **(MIIC, ¶ 18).**

In Millbrook I, Charleston alleges that the First North Charleston Ordinance was invalid because it included territory previously annexed to Charleston and because Charleston acquired the right to complete the annexation of the remainder of the Millbrook Tract by taking the first procedural step toward annexing it on December 19, 2017. **(MIC, ¶ 19).** In Millbrook II, Charleston challenges the Second North Charleston Ordinance, again because Charleston had taken the first procedural step toward annexing the Millbrook Tract on December 19, 2017, prior to North Charleston taking any action to annex the property, and also because the Second North Charleston Ordinance could not "cure" the defect in the First North Charleston Ordinance. **(MIIC, ¶ 46).**

Finally, Charleston asserted standing to challenge both the First North Charleston Ordinance and the Second North Charleston Ordinance (the "Contested Ordinances") because of the confusion regarding the boundary between Charleston and North Charleston caused by North Charleston's attempt to annex property over which Charleston previously acquired jurisdiction. **(MIIC, ¶¶ 8-9).**

STANDARD OF REVIEW

Millbrook moved under Rule 12(b)(6), SCRCP, to dismiss the complaints in Millbrook I and Millbrook II. "Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action." Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Id.

"The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory." Id.

LAW/ANALYSIS

Having considered the allegations of the complaints and the inferences reasonably drawn therefrom, the Court concludes that Charleston has standing to challenge the Contested Ordinances. In reaching these conclusions, the Court holds: (1) the Contested Ordinances infringe on Charleston's statutory and proprietary interests; (2) the attempt to cure the delict of the First North Charleston Ordinance was unavailing; (3) having commenced its annexation of the Millbrook Tract before North Charleston, Charleston acquired exclusive jurisdiction to complete the annexation; and (4) precedent of this State recognizes the right of a municipality to challenge the attempted annexation of the same property by another municipality.

I. The Contested Ordinances infringe on Charleston's statutory and proprietary interests.

North Charleston attempted to annex the Millbrook Tract—twice—under the auspices of section 5-3-150(3) of the South Carolina Code the "100% petition method," which provides, in pertinent part:

> [A]ny area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete . . . .

"In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights." St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002); see also Ex parte State ex rel. Wilson, 391 S.C. 565, 579, 707 S.E.2d 402, 410 (2011) ("We made clear in St. Andrews Public Service District that a

party seeking to challenge a 100% petition annexation 'must assert an infringement of its own proprietary interests or statutory rights.'"). Absent such infringement, the only party who may contest an annexation under the 100% petition method is the State, acting in the public interest. Cf. State ex rel. Condon v. City of Columbia, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000) ("We hold that the State, provided it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own.").

In Millbrook I and Millbrook II, Charleston contends that the Contested Ordinances infringe upon its statutory and proprietary rights over the Millbrook Tract. The inferences reasonably drawn from the allegations of fact in the complaints support these contentions.

A. The Contested Ordinances infringe upon Charleston's statutory authority with respect to property in its jurisdiction granted by section 5-7-30 of the South Carolina Code.

Since annexing a portion of the Millbrook Tract in 2005, Charleston has had the statutory right to exclusive jurisdiction over this portion of the Millbrook Tract, as well as proprietary functions and interests of dominion and control over this property, to include matters pertaining to taxation, land use, and the like. Section 5-7-30 of the South Carolina Code is but one example of Charleston's statutory rights with respect to the Millbrook Tract, which include, but are not limited to, the following:

> (1) the power to "enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality";
> (2) the right to levy and collect taxes on real and personal property (see also S.C. Code Ann. § 5-21-110);
> (3) the authority to abate nuisances (see also S.C. Code Ann. § 5-7-80(1));
> (4) the right to "grant franchises for the use of public streets and make charges for them"; and
> (5) the right to "levy a business license tax on gross income . . . ."

B. The Contested Ordinances infringe upon Charleston's statutory authority with respect to comprehensive planning, zoning, and land development under Title 6 of the South Carolina Code.

Other statutory rights inure to Charleston under Title 6 of the South Carolina Code, to include rights with respect to land use, zoning, land development, comprehensive planning, and the imposition of impact fees. See S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee).

C. The Contested Ordinances infringe upon statutory rights conferred upon Charleston by the annexation statutes themselves.

North Charleston's attempt to annex property already within Charleston further infringes upon Charleston's statutory rights protected by the annexation statutes themselves. Section 5-3-150(3) of the South Carolina Code gives Charleston the statutory right to annex property utilizing the 100% petition method. In 2005, Charleston availed itself of this right to annex a portion of the Millbrook Tract. **(MIC, ¶ 9; MIIC, ¶ 14).**

Absent an agreement to adjust boundary lines between Charleston and North Charleston, the procedures prescribed in sections 5-3-280 and 5-3-285 of the South Carolina Code are the only means by which Charleston's corporate limits could be reduced. See Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953) (interpreting the predecessor to section 5-3-280 and recognizing the "substantial right recognized in plaintiff as a corporate entity, to and over its corporate territory" conferred under detachment statutes). North Charleston did not comply with these "detachment statutes."

D. The Contested Ordinances infringe upon Charleston's proprietary rights.

North Charleston's attempted annexations also infringe upon the Charleston's proprietary rights to the Millbrook Tract. See Black's Law Dictionary, p.1219 (6th Ed.) (defining *proprietary right* to include an interest or right of one who exercises control over property and *proprietary function* being functions a city may perform when considered in the best interests of the municipality).

It is evident that Charleston has statutory and proprietary rights in and to properties within its borders. These rights imbue Charleston with standing to protect them from infringement by others, including municipalities like North Charleston.

II. North Charleston's attempt to cure the defect in the First North Charleston Ordinance was unavailing.

North Charleston's attempt to "cure" the defect in the First North Charleston Ordinance by way of the Second North Charleston Ordinance falls short, the reason being that the defect in the First North Charleston Ordinance was substantive, rendering North Charleston without authority to cure it.

"If an ordinance enacted by a municipality is beyond its powers, no subsequent action in relation thereto by the municipality can give it validity." Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992). "Procedural or technical deficiencies in an ordinance may be corrected by a subsequent ordinance, but not substantive defects." Id. The Court in Bostick held that errors pertaining to the property description in an annexation petition were substantive and beyond validation by corrective ordinance: "[T]he omission of descriptions for the area to be annexed and failure to also shade such property on the plat which shows shaded the area to be annexed is a substantive defect in the petitions." Id.

The reasoning of Bostick applies here by analogy. It is settled law that North Charleston's attempt to annex property within the corporate limits of Charleston was wholly unauthorized, thus

rising to the level of a substantive defect in the First North Charleston Ordinance that could not be cured by the Second North Charleston Ordinance.

III. Charleston obtained exclusive jurisdiction to complete the annexation of the Millbrook Tract by taking the first procedural step toward annexation on December 19, 2017, two (2) days prior to North Charleston taking any step toward its own annexation.

Even if there were no substantive defect in the First North Charleston Ordinance, both the First North Charleston Ordinance and the attempt to correct it came too late. This is so because by the time North Charleston took any action on the Contested Ordinances, Charleston had already initiated proceedings to annex the Millbrook Tract.

On December 19, 2017, Charleston received a petition to annex an area that included the portion of the Millbrook Tract that had not been previously annexed to Charleston in 2005. **(MIC, ¶ 10; MIIC, ¶ 15).** On the same day, the City Council of Charleston voted to accept the petition and authorized the noticing of the public hearing required by section 5-3-150(1)(6) of the South Carolina Code. **(MIC, ¶ 11; MIIC, ¶ 16).** North Charleston did not take any action on a petition to annex the Millbrook Tract until the evening of December 21, 2017. **(MIC, ¶ 14; MIIC, ¶ 19).**

When competing municipalities attempt to annex the same property at approximately the same time, the "prior jurisdiction rule" provides that the municipality which undertakes the first procedural step in the process of annexation is entitled to jurisdiction to complete that process.

The prior jurisdiction rule has not been adopted or rejected by the appellate courts of this State. The Supreme Court of South Carolina declined to rule on its efficacy in City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994), explaining: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." Id. at 196, 447 S.E.2d at 857. "The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first

instituted, if valid, have priority." Id., citing 1 Antieau Municipal Corporation Law § 1A.16 (1993) and 2 McQuillan Municipal Corporation § 7.22A (1966). "Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City [of Columbia]'s Ordinances 90-30 and 90-31." Id. The application of the rule necessarily involves reaching the merits of the validity of the annexations undertaken by both Charleston and North Charleston, an exercise arguably beyond the scope of the motions before the Court.

In facts nearly identical to those before the Court, the Supreme Court of North Carolina, in City of Burlington v. Town of Elon College, 314 S.E.2d 534 (N.C. 1984), held that the City of Burlington, having taken the first procedural step to annex property that the Town of Elon College also sought to annex, was entitled to the protection of the rule, despite the Town of Elon having completed its annexation before the City of Burlington did. The Court explained:

> The doctrine of prior jurisdiction is discussed in 2 McQuillin, Municipal Corporations § 7.22a (3d ed. 1966), which reads, in pertinent part, as follows:
>
> > The rule that among separate equivalent proceedings relating to the same subject matter, that one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted, applies, generally speaking, to and among proceedings for the municipal incorporation, annexation, or consolidation of a particular territory, *i.e.*, in proceedings of this character, while the one first commenced is pending, jurisdiction to consider and determine others concerning the same territory is excluded. Thus, where two or more bodies or tribunals have concurrent jurisdiction over a subject matter, the one first acquiring jurisdiction may proceed, and subsequent purported assumptions of jurisdiction in the premises are a nullity.
>
> We note at the outset that the prior jurisdiction rule is the majority rule and is applied "universally" in "conflicts between two municipalities attempting to assert jurisdiction over the same territory." Comment, Municipal Corporations: Prior Jurisdiction

> Rule, 7 W.F.L. Rev. 77, 79 (1970) . . . . Additionally, we recognize that the prior jurisdiction rule is based upon priority in time and "ordinarily is determined by the time of the commencement or initiation of the proceedings, and not by the time of completion thereof." 2 McQuillin, supra at 378. The time of commencement of proceedings, for purposes of the rule, is the "taking of the first mandatory public procedural step in the statutory process for . . . annexation of territory." Id.
>
> Applying the foregoing principles to the facts of the instant case leads inevitably and undisputedly to the conclusion that the plaintiff City of Burlington, by adopting its Resolution of intent to Annex on 19 April, 1983, took the "first mandatory public procedural step in the statutory process" and thereby acquired prior jurisdiction of the disputed areas. Consequently, any attempts by Town of Elon to acquire jurisdiction were null and void.

Id. at 537.

As to the "equivalency" of voluntary and involuntary annexation proceedings, the Burlington Court concluded:

> For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town the landowners prefer. In fact, it appears to the very essence of the *involuntary* annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes.

Id. at 538 (emphasis in original).

The prior proceedings rule lays the basis for order between two competing municipalities, recognizing the right and exclusive jurisdiction of the entity having first validly initiated the annexation process to complete it. See 2 McQuillin, The Law of Municipal Corporations, § 7:39 (3d ed. Rev. 2006) ("This principle of the common law is based upon the general public policy of the promotion of the orderly administration of government and justice."). Permitting a "race to the finish line," as advocated by North Charleston, discourages municipalities from expending the necessary time and resources to evaluate annexed areas and promotes "jurisdictional shopping" by

developers seeking to maximize development rights to the detriment of the public, including future residents and business owners within such developments.

On the other hand, affording protection to a municipality taking the first procedural step toward annexation also helps ensure that municipal annexations result from thoughtful decisions, made by informed councils, after considering the impact of *any* annexation on the municipality's comprehensive plan, existing facilities, and both existing and future residents. In this respect, the General Assembly has expressed its preference for comprehensive planning, based on appropriate studies and surveys, in the field of land development law by adopting the Local Government Comprehensive Planning Enabling Act of 1994, codified in Chapter 29 of Title 6 of the South Carolina Code. See, e.g., S.C. Code Ann. § 6-29-510 (instructing local planning commissions to "develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction," based on "surveys and studies," including "an inventory of exiting conditions," "a statement of needs and goals," and "implementation strategies").

As applied here, Charleston is entitled to the protection of the rule because it had taken the first mandatory public procedural steps of accepting the petition and calling for the statutorily required public hearing, all before North Charleston ever received or acted on the initial petition for its first attempt to annex the Millbrook Tract. Cf. Sherman v. Reavis, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979) ("An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.").

IV. Precedent of this State recognizes the right of one municipality to challenge the attempted annexation of the same property by another municipality.

Finally, precedent of this State supports standing being accorded to a municipality challenging an annexation by another municipality of territory which is annexing or has annexed. See Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008) (involving competing annexations of the same property by the Town of Summerville and City of North Charleston); Glaze v. Grooms, 324 S.C. 249, 235, 478 S.E.2d 841, 845 (1996) (finding the City of Charleston had standing to contest incorporation of the Town of James Island because areas of the Town included lands already in Charleston); St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605 n.2, 564 S.E.2d 647, 648 (2002) (recognizing, that, in Glaze, "the City had standing to challenge James Island's annexation not because James Island 'crossed' the City's property, but because that municipality purported to annex property already within the City's borders.").

CONCLUSION

Based on the foregoing, Millbrook's motion to dismiss Charleston based on an alleged lack of standing is denied.

NOW, THEREFORE, in light of the foregoing it is

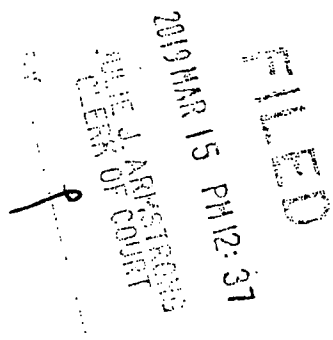
ORDERED that Millbrook's motions to dismiss Millbrook I and Millbrook II be, and hereby are, denied; and it is

SO ORDERED.

_____
Eugene C. Griffith, Jr.
Presiding Judge

_____, 2019
_____, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0846
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2131
MILLBROOK PLANTATION LLC,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF CHARLESTON,	)	
	)	
DEFENDANT.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-2539
CITY OF CHARLESTON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND MILLBROOK PLANTATION LLC,	)	
	)	
DEFENDANTS.	)	

TO: THE HONORABLE EUGENE C. GRIFFITH, JR., CITY OF NORTH CHARLESTON, AND MILLBROOK PLANTATION LLC

CITY OF CHARLESTON'S NOTICE OF MOTION AND MOTION TO RECONSIDER, ALTER OR AMEND

YOU WILL PLEASE TAKE NOTICE THAT the City of Charleston ("Charleston" or the "City"), by and through its undersigned counsel, hereby moves the Court for an order reconsidering, altering, or amending the Court's "Order Granting Millbrook's Motion to Dismiss" (the "Order") in the above-referenced cases. The Order was originally filed on March 1, 2019, and re-filed on March 5, 2019. The City received written notice of the original entry of the Order on March 4, 2019, and the City received written notice of the re-entry of the Order on March 6, 2019.

The proceedings before the Court involve contests to two (2) annexation ordinances adopted by the City of North Charleston ("North Charleston") on December 28, 2017 (the "2017 Ordinance"), and March 22, 2018 (the "2018 Ordinance"). The Court heard motions to dismiss filed by Millbrook Plantation LLC ("Millbrook"), the owner of the parcels referenced in the ordinances (collectively, the "Millbrook Parcel"). The Court granted the motions, finding that the City did not have standing to contest either ordinance.

For reasons hereafter set forth, it is respectfully submitted that the Order issued by the Court requires reconsideration, alteration, and/or amendment to the findings and holdings on standing and/or to clarify the findings and holdings with respect thereto.

ARGUMENT

I. The Order should be reconsidered, altered, or amended because the Court misinterprets Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991), and later cases by limiting standing to challenge a 100% annexation to the State of South Carolina.

For purposes of standing to challenge a 100% annexation, Quinn and its progeny divide the world into two categories: (1) "statutory" parties who have standing because they assert that the annexation infringes upon their own proprietary interests or statutory rights; and (2) "non-

statutory" parties, "outsiders," or "strangers" to the annexation, who do not or cannot assert that the annexation infringes on their own proprietary interests or statutory rights. In the latter category, only the State of South Carolina has standing to challenge an annexation, through a *quo warranto* action.

While Quinn also opened the door for "strangers" to challenge "invalid" annexations as an *exception* to the traditional standing framework, St. Andrews shut the door, at least until the Supreme Court's recent ruling in Vicary recognized that the "public importance" exception applies in at least one circumstance, to wit: when the annexing municipality engages in "nefarious conduct."

Here, the City has standing because it alleges that the 2017 and 2018 Ordinances violated the City's own proprietary interests and statutory rights by attempting to annex property already located within the City and property over which the City commenced its own legally valid annexation prior to North Charleston doing anything.

A. Quinn involved the public importance exception to the general standing framework

In the Court's analysis of standing on pages 5–11 of the Order, the Court seemingly interprets Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991), as precluding Charleston's challenges to the annexations because section 5-3-150(3), the statute authorizing so-called "100% annexations," does not accord standing to specific parties, unlike section 5-3-150(1), permitting "75% annexations."

The standing issue in Quinn turned, not on statutorily-accorded standing under the 100% annexation method, but on whether the challenged annexation was of such public importance so as to imbue standing to other interested parties—often designated as "non-statutory" parties or "strangers" to the annexation. Quinn acknowledged that, unless an ordinance was absolutely void,

it was not subject to challenge by private individuals, i.e., "non-statutory" parties, who were "strangers" or "outsiders" to the annexation. Id. at 407, 401 S.E.2d at 166. The challengers in Quinn contested the method of annexation, but did not contend the ordinance was unauthorized by law. Id. As a result, the Supreme Court held that they did not establish standing:

> Similarly, we reject the contention that the matter is of such public importance as to confer standing. Generally, unless an annexation ordinance is "absolutely void", i.e., *not authorized by law,* private individuals may not challenge its validity. *See, Annot.* 13 A.L.R.2d 1279, 1292 (1950).
>
> Here, although Respondents challenge the *method* of annexation in seeking to have it declared void, they raise no claim that it was unauthorized by law. Accordingly, we find that Respondents lack standing to challenge the ordinance.

Id. at 407, 401 S.E.2d at 166-67 (emphasis in original).

B. Case law subsequent to Quinn confirms that standing to challenge a 100% annexation is *not* limited to the State of South Carolina

In State v. City of Columbia, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992), a case arising from the same series of annexations as Quinn, the Supreme Court of South Carolina explained the existing framework for challenging 100% annexations:

> Litigation concerning the legality of the City's annexations in the St. Andrews/Irmo area previously has been before this Court. *See Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991), *County of Lexington v. City of Columbia*, 303 S.C. 300, 400 S.E.2d 146 (1991). **In these cases we held that the challenging party must assert an infringement of its own proprietary interests or statutory rights in order to establish standing under statutory provisions governing challenges to the one hundred percent landowner petition method of annexation** . . . .

(Emphasis added); see also County of Lexington v. Columbia, 303 S.C. 300, 400 S.E.2d 146, 147 (1991) ("Absent an issue of overriding public concern, a political subdivision must establish it is a real party in interest in order to maintain a suit . . . It must allege an infringement of its own

propriety interests or statutory rights to establish standing.); State ex rel. Condon v. City of Columbia, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000) ("A party may ask the court to declare his or her statutory or proprietary rights affected by the annexation in a declaratory judgment action").

C. St. Andrews overrules the application of the public importance exception articulated in Quinn, while confirming the existing general framework for statutory standing to challenge 100% annexations

The Order also relies upon the Supreme Court's decision in St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002), to support its ruling that only the State of South Carolina may challenge a 100% annexation. In St. Andrews, the Supreme Court was reviewing the decision of the Court of Appeals that held that the respondent, a public service district, had standing to contest the annexations at issue because the district alleged that the annexations were unauthorized by law, and, thus, met the public importance exception articulated in Quinn. Id. at 605, 564 S.E.2d at 648. The Supreme Court reversed the decision of the Court of Appeals and overruled the public importance exception established by Quinn. Id.

In St. Andrews, the Supreme Court laid out the requisites necessary to support standing to contest an annexation:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. **In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights**. State by State Budget & Control Bd. v. City of Columbia, 308 S.C. 487, 419 S.E.2d 229 (1992).
>
> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987). Further, **the Court of Appeals held that respondent had "not alleged a sufficient**

> **infringement of its proprietary interests or statutory rights" to meet the statutory standing test for challenges to 100% annexations. We agree.**
>
> Despite the lack of statutory standing, the Court of Appeals found respondent had standing under our decision in Quinn v. City of Columbia, supra. In Quinn, we adopted a rule that permitted a "stranger" to the annexation to challenge that proceeding if the annexation ordinance was "'absolutely void', i.e. *not authorized by law . . .*." Id. at 407, 401 S.E.2d at 166-167. Nine years later, we held that "The State, providing it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." State ex rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000).
>
> We now overrule Quinn, and hold that **the only non-statutory party** which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit "outsider" annexation challenges to those brought by the State "acting in the public interest." Therefore, we reverse the Court of Appeals' holding that respondent has standing to challenge these annexations.

Id. at 604-05, 564 S.E.2d at 648 (emphasis added).

In St. Andrews, the Supreme Court specifically identified parties with **statutory standing** under section 5-3-150, *to wit*: "Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area." Id. at 605, 564 S.E.2d at 648. "In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights." Id. at 604, 564 S.E.2d at 648. St. Andrews stands for the proposition that, absent statutory standing, only the State, when acting in the public interest, may challenge a 100% annexation.

More recent precedent is in accord with the framework enunciated in St. Andrews, by requiring a party to assert an infringement of its own proprietary interests or statutory rights to establish statutory standing to challenge a 100% annexation, and limiting "non-statutory" parties to the State of South Carolina. See Ex parte State ex rel. Wilson, 391 S.C. 565, 579, 707 S.E.2d

402, 410 (2011) ("We made clear in St. Andrews Public Service District that a party seeking to challenge a 100% petition annexation 'must assert an infringement of its own proprietary interests or statutory rights.'"); Vicary v. Town of Awendaw, ___ S.C. ___, ____, 822 S.E.2d 600, 603 (2018) ("In *St. Andrews*, the Court held non-statutory parties lacked standing to challenge a purportedly unauthorized annexation.").

D. The portion of the Order (p. 8) interpreting Vicary, supra, as implicitly rejecting statutory standing to a party asserting an infringement of its own proprietary interests or statutory rights (p. 8) is, respectfully, incorrect

Vicary did not abrogate the general framework for standing to challenge 100% annexations set forth in Quinn, State v. City of Columbia, St. Andrews, Wilson, and other cases. Instead, Vicary established that the public importance *exception* to the general standing requirements would apply, at the very least, when "nefarious conduct" is alleged. See Vicary, ____ S.C. at ____, 822 S.E.2d at 603-04 ("Although *St. Andrews* and *Town of Yemassee* set forth the general framework for resolving questions of standing pursuant to section 5-3-150, those cases are premised on a good faith attempt by the annexing body to comply with the statutory requirements."); id. at ___, 822 S.E.2d at 605 ("While this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute, the unique facts present here compel a contrary decision.").

Here, Charleston does not seek to establish a "sliding scale" approach to standing in challenges to 100% annexations. Charleston merely seeks to protect its proprietary interests and statutory rights in and to land legally within its borders, consistent with precedent of this State. The holding by the Court that only the State may challenge a 100% annexation is inconsistent with the holding of St. Andrews, requiring its correction and a holding that Charleston has alleged the necessary requirements to meet the statutory test for standing to challenge a 100% annexation.

II. The Court's finding in the Order (p. 6) that the fact situation of the matters before it is similar to those in Quinn requires reconsideration, alteration and/or amendment.

Quinn did not address the Town of Irmo's attempt to annex an area previously annexed by the City of Columbia, as is the issue here. The issue of Irmo's attempt to annex land previously annexed by Columbia was not decided until later, in City of Columbia v. Town of Irmo, 316 S.C. 193, 194, 447 S.E.2d 855, 856 (1994).

In City of Columbia, the Town of Irmo commenced its annexation of the Columbiana Mall after Columbia had completed two annexations establishing contiguity to the Columbiana Mall and after Columbia had passed an ordinance annexing the mall, but with a delayed effective date. Id. Columbia brought an action, "seeking to enjoin Irmo from exercising jurisdiction over the area and to declare Irmo Ordinance 90-06 void." Id. The Supreme Court recognized that the Town's ordinance was invalid because the areas annexed by Columbia in February 1990 "established a barrier to Irmo's contiguity to the Columbiana Center area." Id. at 196, 447 S.E.2d at 857.

Here, not only did Charleston commence its annexation of a portion of the Millbrook Parcel prior to North Charleston giving first reading to the 2017 Ordinance, Charleston had previously completed the annexation of a portion of the Millbrook Parcel annexed under the 2017 Ordinance. This is an important distinction from the factual situation of Quinn, for the reasons to be hereafter set forth.

III. The Court's finding that the 2017 Ordinance did not include the 100-foot corridor that had been annexed by the Charleston in 2005 requires reconsideration, alteration and/or amendment.

The 2017 Ordinance contains a specific property description. That description is clear that the annexed area includes 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies along

Ashley River Road. The 100-foot corridor annexed by Charleston in 2005 hugs the northern right-of-way line of Ashley River Road, and thus was clearly included in the area annexed.

That the inclusion of the corridor was part of the 2017 Ordinance is further buttressed by the fact that North Charleston passed a corrective ordinance to delete it, *to wit*: the 2018 Ordinance. Had the corridor not been included in the 2017 Ordinance, the 2018 Ordinance would have been an exercise in futility. Legislative bodies are not presumed to engage in futile acts. Cf. Centex Int'l, Inc. v. S.C. Dep't of Revenue, 406 S.C. 132, 145, 750 S.E.2d 65, 72 (2013) ("Because the legislature is presumed to be aware of prior legislation and does not perform futile acts, we find the 2008 amendment represents a conscious decision by the legislature to preclude partnerships from earning and passing through certain tax credits."). Moreover, legislation must be construed in light of the conditions obtaining at the time the legislation was passed, not based on after-acquired knowledge. See Durant v. Bennett, 54 F.2d 634, 639 (D.S.C. 1931) ("As has been pointed out by the Supreme Court in many cases, a statute must be construed . . . in the light of the condition obtaining at the time the statute was passed."); see also State ex rel. Attorney Gen. v. Kizer, 164 S.C. 383, 397, 162 S.E. 444, 449 (1932) (adopting Durant as the opinion of the Supreme Court of South Carolina); Soc'y of Divine Word v. Cty. of Cook, 247 N.E.2d 21, 25 (Ill. App. Ct. 1969) ("[W]e believe the intention should properly be determined with regard to general conditions at the time of enactment.").

It is also North Charleston's responsibility to ensure the sufficiency of the legal description of the property being annexed, not Charleston's. See Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) ("We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property. Ordinance 0-07-89 bestowed authority to annex only the property listed and described in the petitions. Hence, no subsequent action by the City could

validate a portion of the ordinance which was a nullity upon origination."); 2 McQuillin, The Law of Municipal Corporations § 7.5 (3d ed. 2006) ("The description of municipal boundaries or of municipal territory is invalid and ineffective where it is indefinite and uncertain").

The circumstance of the 2017 Ordinance reciting that "[t]he area proposed for annexation includes the parcel designated TMS # 361-00-00-006" is not dispositive of the issue of whether other property was also annexed. That becomes especially clear when considering the annexed area does, in fact, include other property, that being the waters and river bottom of the Ashely River.

The circumstance of the 2017 Ordinance reciting all distances being more or less does not affect the placement of points described in the Ordinance, but would only affect, perhaps, the exact distances between those points. It is undeniable that the 2017 Ordinance establishes points at the right-of-way line of Ashely River Road and describes the southwestern line of the area annexed as "along the right-of-way of Ashley River Road."

Whether intentionally or not, the area annexed by the 2017 Ordinance includes the corridor annexed by Charleston in 2005.

IV. Respectfully, the Order also misinterprets the allegations in Charleston's complaints.

Specifically, the Court reads the complaints to assert that TMS 361-00-00-006-1 had been established before North Charleston's purported annexation of the Millbrook property, and, therefore, North Charleston could not have intended to annex TMS 361-00-00-006-1 because North Charleston only referenced TMS 361-00-00-006 in the 2017 ordinance.

This is incorrect. Although a portion of the Millbrook property was annexed to Charleston in 2005, and although the County's records reflect this annexation, it is unclear when a separate TMS number was created for the portion annexed into Charleston in 2005. The allegations in

Charleston's complaint, construed in a light most favorable to Charleston, establish that Charleston pled: (1) the County's records reflected that a portion of the Millbrook parcel had been annexed into Charleston in 2005; and (2) TMS No. 361-00-00-006-1 was shown at the time Charleston filed its complaints.

"A ruling on a motion to dismiss a claim must be based solely on the allegations set forth on the face of the complaint." McCormick v. England, 328 S.C. 627, 632-33, 494 S.E.2d 431, 433-34 (Ct. App. 1997). "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. at 633, 494 S.E.2d at 433. "The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief." Id. at 633, 494 S.E.2d at 433-34.

The allegations of Charleston's first complaint, read in a light most favorable to Charleston, establish that, at the time North Charleston passed the 2017 ordinance, North Charleston City Council purported to annex property, **currently** designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1." (Compl. in -0846, ¶ 1) (emphasis and double-emphasis added). This allegation clearly indicates that TMS 361-00-00-006-1 had been created by the time this complaint was filed.

In Charleston's subsequent complaint, challenging the 2018 Ordinance, Charleston alleges:

> This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging Ordinance No. 2018-017 (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on March 22, 2018, purporting to amend and supplement Ordinance No. 2017-083, adopted by the City of North Charleston on December 28, 2017, whereby the City of North Charleston purported to annex, upon petition of Millbrook that certain tract of land **previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as**

Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel")."

¶ 4 (double-emphasis added).

While Charleston also alleges in this subsequent complaint (¶ 21) that "[p]rior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston," Charleston never alleged that this portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 21, 2017. The same may be said for Paragraph 22 of Charleston's subsequent complaint, which contains no allegations that a portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 28, 2017.

V. The Court's finding that the Supreme Court refused to adopt the prior pending proceedings rule requires reconsideration, alteration, or amendment.

The Order (pp. 10-11) provides: "The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise declines." The Supreme Court has not rejected the rule outright; it has merely held that the rule did not apply to the factual situation before it.

The issue of the prior pending proceedings rule was broached in City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994), discussed supra. The Supreme Court expressly declined to reach the prior pending proceedings rule, explaining:

> We **decline to reach** the issue of whether the "prior pending proceedings" rule should be adopted by this Court. The "prior pending proceedings rule" provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority. 1 Antieau Municipal Corporation Law § 1A.16 (1993); 2 McQuillan Municipal Corporation § 7.22A (1966). Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31.

Id. at 196, 447 S.E.2d at 857 (bold added; italics in original).

In the matters before this Court, the record is clear that the City commenced its annexation of TMS No. 361-00-00-006 prior to North Charleston. The City is entitled to the presumption of regularity, particularly since the motion to dismiss is on the basis of standing, and not any delict with the City's annexation. Unlike the fact situation with Irmo, the record here must be construed as the City having instituted "valid legal" proceedings prior to the enactment of both the 2017 Ordinance and the 2018 Ordinance. See id. at 196, 447 S.E.2d at 857 ("There is a presumption in favor of regularity in annexation proceedings."). Unlike the fact situation with Irmo, the record here must be construed as the City having instituted "valid legal" proceedings prior to the enactment of both the 2017 Ordinance and the 2018 Ordinance. The impediment the Supreme Court found to preclude consideration of adopting the rule in Irmo simply does not exist here.

No precedent of this State precludes this Court from applying the rule to these cases. These cases pose a novel issue for the Court's consideration, a not unusual circumstance. See McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 196, 743 S.E.2d 843, 849 (Ct. App. 2013) ("The trial court failed to consider whether this case posed a novel issue and whether the facts should have been developed further."). Respectfully, the Court should entertain the application of the rule, and amend its Order accordingly.

VI. The Order should be reconsidered, altered, or amended because the Court did not address the statutory grounds for standing asserted by Charleston.

The Court did not address the statutory bases for standing asserted by Charleston in response to Millbrook's motion to dismiss.

Precedent of this State supports standing being accorded to a municipality challenging an annexation by another municipality of territory which the former is annexing or has annexed. See Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008) (involving

competing annexations of the same property by the Town of Summerville and City of North Charleston); Glaze v. Grooms, 324 S.C. 249, 235, 478 S.E.2d 841, 845 (1996) (finding the City of Charleston had standing to contest incorporation of the Town of James Island because areas of the Town included lands already in Charleston).

Charleston's statutory standing to challenge the annexation of property previously annexed into Charleston was also recognized in Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953). Absent an agreement to adjust boundary lines between Charleston and North Charleston, the procedures prescribed in sections 5-3-280 and 5-3-285 of the South Carolina Code are the only means by which Charleston's corporate limits may reduced. See id. (interpreting the predecessor to section 5-3-280 and recognizing the "substantial right recognized in plaintiff as a corporate entity, to and over its corporate territory" conferred under detachment statutes). North Charleston did not comply with these "detachment statutes."

The Court also did not address Charleston's other statutory grounds for standing, as outlined in Charleston's memorandum in opposition to Millbrook's motion and in Charleston's proposed order addressing this issue. See, e.g., S.C. Code Ann. § 5-7-30 (listing general authority of municipality over property within its corporate limits); S.C. Code Ann. § 6-29-330(A) (recognizing comprehensive zoning authority of municipality over property within its corporate limits); S.C. Const. Ann. Art. VIII, § 15 (recognizing right of "municipal consent").

CONCLUSION

Charleston has statutory standing to challenge the 2017 and 2018 Ordinances because these ordinances infringe on the City's proprietary interests and statutory rights. The Court respectfully misinterprets Quinn and its progeny, which limits only "outsider" standing to the State of South Carolina.

The Court also misinterprets the 2017 Ordinance and the pleadings in ruling that the 2017 Ordinance annexed only portions of Millbrook's property lying outside the City's municipal boundaries.

Additionally, or alternatively, the City has standing because, prior to the enactment of the 2017 and 2018 Ordinances, the City commenced valid legal proceedings to annex the same property. The Court should so find, and amend its Order.

Under any or all of these scenarios, the motions to dismiss should have been denied.

Respectfully Submitted,

Susan J. Herdina (S.C. Bar No. 13165)
Corporation Counsel
E-mail: herdinaj@charleston-sc.gov

Frances I. Cantwell (S.C. Bar No. 01121)
Of Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr (S.C. Bar No. 06802)
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for the City of Charleston

March 14, 2019
Charleston, South Carolina

State of South Carolina County of Charleston City of Charleston, Plaintiff, vs. City of North Charleston, and Millbrook Plantation, LLC, Defendants.	In the Court Of Common Pleas Case No.: 2018-CP-10-00846
State of South Carolina County of Charleston Millbrook Plantation, LLC, Plaintiff, vs. City of Charleston, Defendant	Case No.: 2018-CP-10-02131
State of South Carolina County of Charleston City of Charleston, Plaintiff, vs. City of North Charleston and Millbrook Plantation, LLC, Defendants.	Case No.: 2018-CP-10-02539

October 24, 2018

Lexington, South Carolina

BEFORE:

The Honorable Eugene C. Griffith, Junior, Judge

APPEARANCES:

Frances I. Cantwell, Esquire
Daniel S. "Chip" McQueeney, Junior, Esquire
Attorneys for The City of Charleston

Derk Van Raalte, Esquire
J. Brady Hair, Esquire
Attorneys for The City of North Charleston and Jerome Heyward

Bruce Miller, Esquire
Attorney for Millbrook Plantation, LLC

Keith M. Babcock, Esquire
Attorney for Whitfield Company

Amy Wooten, Esquire
Attorney for the National Trust

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
NONE			

Thereupon, the following proceedings were had,

THE COURT: I know we're doing a little bit of a status conference on where we stand and what we need to do in trying to identify issues. We've got some motions to argue potentially and there's one motion that the lawyer, tell me who he was, that he's not here. Who is that?

MS. CANTWELL: That's Mr. Walker, Trenholm Walker who represents the National Trust.

THE COURT: And he was National Trust. So have y'all discussed, because y'all will be in a lot better position than me, which would be the most efficient use of starting with what, going to the next. How are we gonna present the issues efficiently? I have read, and I'm gonna quote Judge Sanders, some of your briefs.

MR. BABCOCK: Judge, Keith Babcock on behalf of the Whitfield Company. I think it might be helpful if we do the status conference first to kind of give you a framework of what we're dealing with because we've got a unique situation with two municipalities annexing the same pieces of land so to give you an overview it might help you and then we can get to the motions.

THE COURT: All right. Let's start with that. So for record clarity, Mr. LeBlanc needs y'all to identify yourself when you stand up. If y'all have selected

somebody to give me the overview because the overview I have gotten from the briefs would be, and I did a little municipal annexation, condemnation work, but the Whitfield tract is the big tract and that's kind of what initiated all of the movement and the competition to acquire it; am I correct? That was kind of this land has been sitting there for a long time being used for a purpose of mining phosphate, hunting, fishing, recreation, growing trees and now it's evolving into maybe one of development, a third of it into some residential areas. That plan is what has kind of initiated and triggered everything; is that right:

MR. BABCOCK: That's certainly so from our perspective, Your Honor.

THE COURT: All right. So, tell you what, Mr. Babcock, since you stood up first and you're Whitfield? That is the tract, correct?

MR. BABCOCK: Yes, sir.

THE COURT: All right. Well, why don't you give me the first overview and then I'm gonna go in alphabetical order. Then I want to hear from Charleston and then North Charleston. How about that?

MR. BABCOCK: We can do that. Whatever Your Honor wants, of course, we'll do. I think that North Charleston presented a status conference form for you

which was a good overview and I might want to defer to them because really what you've got, Your Honor, from my perspective is two dueling municipalities trying to annex the same property and so this is really a North Charleston versus Charleston and to a certain extent a trust fight that Whitfield has gotten caught up in the middle because everybody wants the same piece of property. So we're, I guess, collateral damage in a sense so I think maybe North Charleston and Charleston could give you the best overview and then we can add in our concerns from there if that would be okay.

THE COURT: Okay. Let's start with that.

MR. MILLER: Your Honor, Bruce Miller on behalf of Millbrook Plantation. We're like one and a half percent of the Whitfield property. Although North Charleston and Charleston are battling for our property also, we've got some similar issues that they're battling but then some very distinct issues so we're kind of not even the tail on the dog, we're the tip of the tail on the dog but very important to the owners of Millbrook.

THE COURT: Okay. Y'all okay with North Charleston giving me their review?

MS. CANTWELL: Excuse me?

THE COURT: Y'all okay with North Charleston giving me their review?

MS. WOOTEN: Sure.

THE COURT: Well, let's start with them.

MR. VAN RAALTE: Thank you, Your Honor. Derk Van Raalte and Brady Hair on behalf of The City of North Charleston. As Your Honor noted, this is a annexation dispute that is driven by The City of North Charleston's willingness to take in two property owners that desire to come into The City of North Charleston. The Whitfield tract that really is driving this, this is a large 2000 plus acre tract that's west of the Ashley River. The way the city got there was a little unusual. I say the city. The City of North Charleston. We annexed a property called Runnymede Plantation that was also owned by the Whitfields and then we had to cross over the road. In order to cross over a road, there was an intervening parcel of a hundred foot strip owned by the National Trust that had previously been annexed by The City of Charleston.

Normally in your typical annexation statutes contiguity is sort of the linchpin of the ability to annex. That's under, I think, 5 through 150. This case is a little different because there's a lesser known statute, I think it's 5-3-100 that says if a property is wholly owned by a municipality, it can be annexed if it is adjacent which The City of North Charleston contends

is a different word and has a different meaning than contiguous. As a result, The City of North Charleston got title to a one acre tract that was just across the hundred foot piece so you have North Charleston coming up, the hundred foot intervening parcel of the National Trust, and then a one acre tract just touching that. The city annexed that using the adjacent statute and then was contiguous to the Whitfield tract. That spawned a variety of jockeying among the parties and ultimately lead to, I think, eight captioned lawsuits because due to a quirk in the annexation challenge statute it says that annexation challenges are gonna be filed by way of a summons and complaint. Of course, there's the mandatory counterclaim in the Rules of Civil Procedure and as a result of that everybody wanted to file a counterclaim to make sure that they hadn't waived a claim and so what we have got is eight captioned cases that in the city's opinion probably boil down to four or less controversies.

You've got a controversy about North Charleston's ability to take the one acre tract and that seems to drive quite a bit of it because I think everybody would agree that the larger 2200 acre tract is contiguous for us if the one acre tract annexation is valid. So that's one of the linchpins. You've also got some collateral issues like who got there first later down the road

because The City of Charleston in addition to filing lawsuits challenging our ability to annex also attempted a competing annexation during the time that we were looking at it. North Charleston contends that we completed the process first and that puts us first in line. The City of Charleston takes a different position, that they took some preliminary steps along the way that got them first in line. Those are all the issues that are swirling around here.

We also have Mr. Miller's Millbrook Plantation tract that is presenting some of the same issues but some different ones. The contiguity issue doesn't really exist for Mr. Miller's tract because it was directly across the river from North Charleston. On the other hand, there was an issue about the county records being erroneous and so when maps were drawn during the annexation, everybody on our side followed the county records and then as the county records were corrected, we amended ours to follow the county records. So those are sort of the unique issues there. But I think that is the overview.

You've got, standing is obviously something that has been raised today by Mr. Miller on behalf of Millbrook Plantation. That's gonna be a seminal issue. The City of North Charleston has filed motions for that

with respect to the Whitfield and the one acre tract in those properties, however, Trenholm Walker on behalf of the Trust contacted us earlier and I believe contacted the Court yesterday and asked that those motions for the city be held in abeyance and so our two motions would be put off until another day.

THE COURT: Okay. The Trust, Mr. Walker's client, they're not a municipality and they're not a land owner. How are they --

MR. VAN RAALTE: The Trust --

THE COURT: What's the big picture? How is the Trust connected into the suit?

MR. VAN RAALTE: That's a great question, Your Honor. The Trust owns the hundred foot strip that we jumped up over in order to get to the one acre tract.

THE COURT: Okay. I got you. Okay.

MR. VAN RAALTE: There's a, I think, a three tenths of one foot disparity between some surveys that they claim that the three tenths of one foot essentially conveys standing to them. I'll let them explain their position better but that in a nutshell is I think where they're coming from, that we hopped over their parcel and so we're not allowed to do that and that there's this survey boundary line issue.

THE COURT: Okay. All right. I'm somewhat getting

the pieces falling together. All right.

MS. CANTWELL: Thank you, Your Honor. I'm Frances Cantwell of counsel with The City of Charleston and I'm here with Daniel "Chip" McQueeney. He's been doing most of the heavy lifting along the way. I think Mr. Van Raalte gave you a very good overview of where we are. I just would like to, to me this comes down to basically you've got three issues. What we call the annexation of the acre which North Charleston claiming ownership to the acre says they only have to be adjacent which means they don't have to touch, they just have to be nearby. The City of Charleston challenged that annexation along with the National Trust and I'll let them speak for themselves but we believe, well, we don't believe, the records reflect that the strip or the corridor, that it's own piece of property that the National Trust has owned for a long time and independently annexed to the city 13 years ago if I'm doing my math right, and we believe that the plat of the acre that North Charleston annexed by infringes to a degree on the National Trust property.

That's a factual dispute that we would have to work out with you or argue it but if, in fact, the maps are correct, then ever so slightly some portion of the National Trust property was included in the acre annexation which brings to question whether or not it was

a legitimate one hundred percent annexation. And it's from the city's perspective if that part of that acre is in The City of Charleston, we feel like we have standing that we will argue later on this morning due to our statutory and proprietary rights over property that's within our corporate boundaries. So those are sort of the issues on the acre.

What the annexation of the acre did was enable the contiguity of the larger tract that you called it. So when Charleston realized or had an inkling of what was going on, we started looking at a way of trying to annex the property ourselves and so Charleston received 75 percent petition, not the one hundred percent but 75 percent petition method from the property owners in the Whitfield annexation, we'll just call it that, and also from the Millbrook annexation which we will call that, and those two annexations, the city actually, city council actually received the petition and authorized the advertisement for the public hearing which is a procedural step you have to do before you can act under the 75 percent method. They did that, somebody will correct me I'm sure, I believe it was on the 19th of December of 2017. Two days later North Charleston gives first reading to an ordinance, two ordinances, I think, under the hundred percent method where Mr. Whitfield came

in with his tract and Mr. Miller, Millbrook came in with their tract.

So the position - so I think under those two annexations, I think if the acre is faulty, then North Charleston has got a problem with it. I don't think anybody argues about that. If the acre is a good annexation, then I think the issue is gonna become who gets to proceed first and there is a theory of law that's pretty much universally accepted unless the legislature has changed it which our legislature has not done which essentiality says that between two competing municipalities annexing for the same piece of property, the one that takes the first procedural step to start first is entitled to jurisdiction to complete it. So I think what you have, and even if they finish after the second City does, so what you have is we contend Charleston started first, then North Charleston started and finished before Charleston finished but we believe that under the prior jurisdiction rule that Charleston acquired jurisdiction to complete the process so that is sort of I think the nutshell of where we are.

THE COURT: Okay.

MS. CANTWELL: And counterclaims we can talk about later.

THE COURT: All right. Explain to me this: The

Whitfield tract, does Whitfield own 2200 acres or is that -- Give me a summary of how there are other owners in the Whitfield tract that could petition to come in. Who are those owners?

MS. CANTWELL: Whitfield is a large tract. I don't have the map. I didn't bring that map with me.

THE COURT: Who are those folks? They're not developing the property. Tie them together for me factually.

MS. CANTWELL: I think there was a concern about what was gonna happen on the Whitfield tract not just by Charleston but from adjoining property owners out there who own substantial, have substantial land holdings much of which is under conservation and they're very concerned about what is gonna happen to what we're calling the Plantation District and so there were four other property owners that agreed to sign an annexation petition under the 75 percent method to take in not only their own tracts but the Whitfield tract as well and that annexation all tolled was over 5000 acres.

THE COURT: Okay. That makes better sense. I kind of have the big picture now. Y'all got quite the thing. All right.

MS. CANTWELL: Thank you, Your Honor.

THE COURT: All right. Then I have an overview.

Let's see. Tell me what the pending motions are that are not involving the historical trust.

MR. MILLER: Millbrook has a motion to dismiss on standing under two lawsuits brought by The City of Charleston.

THE COURT: What else you got?

MR. VAN RAALTE: North Charleston and The City of Charleston have also agreed to a consent order to dismiss Jerome Heyward who is a plaintiff in the 2018-CP-10-1833 and I believe we sent you the proposed order but I don't think that's necessarily on the agenda today but that does not involve the National Trust but we would like to address that if possible.

THE COURT: Let's start with that because y'all kind of got that agreed to. Is he just the guy that wants out?

MR. VAN RAALTE: Yes, Your Honor.

THE COURT: Not knowing any more than I know, is there any reason that y'all don't agree to let him out? I mean, is he gonna be a necessary party or maybe just be a witness perhaps?

MR. HAIR: Your Honor, he might be a witness. I don't believe he would be a necessary party. He's just asked to be removed from the lawsuit.

THE COURT: Okay. If y'all agree to it and no more

than I know I'll probably go along with it. I was kind of waiting for this meeting to say, okay, I'll sign that order. I noticed it came and everybody's signature was on it. Y'all know more about your case than I do at this point. And what was his name again?

MR. VAN RAALTE: Jerome Heyward, Your Honor.

THE COURT: Okay. We'll let him out. Whitney will get that order printed up and have that dealt with. All right. Let's start with the Millbrook.

MS. WOOTEN: Your Honor.

THE COURT: Yes, ma'am.

MS. WOOTEN: I represent the National Trust on the defense of counterclaims in a lawsuit brought by the Whitfield entity. Mr. Walker primarily handles the annexation issues and the National Trust doe have motions to dismiss pending against Whitfield in relation to two claims they brought, interference with a contractual relationship and interference with prospective economic advantage. Those claims are by and large unrelated to the annexation and I'm prepared to argue those today. I believe Whitfield is prepared to oppose my motions today. If we could add those to the list. Thank you, Your Honor.

THE COURT: All right. So that involves the Trust and Whitfield?

MS. WOOTEN: Yes, Your Honor.

MR. BABCOCK: Yes, Your Honor.

THE COURT: All right. We'll take those up momentarily I guess if y'all are ready to proceed on those. Let's go with the first motions here, motion to dismiss.

MR. MILLER: All right. Your Honor, if I can, let me give you an overview.

THE COURT: Give me your name one more time.

MR. MILLER: I'm sorry. Bruce Miller, Charleston, representing Millbrook Plantation, LLC.

THE COURT: All right.

MR. MILLER: So we've got the Whitfield annexation and the Millbrook annexation. They both involve The City of Charleston, City of North Charleston but two distinct properties. Millbrook is approximately a 30 acre tract on the Ashley River directly across the river from The City of North Charleston so contiguous to North Charleston. To try to give you an overview perspective, you were asking about the other property owners, there are three adjacent property owners to Millbrook toward the Summerville side all essentially owned by the Carter family, or controlled by the Carter family, so we'll call those 1, 2, 3, and Millbrook being 4.

The National Trust we found out after the annexation

also owns the hundred foot strip adjoining Highway 61 on each one of those properties so each one of those properties were contiguous to The City of Charleston before The City of Charleston ever initiated any annexation proceedings against Millbrook.

THE COURT: Let me make sure. These four tracts are contiguous to both cities, one on the road and one on the river?

MR. MILLER: Correct, Your Honor. So 1, 2, and 3 controlled by the Carter family could have at any time annexed into The City of Charleston. They did not need Millbrook. So that's just a point that won't really be relevant to the arguments today but going, if we end up going forward, very important.

All right. So you've heard the city is going to argue the prior proceedings but for the relevant points on December 28th, 2017 North Charleston adopted an ordinance annexing Millbrook one hundred percent. After that annexation, it was learned that the National - that the county maps were incorrect. The National Trust actually owned this hundred foot strip. So The City of North Charleston on March 22 adopted an ordinance modifying the 2017 ordinance removing the one hundred foot strip from it's annexation.

During this time The City of Charleston had

initiated the 75 percent annexation based on the petition signed by the three Carter families. It was sent to Millbrook, obviously without Millbrook's signature. On April 10th of 2018 after North Charleston had completely annexed a hundred percent, they adopted an ordinance annexing those four pieces of property into The City of Charleston, okay? We contend that The City of Charleston fails to have standing to challenge a hundred percent annexation. If the Court -- Has the Court had an opportunity to read our brief?

THE COURT: Yes. I've done that.

MR. MILLER: Okay. So we believe the cases laid out there, The City of Quinn case, the Ogden case, and then also the St. Andrews case shows that The City of Charleston, that the only person that has standing to challenge the one hundred percent annexation is the State of South Carolina through the Attorney General which they have not done and it's totally past the statute of limitations for that. We believe the city lacks standing and the annexation into North Charleston should stand.

I know that The City of Charleston, we received their brief yesterday and that they have argued not only the prior proceedings rule which as yet has never been adopted by our courts, they argue based on the St. Andrews case versus The City of Charleston, they argue

that Charleston is alleged infringement of its own proprietary interest or statutory rights and that's true in their answer or their complaint that they have alleged that. But there's no allegation of what is their proprietary right, what is their statutory right other than the one hundred foot strip which The City of North Charleston has corrected.

THE COURT: Let me ask another question so I understand. Highway 61 runs south of Charleston out across the river, parallel with the river more or less --

MR. MILLER: Correct.

THE COURT: -- towards Beaufort.

MR. MILLER: Towards Summerville. From Charleston to Summerville.

THE COURT: Summerville. It runs out that way. The National Historic Trust acquired a hundred foot strip. Where did they get it? I mean, how did Carter and everybody else along 61, how did the National Historic Trust acquire its hundred foot strip ownership?

MR. MILLER: Well, that's beyond my understanding.

THE COURT: Because I mean, why would Carter - why would anybody sell it to the historic trust? I mean, how did they get in there?

MS. CANTWELL: If I could, Your Honor, and I don't want to interfere with Bruce's train of thought but this

might help you a little bit. This is just for purposes of helping you get oriented. Here's the Ashley River. North Charleston would be at the top of the map. This is Highway 61 in gray. The National Trust property is actually here on the lower end of the right hand part of the exhibit and these are the Carter properties ending in 02, 01, and 07. This is Millbrook ending in 06.

In 2005, and I have to say I was not involved in that one, but there was another annexation dispute going on related to another piece of property and the Carters who at that time owned 06 agreed to annex to The City of Charleston a hundred foot corridor along 61 at I'm going to call it the southern border of their properties, okay? So this strip, this corridor is owned by the Carters. This corridor is owned my Mr. Miller's client. The National Trust, we don't show it on this map, but they have a one hundred foot strip that they acquired or it acquired, actually I believe it was Georgia-Pacific who owned all of this property at one point in time, it was all timberland like you were saying, and a one hundred foot corridor along 61 was conveyed, actually platted and conveyed to the Nature Conservancy in the '90s perhaps.

MR. VAN RAALTE: In was conveyed in 1980. It was not platted. The deed just says a hundred foot strip from the right-of-way line of Highway 61 south of the

right-of-way line of Highway 61.

THE COURT: So the hundred foot strip that the Trust owns is on the other side, the eastern side of 61.

MS. CANTWELL: Well, we call it the western but it's on the bottom side. From looking at the map it would be toward the bottom of the map.

THE COURT: I got you. 61 is running this way so that would be western barely.

MS. CANTWELL: That's right. Yeah. Yeah.

THE COURT: Okay. I'm very visual so... It looks like the southern side to me but I'm certain that 61 is supposed to run north and south.

MS. CANTWELL: I'm good with north and south.

THE COURT: Well, the odd numbered highways are supposed to run north and south. They don't always because they follow natural boundaries like the river.

MS. CANTWELL: So to answer your question, the Nature Conservancy acquired this corridor years ago from a predecessor entitled to Whitfield and then the Nature Conservancy, I believe, conveyed their property to the National Trust and then Mr. Whitfield bought, I believe, a substantial piece from the successor in interest to Georgia-Pacific who I don't know who that was. I can't remember the name. MeadWestvaco. I don't know. I hope that helps.

MR. MILLER: But the Trust does own the hundred foot strip there on these four properties, right?

MS. CANTWELL: No. This is Carters' property and this is your property.

MR. MILLER: Correct.

MS. CANTWELL: So the National Trust is on the other side of 61 across the street from you.

MR. MILLER: So the Trust doesn't own a hundred foot of the properties here?

MS. CANTWELL: No. No. You own this or Millbrook owns this and the Carter interest own that.

THE COURT: So that map is actually a little bit of misleading having the shaded area above the highway.

MR. MILLER: Well, I thought that The City of Charleston was saying that North Charleston tried to take this in the first ordinance.

MS. CANTWELL: It did.

MR. MILLER: If they're saying that they don't own it, then the first ordinance is good. October - December 28th.

MR. VAN RAALTE: No. This is all in The City of Charleston.

MS. CANTWELL: The gray is in the city.

MR. VAN RAALTE: That color is, that was all annexed in 2005. This was all - all of this stuff -- Well, The

City of North Charleston in December of 2017 annexed everything here as well as this hundred foot strip which was already in the city but it's all part of - it's all owned by Millbrook. And then before that happened, before they took their first step, The City of Charleston annexed all four of these in the sort of the lined area.

MS. CANTWELL: Cross hash.

MR. VAN RAALTE: Correct.

THE COURT: Okay. So the Historic Trust ownership strip is on the western side of 61 to the center line?

MS. CANTWELL: It is to the - it's to the right-of-way line, not to the center line.

THE COURT: Okay. To the right-of-way line.

MS. CANTWELL: Right-of-way line so then the National Trust corridor or strip is implicated with the Whitfield annexation. The corridor on the east side of 61 is privately owned by the Carter interest and Millbrook Plantation but it had already been annexed to the city in 2005.

MR. MILLER: So it's a hundred foot strip that in 2005 for all four of those properties were in The City of Charleston but it was not shown on any county map.

THE COURT: All right. But that hundred foot strip you're describing to me unless I'm misunderstanding is

not owned by the Historic Trust. It's owned by the land owners there.

MS. CANTWELL: This one. Yes.

THE COURT: So Carter, Carter, Carter, Millbrook have a hundred foot strip in The City of Charleston.

MS. CANTWELL: Correct. Before all this started.

THE COURT: Okay. So they've got contiguity on that strip. Now, the property to the west of 61 that's got the National Historic Trust ownership, is that within the city limits --

MS. CANTWELL: Correct.

THE COURT: -- of Charleston also?

MS. CANTWELL: It is.

THE COURT: Okay. So is the dilemma whether or not the annexation by North Charleston is totally defective or only partially defective as to what wasn't in North Charleston - I mean in Charleston at the time they took their steps? Is that the question? Y'all kind of keep identifying yourselves to me so I can get to know you and so I have got a good record.

MR. VAN RAALTE: Derk Van Raalte on behalf of The City of North Charleston. I think that's certainly a seminal issue. When The City of North Charleston in December annexed the Millbrook tract as everybody has mentioned, The City of Charleston's hundred foot strip

was not shown on the county records and so when you go down and you check the county property records and get the TMS numbers to annex, we annexed TMS 006 which is the Millbrook TMS number and later the county came back, I think The City of Charleston notified the county that their records were wrong and the county assigned a different TMS number to that hundred foot strip on the front. It was like 006-1. And so at that point we came back at The City of North Charleston and passed an ordinance that said we meant what we said when we were taking 006 and there's the newly identified 006-1 and we never said that we took it and we don't claim to have taken it.

So The City of North Charleston makes no claim to the hundred foot strip that's right on the road on Millbrook. So I think The City of Charleston's position is that that doesn't matter, that we can't fix it, that we're stuck with the county records but our position is clearly that we're supposed to rely on the county records, we did, we amended it when the county amended it.

MR. MILLER: Your Honor, I would just to remind everybody, this part of it is a motion to dismiss and nobody has gotten any discovery from the county. We're not sure how that error arose. I think the e-mail we got

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THE COURT: I can tell you how it arose. It's simple. The property owners weren't getting a tax bill from Charleston and unless they pointed out the mistake, they continued to not get a tax bill so why point it out to them? I mean, that's obvious.

MS. CANTWELL: What was interesting, Your Honor, and this will come out in discovery, is that at one point the tax records did reflect this and then at some point in time when none of us knew what happened, it disappeared. And what did y'all call it? The invisible parcel which I got a kick out of.

THE COURT: We didn't get a tax bill. Keep your mouth shut. Maybe we won't get one. That's what's going on, I guess. That's obvious. All right. This is gonna be fun.

MR. MILLER: Of course, Millbrook simply want, desire, they exercised their property rights and desire and initiated annexation one hundred percent to The City of North Charleston.

THE COURT: Well, I mean, is the issue, is an issue gonna become what North Charleston tried to do in annexing Millbrook was not intentionally annexed as a portion of The City of Charleston, they unintentionally included it because of a mutual mistake in the county

records?

MR. MILLER: Bruce Miller on behalf of Millbrook. As to what Mr. Van Raalte was saying, the December 28th, 2017 North Charleston ordinance annexed TMS361-00-00-006 which is this property. The one hundred foot strip that had already gone to The City of Charleston was the same number -01 so their ordinance did not annex the one hundred foot strip that was already in The City of Charleston.

THE COURT: All right. This is a good time for a quick break. I'm gonna step off and use the restroom, then I want to get back at it.

(Short break.)

BAILIFF: All rise.

THE COURT: Be seated. Thank you. All right. Let's go back on the record. You were arguing, or I was listening to arguments on Millbrook's motion against Charleston, correct?

MR. MILLER: Yes, Your Honor.

THE COURT: I want to pick back up there.

MR. MILLER: Bruce Miller for Millbrook Plantation. So, Your Honor, we believe under the cases cited in our brief Quinn versus City of Columbia, the St. Andrews Public Service District which was against The City of Charleston, and the Vickery and Town of Ogden that says

that when the property is annexed one hundred percent, that The City of Charleston would not have standing and that the only party having standing would be the State of South Carolina through the Attorney General. The city I know argues that they allege that the ordinance passed by The City of North Charleston violated the statutory and proprietary rights of the city in the first Millbrook case which is number 846. In paragraph 16 they allege that it violates those rights in two ways. One, that it annexes land within the city's limits which would be the hundred foot strip and then it annexes land over which The City of Charleston had previously begun the process of annexation, theory of prior proceeding rule.

We contend that The City of North Charleston's annexation was valid. In fact, the map that Ms. Cantwell and Mr. McQueeney were just showing you, you notice this was the map I believe used at The City of Charleston's annexation. They don't even use one showing their own TMS numbers. North Charleston annexed plat ending in 006. That was the ordinance. 006 only went to the one hundred foot strip according to The City of Charleston themselves so we believe based on their allegation that fails.

THE COURT: Stop there. The 2005 annexation, was that done by the Historic Trust or not? The predecessor

owner?

MS. CANTWELL: It included hundred foot corridors on both sides of 61 on what we're calling the north side which would be Mr. Miller's tract. That was done by the private property owners who was the Carter family at that point in time. On the other side of 61 that was the National Trust so we've got a hundred foot strip on either side.

MR. MILLER: Our strip has nothing to do with the Trust. The Trust is not a party in any of the Millbrook litigation.

THE COURT: All right. So the three Carter tracts and the Trust have parallel one hundred foot strips in the city to the center line of the right-of-way?

MR. MILLER: Well, all four of those parcels. Millbrook purchased its parcel from a member of the Carter family, extended family. So I don't know about anything else other than those four parcels in 2005 apparently annexed a hundred foot strip of the road into The City of Charleston.

THE COURT: Okay.

MR. MILLER: So if North Charleston's ordinance annexed only -006, then that didn't annex the one hundred foot strip.

THE COURT: Wouldn't the petition to annex filed by

the land owner -- I mean, didn't Millbrook make a petition to North Charleston, please accept us into the city limits?

MR. MILLER: Correct. One hundred percent.

THE COURT: One hundred percent. That's how that works. They've got to petition the city and say please let us in.

MR. MILLER: They did.

THE COURT: We will accept your terms type of thing. That's what a petition to annex is.

MR. MILLER: It was a petition one hundred percent.

THE COURT: The other way is initiated more or less by the city.

MR. MILLER: The 75 percent method that The City of Charleston initiated, I don't know whether The City of Charleston initiated it or the Carter family initiated it and then they lassoed in Millbrook to come into The City of Charleston. So the other method by which Charleston alleges that their statutory proprietary rights were infringed is based solely on the prior proceedings rule which has never been adopted by the State of South Carolina.

THE COURT: Okay.

MR. MILLER: We believe based on that the Court should grant our motion to dismiss and we're seeking

attorney's fees and costs in our argument.

THE COURT: Okay. Who's arguing the Millbrook position?

MS. CANTWELL: Yes, sir. Thank you, Your Honor. Frances Cantwell for The City of Charleston along with Daniel "Chip" McQueeney. Factually the pleadings layout in no uncertain terms that in December of 2017 North Charleston annexed the Millbrook tract which included in the pleadings a portion of property that was in The City of Charleston. If that were not the case, there would not have been any need for North Charleston to pass a subsequent ordinance in March of 2018 to theoretically remove the property that was in the city. So on the face of the pleadings that's what you have.

Now, I would have to just respectfully disagree with my colleague on the interpretation of the various annexation standing statutes. It's a long and winding road and it started out sort of with in Quinn versus, I believe it was Quinn versus Columbia or Lexington, and the Court, the Supreme Court at that point in time condoned a complete stranger to a hundred percent annexation which is not a property owner, not a municipality, anything like that, if you just made the allegation that the annexation was void, it was sufficient to give you standing to challenge it. That

spawned a number annexation fights across the state but I'm aware of a lot of them in my own county and I think that Mr. Hair and Mr. Van Raalte would agree with me.

But then in 1992 or so in Budget And Control Board versus Columbia where they were arguing about a strip annexation that Columbia had done, the Supreme Court said in a hundred percent annexations the challenger has to allege an infringement of his own statutory rights or proprietary interest. We fast forward to 2002, St. Andrews versus The City and in that case the Court reiterated again under a hundred percent annexation a challenger has to assert an infringement of his own statutory rights or proprietary interest. And then they did something different and something else, and they said and we overrule Quinn to the extent that we said that you could bring an action just on the allegation that the annexation was void. They did not abrogate or run away from or in any way diminish the earlier standard that they set to say in a hundred percent annexation you've got to infringe your own statutory or proprietary rights having been infringed upon.

And they reiterated that in Ex Parte Wilson where you had actually the Attorney General did join in that suit challenging an annexation down in Yemassee as did a number of private property interests and the Court said

again as to the private property parties, private parties, you don't have standing because you don't - have not shown and asserted an infringement of your own statutory rights or proprietary interest. That having been said the State acting in the public interest does have standing to bring property - I mean to bring a challenge even if they don't own property in the annexation.

So I would submit to the Court that the standard you have on the hundred percent is that if you don't have statutory rights on infringement of proprietary interest, you don't have standing. The State does. Here Charleston has alleged and we believe that the pleadings support as I do think the discussion this morning that Charleston does have statutory interest and proprietary interest in the Millbrook tract that existed since 2005. The first annexation ordinance that North Charleston did took in property it didn't have the authority to take in. That implicated our rights - excuse me - The City of Charleston's rights because they have to have statutory control, jurisdiction, police, taxation, zoning, you name it. I don't care if it's ten feet or 3000 acres, once it's in the city, it's in the city.

Glaze versus Grooms supports our standing in that regard because there the town of James Island tried to

form using property, marshes and waters, that were already in The City of Charleston to make their town whole. In Glaze versus Grooms the Supreme Court said that Charleston had sufficient standing to challenge that incorporation because they're attempting to use properties that are already in the city to form their town and that's totally parallel to what we have here. Property already in the city was included in the annexation petition inadvertently or not, it was. It extended to Highway 61. It started in the middle of the river and extended to Highway 61. North Charleston attempted to correct it with the second annexation ordinance. We argued that they didn't have the authority to do that because it was a substantive defect but that gets again to the validity of their annexation and maybe beyond where we are on standing but even if it wasn't substantive and they could correct it, by that point in time Charleston had taken the first procedural steps to annex the Millbrook tract.

So our position, Your Honor, is that based upon the cases that Charleston has standing to challenge the hundred percent annexations done by North Charleston because they included lands in The City of Charleston which implicates our statutory and proprietary interests and that the prior proceedings rule which has not been

adopted by our state yet came close in one of the Irmo/Columbia battles over the year, they came close but they said no, we're not gonna reach it because Irmo's ordinance is invalid on its face. We are here not to talk about the validity of the ordinances. We're here to talk about whether we have sufficient interest, The City of Charleston has sufficient interest to challenge it and I believe the case law and the prior proceedings rule and the precedent which is, it's almost nationally, gives the city the right to challenge it, challenge both of these annexations for the reasons I have stated and if you don't, you can't accept that the hundred foot strip gives us standing, then certainly the prior proceedings rule would.

THE COURT: How is North Charleston's receiving the petition to come in from the Millbrook folks, they filed a petition out of mistake from some source that there was a hundred foot strip in Charleston City limits that wasn't shown on county maps or whomever but the land owner should have known what was, how his property were configured city limits or not.

MS. CANTWELL: And, Your Honor, and I think that if we do discovery, maybe limited discovery on the legal issues, that we will be able to plug that hole for you.

THE COURT: Okay. All right. Back to Millbrook.

MR. MILLER: Sure. The Millbrook owners bought it from a member of the Carter family. As far as they were told it was in Charleston County. The property was in Charleston County. They had a tax bill from Charleston County. They never had anything from The City of Charleston. The North Charleston ordinance, Ms. Cantwell says she assumes that because they passed a second one that means the first one had to have a flaw in it. That's just simply belt and suspenders. You passed it, you filed suit, you said, hey, there's a hundred foot strip there, okay. North Charleston came back and made sure that they weren't taking that hundred foot strip. Never were, never intended to. They only annexed that tax number -006.

THE COURT: Has the tax map been amended on the county records in the midst of this to show the 01?

MR. VAN RAALTE: I believe it has, Your Honor. Derk Van Raalte on behalf of North Charleston. When North Charleston did the original annexation package, it said that we were taking parcel 006 and it gave the description of boundaries of 006 as it then showed up on the records. When the records were updated, there suddenly showed two 006 and 006-1 and we came back and said, we said we wanted 006 and that's what we still say we want and if the area, the boundaries of 006 are now

smaller on the county, then we'll conform to whatever the proper boundaries are according to the county. Our intent to take 006 has never changed. We never passed an ordinance that said we intended to annex sub parcel 01 and we still don't claim to have. So I don't think The City of North Charleston would challenge that if we had taken the hundred foot strip owned by the City of Charleston, that us taking their strip would implicate their proprietary interest. I mean, we're a government and we understand the government's interest in jurisdiction over your own property. Our position is we didn't take it.

THE COURT: All right. Just so the record is clear, you said The City of Charleston owned, The City of Charleston had claimed municipal limits on the hundred foot strip.

MR. VAN RAALTE: Correct, Your Honor.

THE COURT: I thought that's where we were. Maybe that's where I had a misnomer earlier with the National Trust, that they were claiming ownership or they were claiming a right-of-way. They're claiming ownership.

MR. VAN RAALTE: The Trust, actually on the other hundred foot strips the Trust actually owns a platted parcel and The City of Charleston annexed it. With respect to Millbrook the Trust doesn't own it.

Mr. Miller and Millbrook own it. But The City of Charleston has annexed it for jurisdictional purposes.

MR. MILLER: I think what will come out in discovery is when Millbrook purchased it in April of 2017, neither seller nor buyer mentioned any hundred foot strip in The City of Charleston. During 2017 there was a lot of interaction with Charleston County and no one ever said, hey, well, you know, a hundred foot of that is already in The City of Charleston. The tax maps didn't show it. And then after these annexation proceedings started is when the county updated their maps.

So again, the two ways that the city is alleging standing is one, that the ordinance was invalid. As Mr. Van Raalte has pointed out North Charleston only wanted to annex tax map number -006. The other method that The City of Charleston is alleging is the prior proceedings rule which has never been adopted by our state.

Ms. Cantwell has brought up one thing. She cited the St. Andrews Public Service District versus City of Charleston case and they did partially overrule Quinn but I want to quote from it. We now overrule Quinn, and hold that the only non statutory party which may challenge a municipal annexation is the State through a quote, warrantable action. In our view the better policy is to limit outsider annexation challenges to those brought by

the State acting in the public interest. The City of Charleston is not the State.

THE COURT: Okay. All right. I'm going to read the cases. I have a flavor for what's going on. What is our next motion, the next issue? Is this the Trust's motion?

MS. WOOTEN: Yes, Your Honor. I believe that's the other motion left to be heard today.

THE COURT: All right. Tell me your name again.

MS. WOOTEN: Yes, Your Honor. Amy Wooten on behalf of the National Trust. And we're here before Your Honor on two motions to dismiss filed by the National Trust. There are two cases that these motions pertain to. The first is 2018-CP-10-848. That is a case in which the National Trust and The City of Charleston brought suit against The City of North Charleston and Whitfield Construction Company. In responding to that complaint, Your Honor, Whitfield Construction Company pled two counterclaims against the Trust, one for interference with a contractual relationship and one for interference with prospective economic advantage.

The second suit that we have a motion pending in, Your Honor, is 2018-CP-10-2073. This is a lawsuit, Your Honor, filed by the Whitfield Company, LLC and Whitfield Construction Company who was a party to the 848 suit, Your Honor. This suit was filed by the Whitfield

case with Mr. Walker right now so I'm a little bit familiar with his schedule and he's got a two week trial coming up on November 5th.

THE COURT: Y'all have other things to do?

MR. BABCOCK: I'm just telling you what I know about his schedule, Your Honor.

THE COURT: Okay.

MR. MILLER: Your Honor, if I may, Bruce Miller for Whitfield - I mean Millbrook. Sorry. Tim's property is much, much bigger. We're just a little speck. Millbrook is desiring to put up events, weddings, wedding receptions. Every day that this gets delayed because if The City of Charleston wins, then they won't be able to do that. Their ordinance is there. Millbrook wanted to go into The City of North Charleston so every day that we don't move forward is a day Millbrook doesn't get to start the business. So your question was what happens if you deny the motion. So if you do deny, we would like to move forward with discovery. We think the Millbrook cases should be consolidated for discovery. Millbrook would also like to amend its answer to clarify on the fact that Charleston used the 75 percent method when they could have used the hundred percent. We would like to amend to allege that that's an unconstitutional taking of property when the hundred percent method was fully

available. So no discovery has occurred so we think a motion to amend, there's no prejudice. We would like to do that.

THE COURT: And so Mr. Walker has court for two weeks commencing the first week of November. All right. The week of Thanksgiving commencing November 19th. That's a possibility. Do y'all want to talk about that over the next few days before we go into December into, potentially maybe into late, or first week of December, December 3rd week. I've got General Sessions in Saluda. That's generally a front loaded week. Potentially we could do something that week. Now, if we want -- I'm sorry. If I want to come to Charleston, would I have to make arrangements with Ms. Armstrong to get a courtroom and that kind of thing for this case? Would that be on me?

MR. McQUEENEY: Judge, I think we can help you with that. Judge Young is the Administrative Judge down there and Ms. Armstrong is a good friend. If you want to come to Charleston, we would love to have you. We'll make it work.

THE COURT: Just out of an abundance of selfishness, I'd like to come to Charleston.

MR. MILLER: We would love to have you, Judge.

THE COURT: That's not out of the question because

Saluda is nice but maybe Charleston -- I could take y'all over to the Luncheon Treats. They've got a pretty good buffet and aside from that, that's about it to eat. But all right. And I know Thanksgiving is tough, that Monday, Tuesday, Wednesday Thanksgiving week is difficult because of people having plans and whatnot, but do y'all want to look at that and maybe there's a morning or an afternoon that we could do that that won't impose on somebody? Because I did this via email. I don't know who it was. I don't remember because I'm just now kind of getting familiar with y'alls faces. Somebody wrote me a letter and asked me to grant protection because of something, something, something.

If Judge Young granted y'all protection, we're gonna plan this with the idea that those are already imposed and I'm gonna work around those. You don't have to come and ask me for protection on this case. If we're gonna do a status conference, unless somebody starts jerking me around and is never available, we're gonna do it when it's convenient for everybody. I'm not gonna be hard to get along with on that. If you start jerking me around, we'll just make it inconvenient and we'll get together in Saluda. But I don't need formal orders of protection. Just say I've got plans. I've already got protection via email and that is certainly fine for me. Let's don't get

more complicated than we have to as far as scheduling things.

If we ever get to the position of going to trial, certainly we're gonna ask for a week that court administration will have to give it to us and we'll just have to deal with it then. But the formality of that's not good and I need protection, this and that, I don't want to schedule something like that that far off. It's too much organization to get us together for something like this simple so don't fret over that. We'll be able to get together. Anyway, y'all check the first week of Thanksgiving. Mr. Walker, maybe he's too tired. He's the one -- It's his motions, right, for that week?

MR. VAN RAALTE: The city's motion. Mr. Walker will be responding.

THE COURT: Maybe that's a good time to try to do that so I'm gonna leave that in y'alls capable hands otherwise we're looking at sometime in December, maybe that first week of December to get back together with that.

MR. McQUEENEY: Judge, are you talking about that first three days of Thanksgiving us coming to you somewhere or do you want us to try to get it hooked up in Charleston?

THE COURT: Yes.

MR. MILLER: I'm almost certain that there is no court in Charleston Common Pleas or General Sessions usually those three days.

THE COURT: And, Mr. LeBlanc, he's not opposed to going to Charleston as long as we get fed right. No. The court, getting a court reporter secured and all that it's easier the latter parts of the week when we're starting to try to organize something like this but being a chambers week I suspect some court reporter may want to work but as I understand it though I don't want to impose upon court administration an improper burden that I'm demanding a court reporter for a particular day. We won't do that either. We should be able to get something and someone for half a day if we need it during that week if that fits everybody schedule. If it doesn't, we'll push it off until December and get together then. Does that sound okay?

MS. CANTWELL: Your Honor, I just want to make sure I understand. Whenever we get together whether it's this Thanksgiving or in December, is the purpose of that to actually hear the motions for partial summary judgment that North Charleston has filed?

THE COURT: Y'all answer that question. I don't know because I'm just warming up to y'all.

MR. VAN RAALTE: I would certainly submit yes on

behalf of The City of North Charleston. The one which is asking for interpretation of adjacency and contiguity we think an early answer to that would be very helpful because it tells everybody about what the case looks like going forward. As far as the standing issue and the three tenths of a foot discrepancy, we will be prepared to argue that and I suppose if Mr. Walker is able at that time to articulate some reason that discovery is needed or that there are documents that would shed additional light on what the public record is, then we can entertain that and take it up but I think we ought to at least get the ball rolling and put the arguments out on the table at that point.

MS. CANTWELL: So we're talking about adjacency for sure and maybe the standing.

THE COURT: And so understanding what y'all are saying now, I think it would be very helpful for me for that issue to whatever extent y'all haven't raised it to brief it for me contiguity versus adjacency and then the standing question on Mr. Walker's side.

MR. VAN RAALTE: Yes, sir.

THE COURT: Okay.

MR. VAN RAALTE: We can put that argument to the other side, Your Honor, in writing easily.

THE COURT: Yes. Briefing that issue and then

arguing the partial summary judgment on that issue. I think that - it seems to be the next logical step, addressing the paired motions on each side I've got now. I'm gonna do my best to have those resolved before we get back together if that sounds good but my inclination right now is perhaps we need to do a little bit of limited discovery on some of that so that's kind of what I'm feeling until I read everything.

Now, poor Whitney, she was trying to keep y'all organized and an email came out of court administration, the Bar results are coming out Friday and all her thoughts were disorganized all of a sudden. Can y'all believe that? I don't call people out either. But anyway, she'll be back thinking clearly again Friday afternoon late. I'm sorry. Saturday morning sometime but she's gonna do fine. I'm very confident in her. All right. Anything else y'all need to put before me?

MS. CANTWELL: Your Honor, I have hard copies of our brief and most of the cases cited.

THE COURT: Very helpful. All right. Now, I did tell y'all this, too. This is helpful to me is when y'all send a group email, put me in it and that way if I want to respond and I hit reply all, I can respond. When y'all send it to Whitney and I get a copy of it, I can't reply to all. I reply back to her and it's just

cumbersome to me so y'all put me in the chain also and if I don't want to read it, I'll just delete it. If I want to reply, I'll have the ability to do so. That's just real helpful to me I've found. Yes, ma'am.

MS. CANTWELL: Thank you, Your Honor (proffering.)

MR. HAIR: Judge, just one minor thing. We have all gotten notices of mandatory ADR in this case. Obviously we don't think that that's going to work.

THE COURT: If y'all don't cry foul on it, I'm not gonna call you out on it. Just leave that issue alone. When y'all get ready to mediate, we'll select an appropriate mediator.

MS. WOOTEN: Your Honor, may I?

THE COURT: How is that done? We're now just getting it up here in the Eighth Circuit.

MR. HAIR: Every case is subject to mandatory ADR. Like I'm a mediator so I get a notice once a week saying you're either the mediator for this case or the alternate.

THE COURT: How do y'all pick the mediators?

MR. HAIR: The Court tells you these are the two choices. Now you can pick somebody else if you choose to do so. I have been noticed for two years now and never been picked. I don't know what that says.

THE COURT: So I can pick one for this case, a

mediator?

MR. HAIR: You could.

THE COURT: Okay. Interesting.

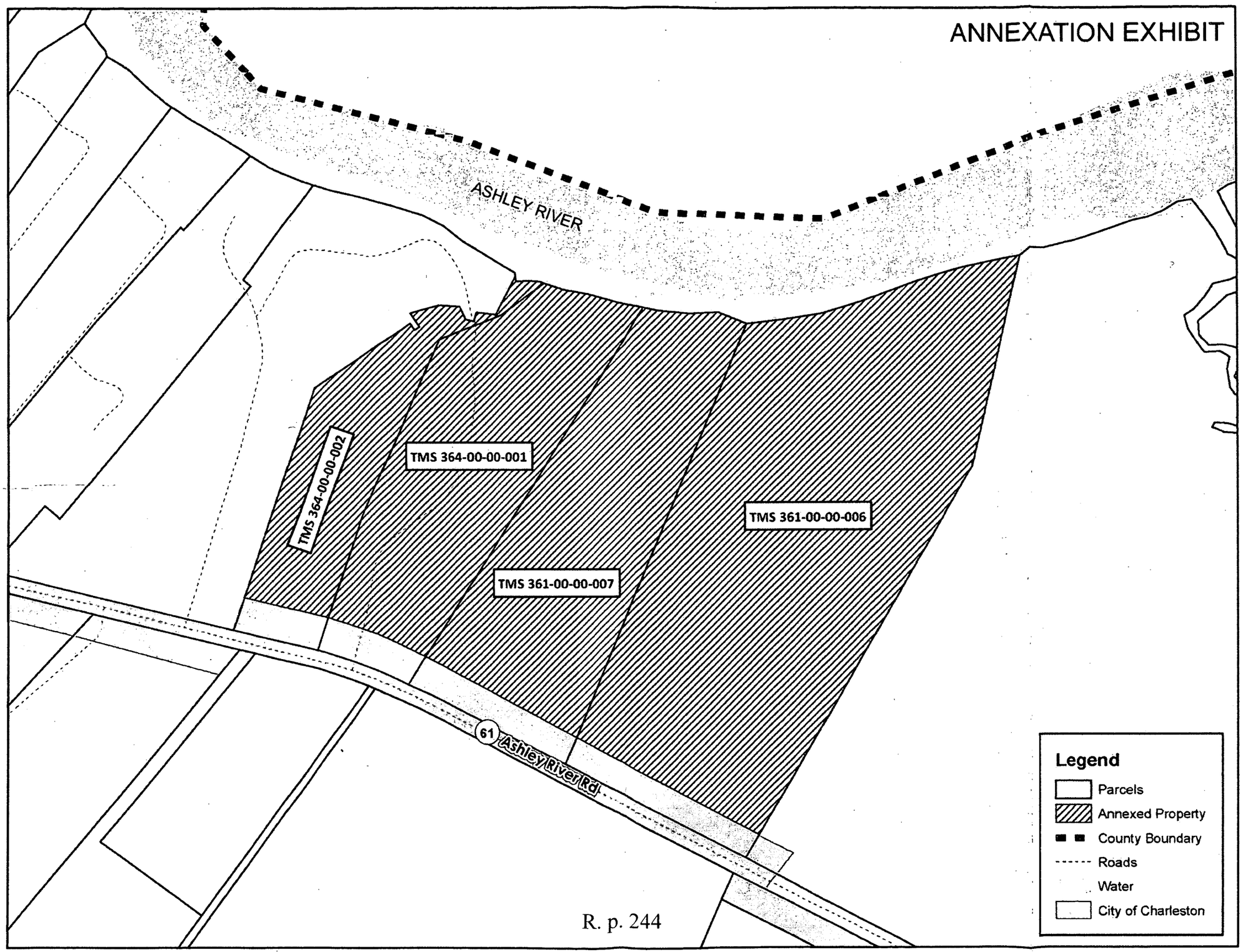
MS. WOOTEN: Your Honor, one other issue just briefly to be aware of and I have certainly alerted co-counsel and opposing counsel of this. I am expecting in March so I'll be coordinating with everyone on this.

THE COURT: Okay. Good deal. Good luck. Your life is about to change.

MS. WOOTEN: Second one so not quite as bad.

THE COURT: I'm gonna give you some advice my grandmother said. You only have two hands. Thank y'all.

WHEREUPON, THE HEARING WAS CONCLUDED.


ANNEXATION EXHIBIT
ASHLEY RIVER
TMS 364-00-00-002
TMS 364-00-00-001
TMS 361-00-00-006
TMS 361-00-00-007
61 Ashley River Rd
Legend
Parcels
Annexed Property
County Boundary
Roads
Water
City of Charleston

R. p. 244

Ratification Number 2005-93

AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF THE AREA KNOWN AS TMS# 359-00-00-012, 359-00-00-013, A PORTION OF 359-00-00-004, 359-00-00-003, 359-00-00-014, 301-00-00-017 AND PORTIONS OF 361-00-00-006, 361-00-00-007, 364-00-00-001, 364-00-00-002, 364-00-00-014, 364-00-00-012 AND 301-00-00-002, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON AND INCLUDES ALL MARSHES, PUBLIC WATERWAYS, AND PUBLIC RIGHTS-OF-WAY SHOWN WITHIN THE AREA ANNEXED UPON A MAP MARKED AS EXHIBIT I, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN, AND TO MAKE SAID AREA PART OF DISTRICT 10.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. Finding of Fact.

As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150(3), Code of Laws of South Carolina (1976) as amended, provides for a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received thirteen (13) Petitions requesting that certain properties in Charleston County hereinafter described be annexed to and made a part of the City of Charleston. The Petitions are signed by all persons owning real estate in the area requesting annexation and are attached hereto and incorporated by reference herein.

C) The area comprising the said properties is contiguous to the City of Charleston.

Section 2.

Pursuant to Section 5-3-150(3), Code of Laws of South Carolina (1976) as amended, the following described area be and hereby is annexed to and made part of the City of Charleston and shall be made part of present District 10 of the City of Charleston, to wit:

SAID AREA to be annexed is identified by the Charleston County Assessor's Office as TMS# 359-00-00-012, 359-00-00-013, a portion of 359-00-00-004, 359-00-00-003, 359-00-00-014, 301-00-00-017 and portions of 361-00-00-006, 361-00-00-007, 364-00-00-001, 364-00-00-002, 364-00-00-014, 364-00-00-012 and 301-00-00-002. Further reference is craved, see the map of the area to be annexed, marked as Exhibit I, attached hereto and incorporated by reference herein and includes all marshes, public waterways and public rights-of-way shown within said area to be annexed on said map.

Section 3.

This ordinance shall become effective upon ratification.

Ratified in City Council this 10th day of May in the Year of Our Lord, 2005, and in the 229th Year of the Independence of the United States of America.

By: _____
Joseph P. Riley, Jr.
Mayor, City of Charleston

Attest:

By: Vanessa Turner-Maybank
Vanessa Turner-Maybank
Clerk of Council

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 359-00-00-003 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

4/29/05

Taylor Drayton Nelson, Member
Five Lagoons, LLC, General Partner
For The J. Drayton Hastie Family
Limited Partnership
As To TMS Number 359-00-00-003
Charleston County

RECEIVED
MAY 12 2005
8:30 am
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

FREEHOLDER(S) DATED

FREEHOLDER(S) DATED

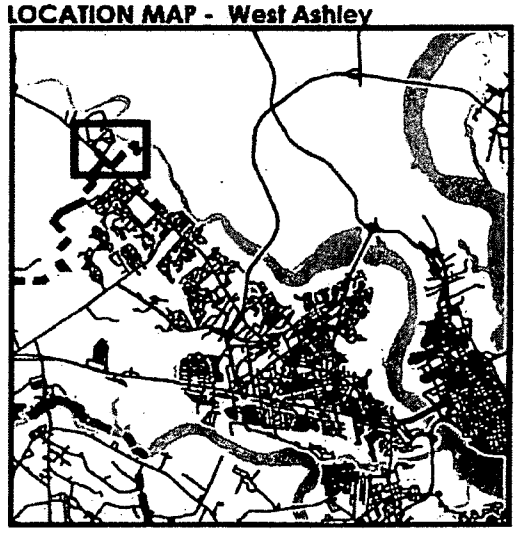
4/27/05

J. Drayton Hastie, III, Member
Five Lagoons, LLC, General Partner
For The J. Drayton Hastie Family
Limited Partnership
As To TMS Number 359-00-00-003
Charleston County

City of Charleston Annexation Map

EXHIBIT A

LOCATION MAP - West Ashley



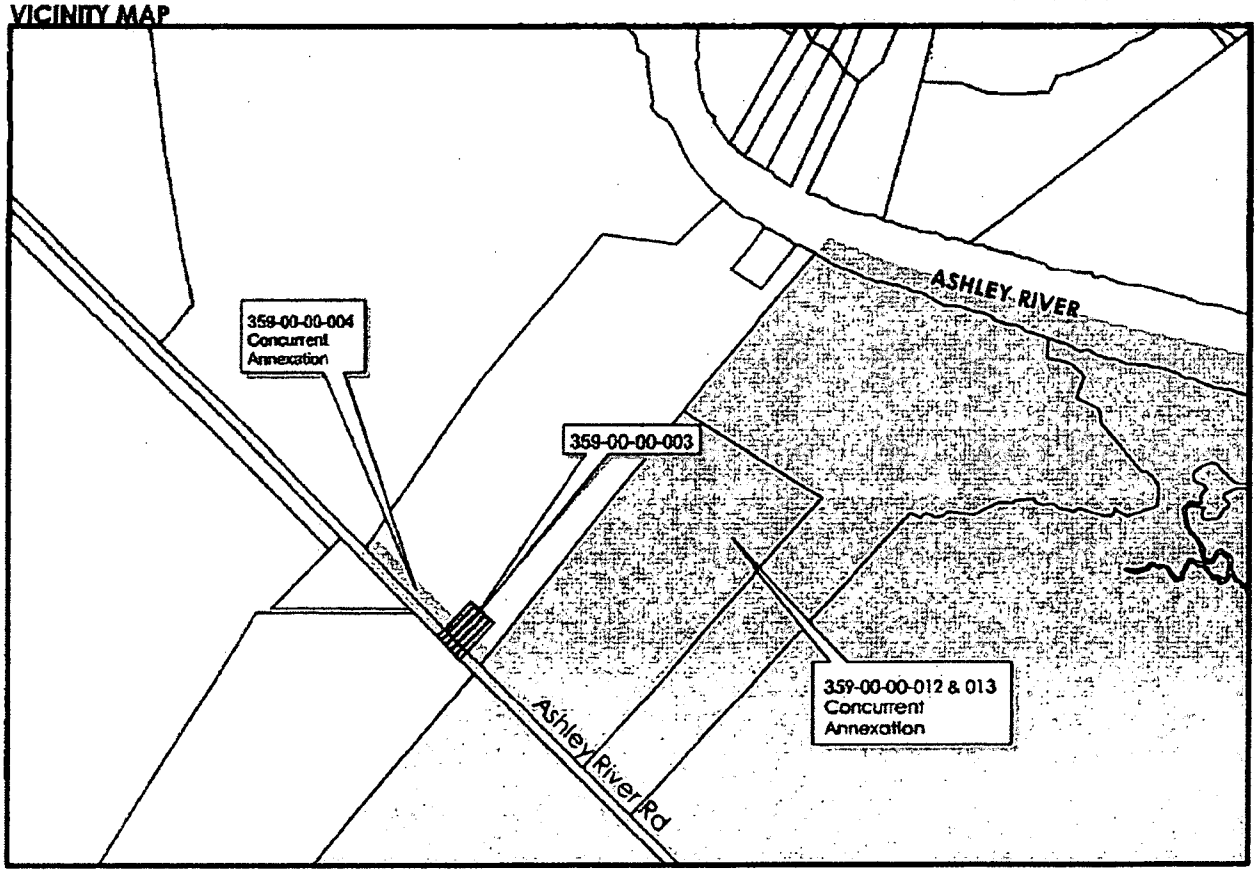
Parcel Address:
Ashley River Rd

TMS #: 359-00-00-003

Subdivision: NA

City Council District: 10

VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

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WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 359-00-00-004 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S)

Taylor Drayton Nelson, Member
Five Lagoons, LLC, General Partner
For The J. Drayton Hastie Family
Limited Partnership
As To TMS Number 359-00-00-004
Charleston County

DATED

4/29/05

RECEIVED
MAY - 2 2005
2:45 p.m.
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

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NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S)

DATED

5/3/05

Signature

Printed Name

J. Drayton Hastie III, Member
Five Lagoons, LLC, General Partner
For The J. Drayton Hastie Family
Limited Partnership
As To TMS Number 359-00-00-004
Charleston County

City of Charleston
Annexation Map

EXHIBIT A

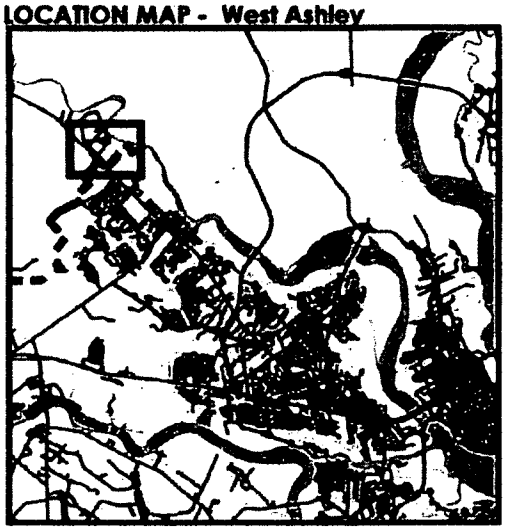
Parcel Address:
Ashley River Rd

TMS #: 359-00-00-004
(a 100 foot strip along
Ashley River Road)

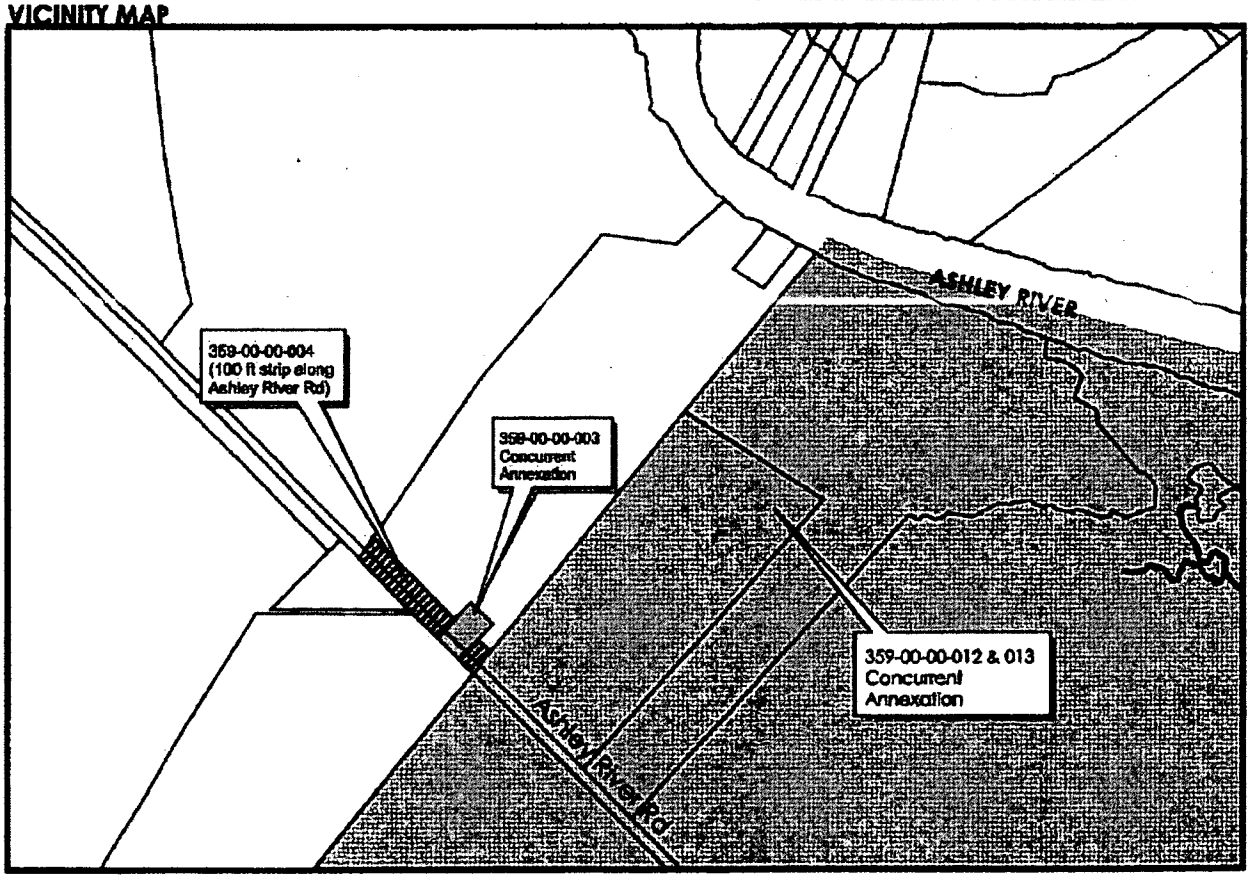
Subdivision: NA

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

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WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 359-00-00-012 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

George W. McDaniel April 28, 2005
Signature

George W. McDaniel
Printed Name
For National Trust for Historic Preservation
As To TMS Number 359-00-00-012
Charleston County

RECEIVED
APR 28 2005
4:38 PM
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

City of Charleston
Annexation Map

EXHIBIT A

Parcel Address:
3380 Ashley River Rd

TMS #: 359-00-00-012
& 359-00-00-013

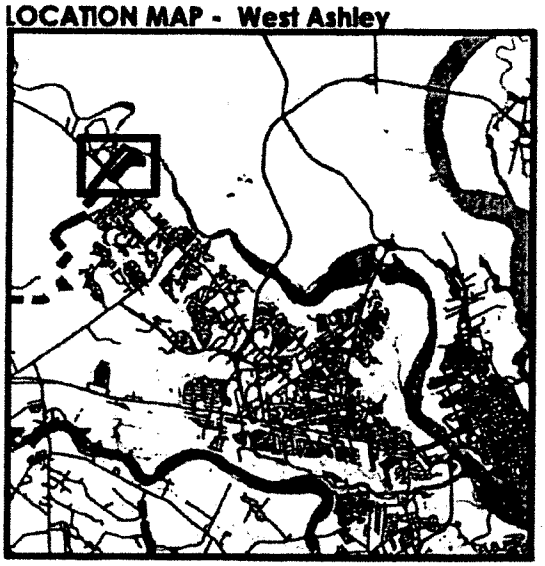
Subdivision: NA

Acreage: 124.87

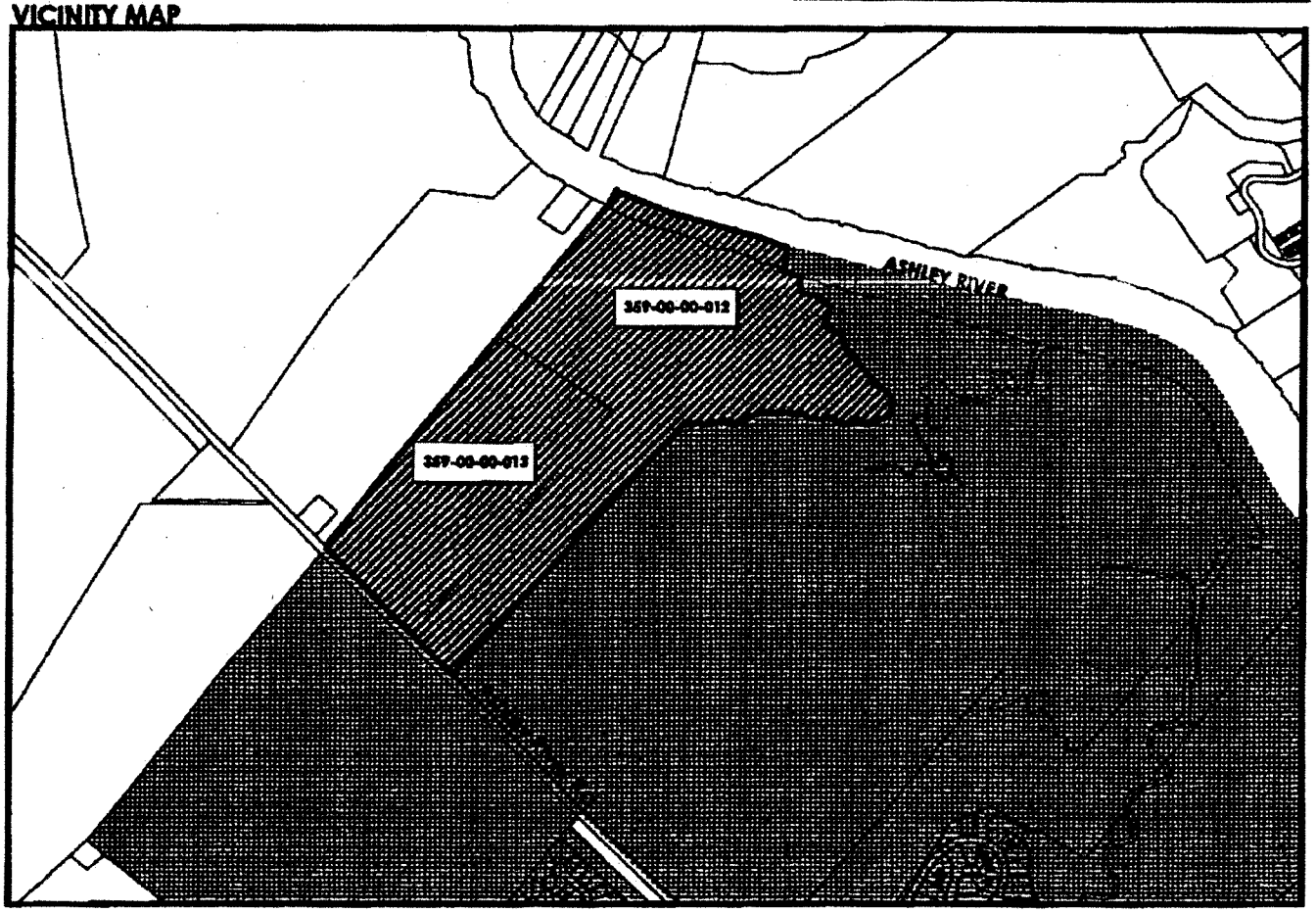
City Council District: 10

Land Use: Historic Plantation

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

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WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 359-00-00-013 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

George W. McDaniel April 26, 2005
Signature

GEORGE W. McDANIEL
Printed Name
For National Trust for Historic Preservation
As To TMS Number 359-00-00-013
Charleston County

RECEIVED
APR 28 2005
4:38 PM
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

City of Charleston
Annexation Map

EXHIBIT A

Parcel Address:
3380 Ashley River Rd

TMS #: 359-00-00-012
& 359-00-00-013

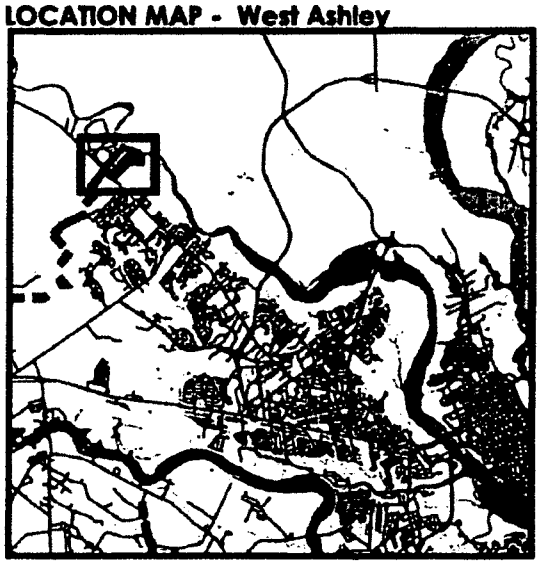
Subdivision: NA

Acreage: 124.87

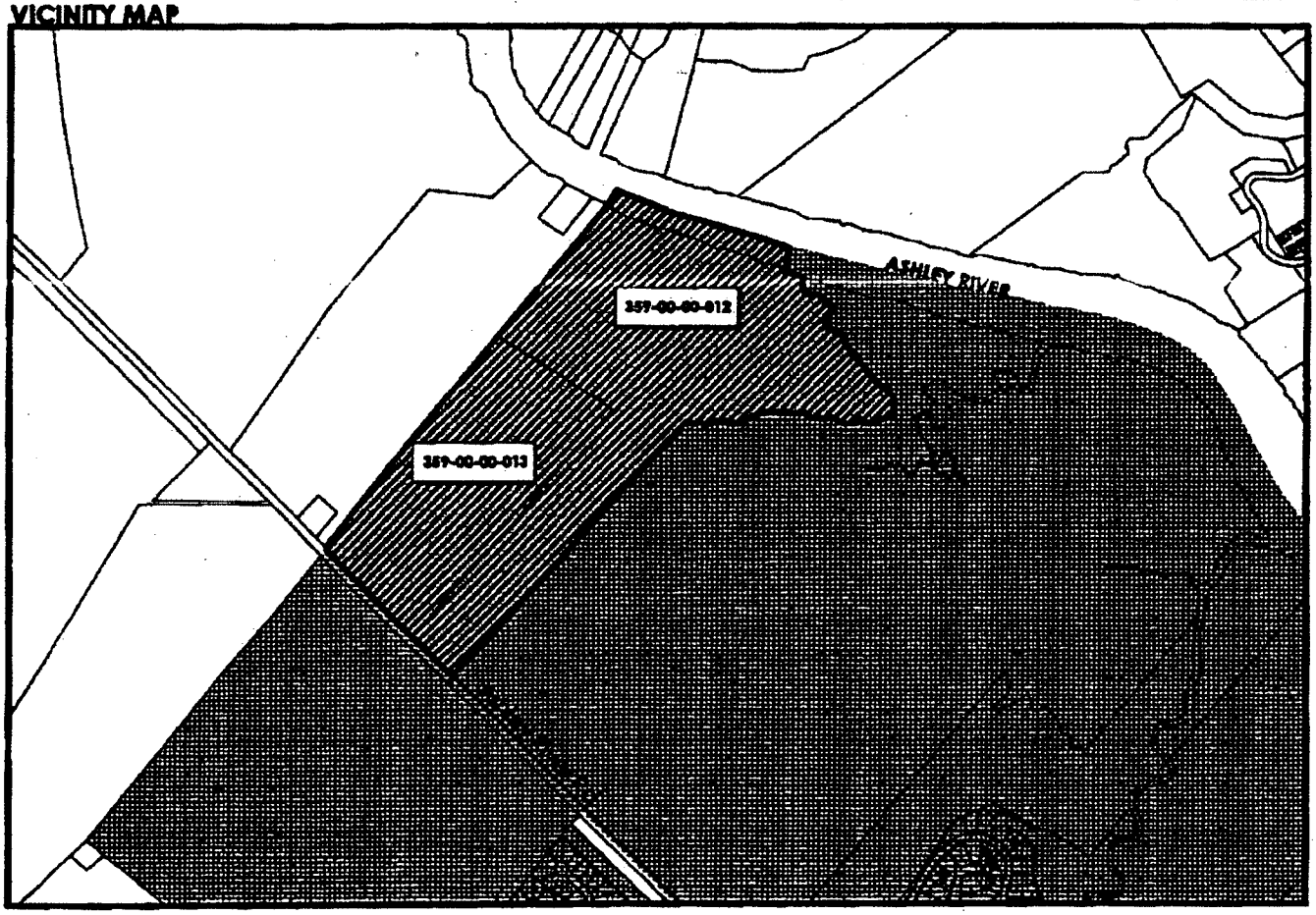
City Council District: 10

Land Use: Historic Plantation

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 359-00-00-014 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

George W. McDaniel April 28, 2005
Signature

GEORGE W. McDANIEL
Printed Name
For National Trust for Historic Preservation
As To TMS Number 359-00-00-014
Charleston County

RECEIVED
APR 28 2005
4:38 PM
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

City of Charleston
Annexation Map

EXHIBIT A

Parcel Address:
Ashley River Rd

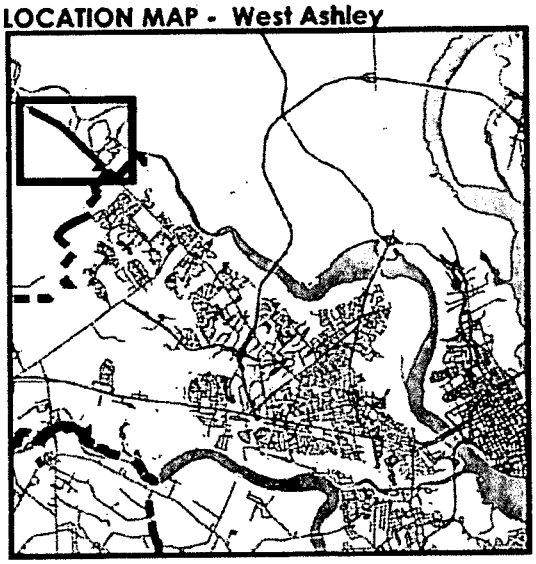
TMS #: 301-00-00-017 (a portion)
& 359-00-00-014

Subdivision: NA

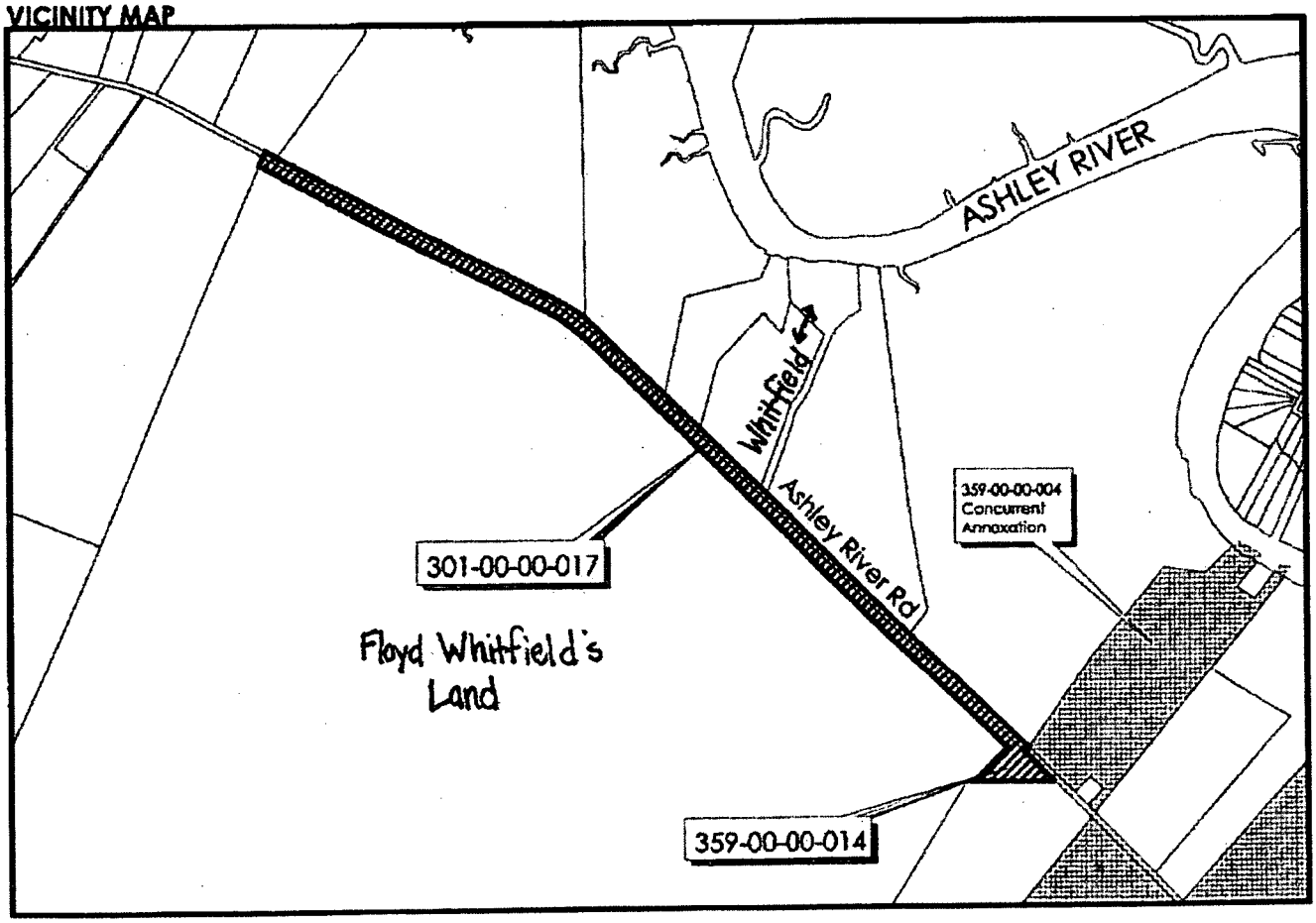
Acreage: approx. 23.36

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the southern side of Hwy. 61, located in Charleston County, South Carolina, said area beginning at the northeastern property line and heading in a northwesterly direction for approximately 1600 feet, and then heading in a southerly direction for approximately 400 feet, and then heading in a northwesterly direction for approximately 150 feet, and said area is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 301-00-00-002 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S)

T. Heyward Carter, Jr., Manager
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

DATED

5/2/05

RECEIVED
MAY - 2 2005
2:34 p.m.
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

FREEHOLDER(S) DATED

May 2, 2005

Margaret H. Carter, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

FREEHOLDER(S) DATED

_____ _____

Grayson C. Jackson, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

FREEHOLDER(S) DATED

_____ _____

Eleanor W. Carter, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

FREEHOLDER(S) DATED

Margaret H. Carter, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

FREEHOLDER(S) DATED

Grayson C. Jackson
Grayson C. Jackson, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

May 2, 2005

FREEHOLDER(S) DATED

Eleanor W. Carter, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

FREEHOLDER(S) DATED

Margaret H. Carter, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

FREEHOLDER(S) DATED

Grayson C. Jackson, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

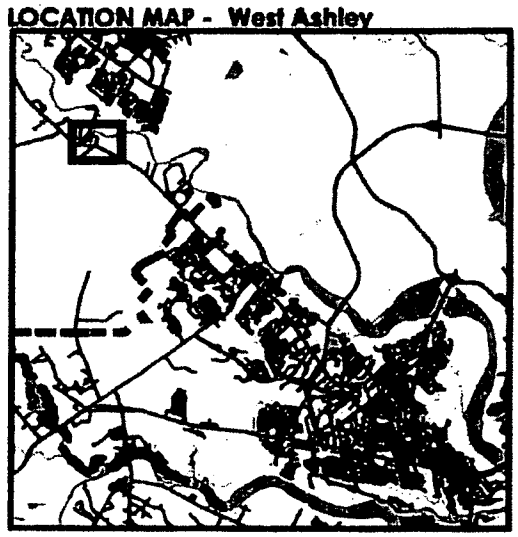
FREEHOLDER(S) DATED 5.2.05

Eleanor W. Carter, Member
For Millbrook, LLC
As To TMS Number 301-00-00-002
Charleston County

City of Charleston
Annexation Map

EXHIBIT A

LOCATION MAP - West Ashley

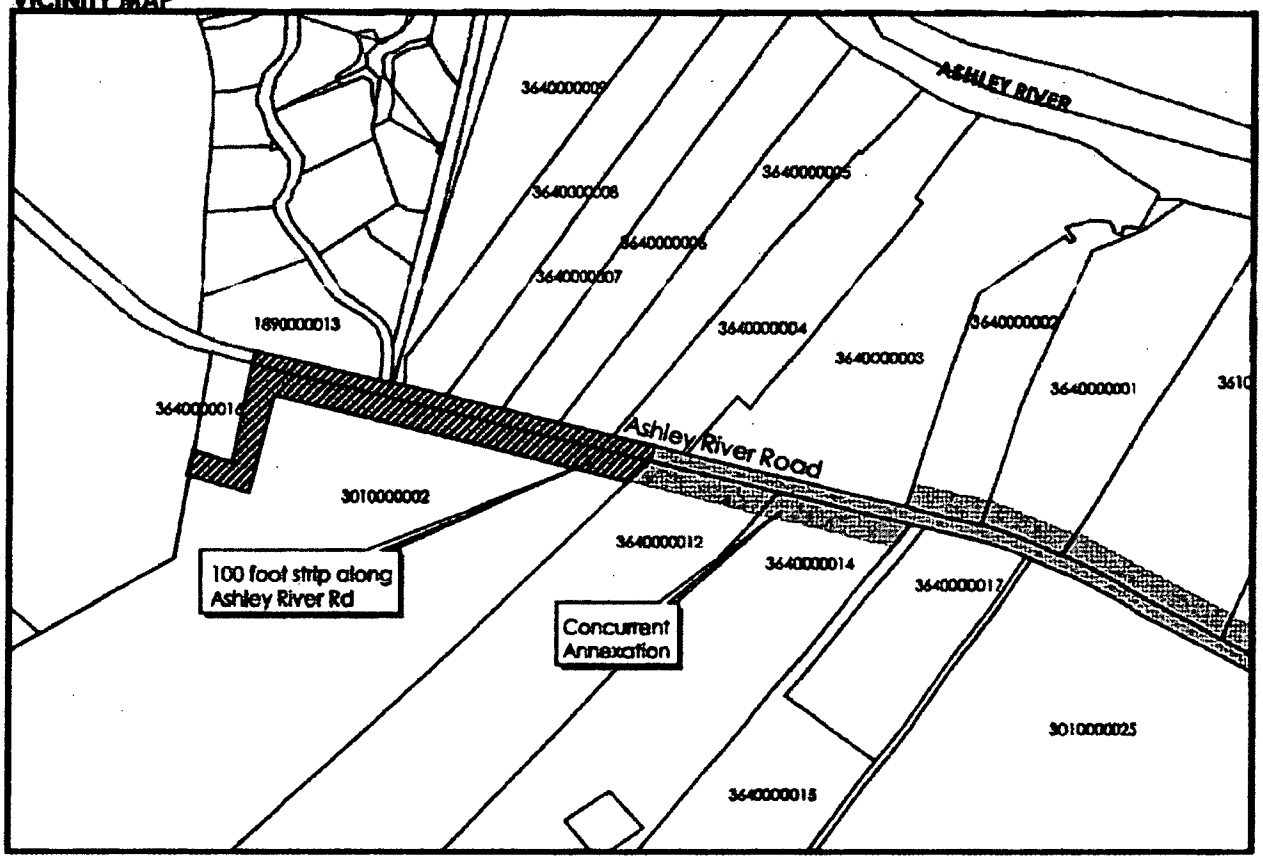


Parcel Address:
Ashley River Rd

TMS #: 301-00-00-002
(100 foot strip along
the southern side of
Ashley River Rd

City Council District: 10

VICINITY MAP



N

Subject Property
City of Charleston Corporate Limits

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 301-00-00-017 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

George W. McDaniel April 28, 2005
Signature

GEORGE W. McDANIEL
Printed Name
For National Trust for Historic Preservation in the United States
As To TMS Number 301-00-00-017
Charleston County

RECEIVED
APR 28 2005
4:38 PM
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

City of Charleston
Annexation Map

EXHIBIT A

Parcel Address:
Ashley River Rd

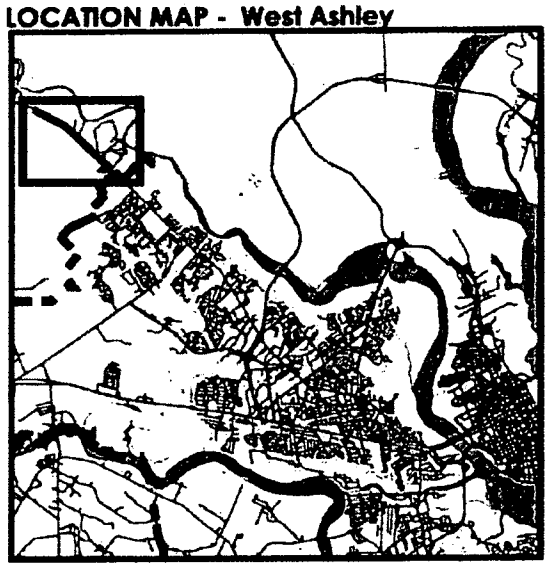
TMS #: 301-00-00-017 (a portion)

Subdivision: NA

Acreage: approx. 2.65

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

RECEIVED
MAY - 2 2005
8:31 am
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

FREEHOLDER(S) DATED

Muriel Ross Hanahan 5-1-05
Muriel Ross Hanahan
As To TMS Number 361-00-00-006
Charleston County

RECEIVED
MAY - 2 2005

Roger Parke Hanahan, Jr. 5/01/05
Roger Parke Hanahan, Jr.
As To TMS Number 361-00-00-006
Charleston County

Orianna Hanahan Kirby 4/30/05
Orianna Hanahan Kirby
As To TMS Number 361-00-00-006
Charleston County

Katharyne Hanahan Rike 4-30-05
Katharyne Hanahan Rike
As To TMS Number 361-00-00-006
Charleston County

Jeanne Hanahan Smith
Jeanne Hanahan Smith
As to TMS Number 361-00-00-006
Charleston County

See attached Fax

Roger Parke Hanahan, Jr.
As To TMS Number 361-00-00-006
Charleston County

Orianna Hanahan Kirby 4/30/05

Orianna Hanahan Kirby
As To TMS Number 361-00-00-006
Charleston County

Katharyne Hanahan Rike 4-30-05

Katharyne Hanahan Rike
As To TMS Number 361-00-00-006
Charleston County

See attached Fax

JEANNE HANAHAN SMITH
As to TMS Number 361-00-00-006
Charleston County

Roger Parke Hanahan, Jr.
As To TMS Number 361-00-00-006
Charleston County

Orianne Hanahan Kirby 4/30/05
Orianne Hanahan Kirby
As To TMS Number 361-00-00-006
Charleston County

Katharyne Hanahan Rike
As To TMS Number 361-00-00-006
Charleston County

Joanne Hanahan Smith Hanahan 4/30/05
Joanne Hanahan Smith Hanahan
As to TMS Number 361-00-00-006
Charleston County

Do know "Joanne Hanahan" formerly

City of Charleston
Annexation Map

EXHIBIT A

Parcel Address:
Ashley River Rd

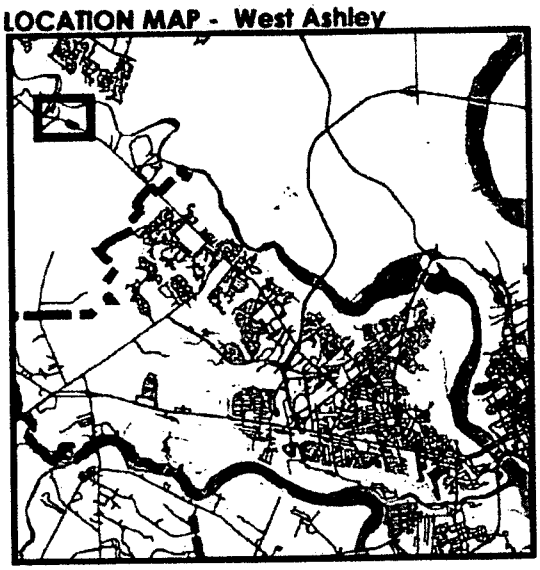
TMS #: 361-00-00-006
(a 100 foot strip along
Ashley River Rd)

Subdivision: NA

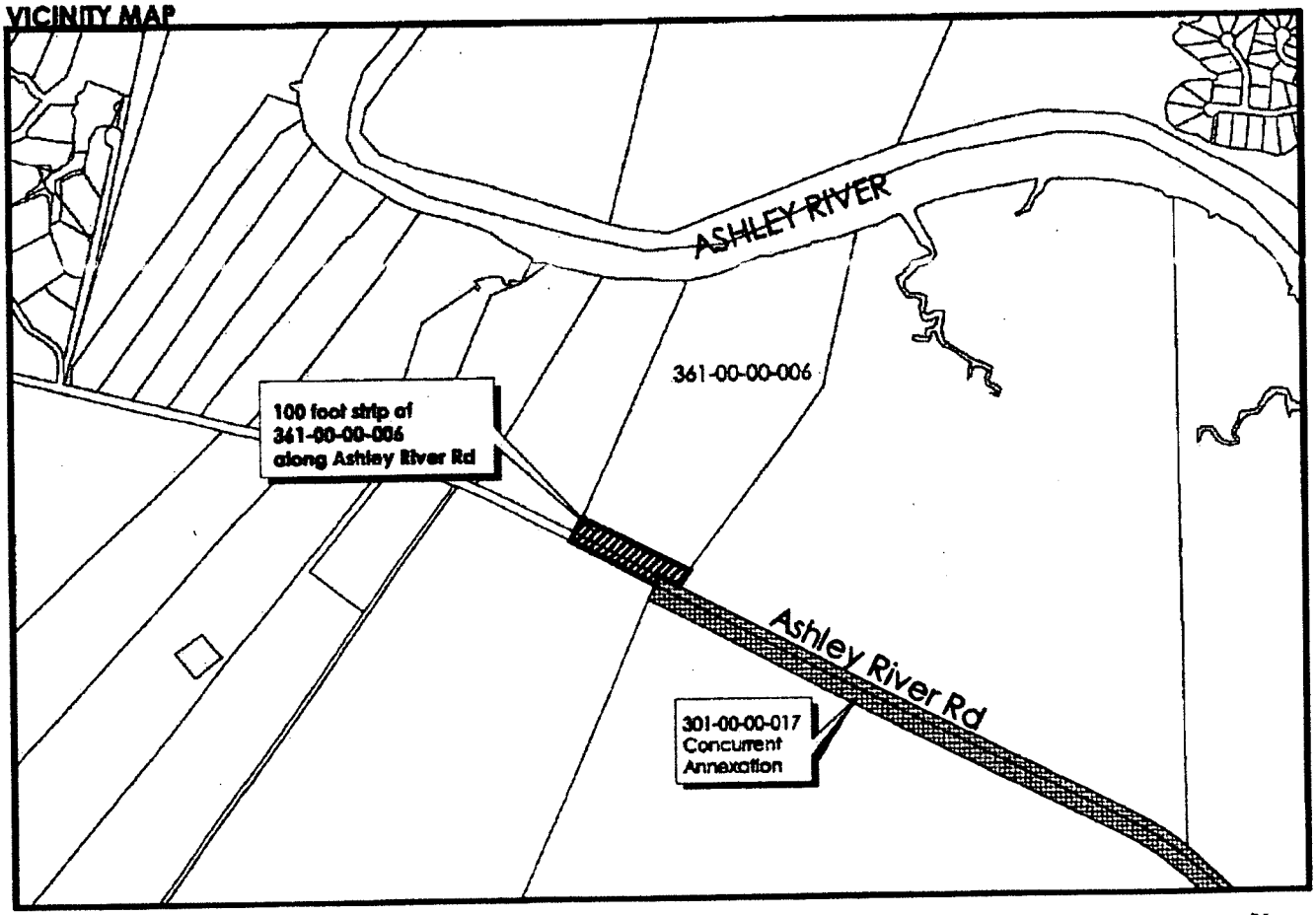
Acreage: approx. 1.90

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



N

Subject Property
City of Charleston Corporate Limits

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

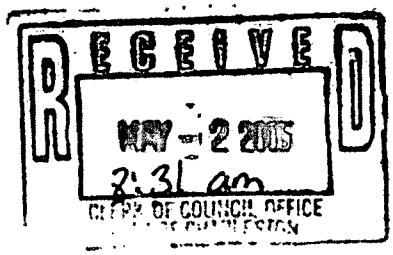
WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-007 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

Grayson G. Hanahan — May 2, 2005
Grayson G. Hanahan
As To TMS Number 361-00-00-007
Charleston County



City of Charleston
Annexation Map

EXHIBIT A

Parcel Address:
Ashley River Rd

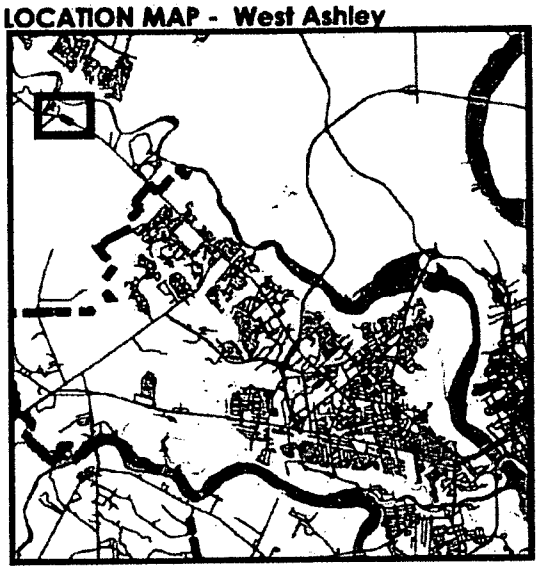
TMS #: 361-00-00-007
(a 100 foot strip along
Ashley River Rd)

Subdivision: NA

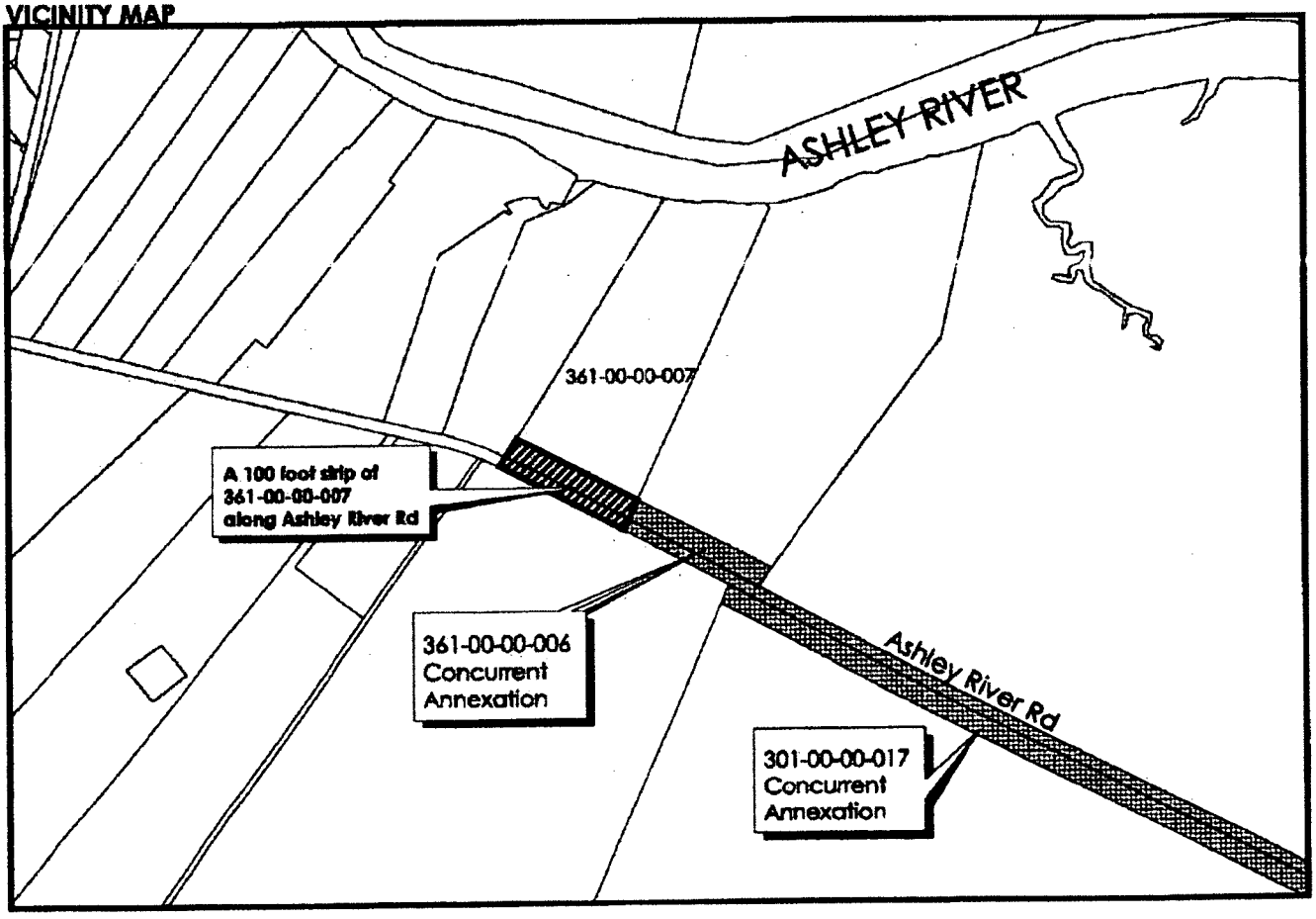
Acreage: approx. 1.68

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot wide strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 364-00-00-001 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

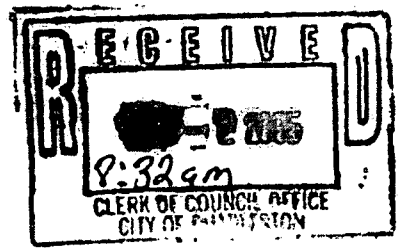
NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S)

Eleanor W. Carter, Trustee
To TMS Number 364-00-00-001
Charleston County

DATED

4/30/05



City of Charleston Annexation Map

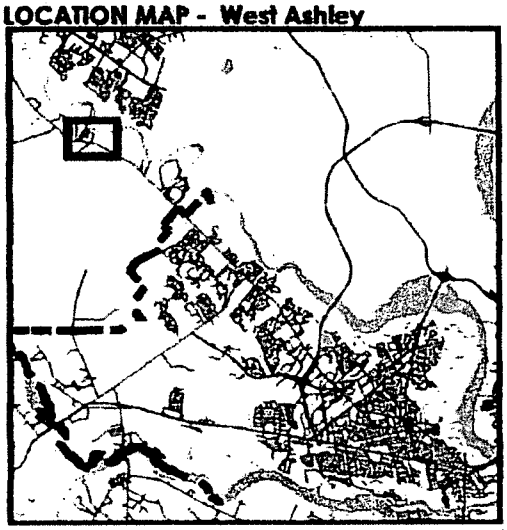
EXHIBIT A

Parcel Address:
Ashley River Rd

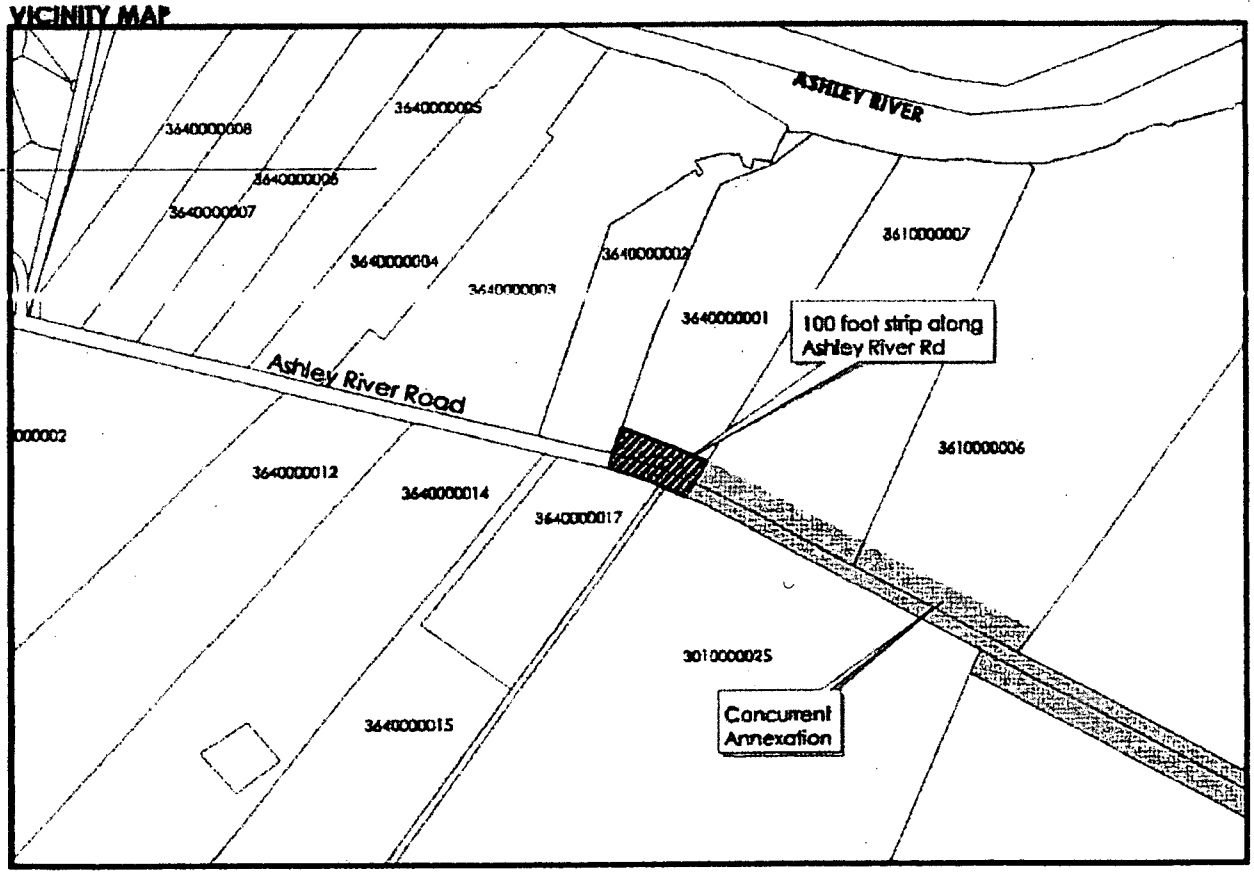
TMS #: 364-00-00-001
(100 foot strip along the northern side of Ashley River Rd)

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 364-00-00-002 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

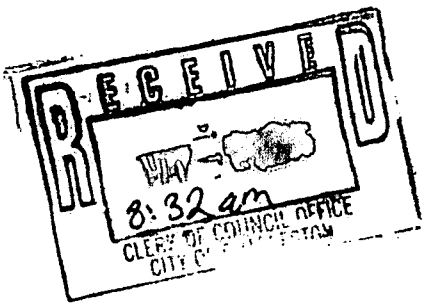
NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S)

Margaret Hartley Carter
As To TMS Number 364-00-00-002
Charleston County

DATED

4/30/05



City of Charleston
Annexation Map

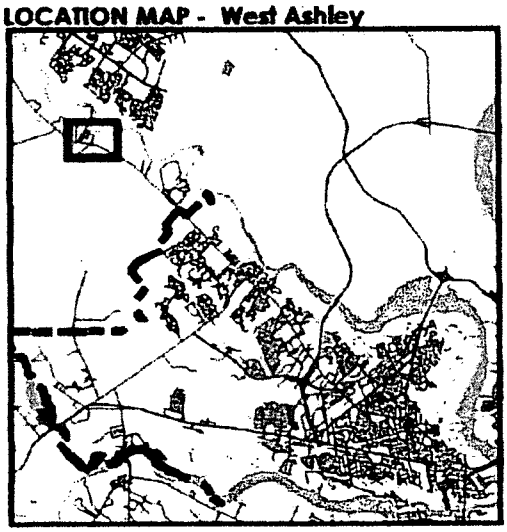
EXHIBIT A

Parcel Address:
Ashley River Rd

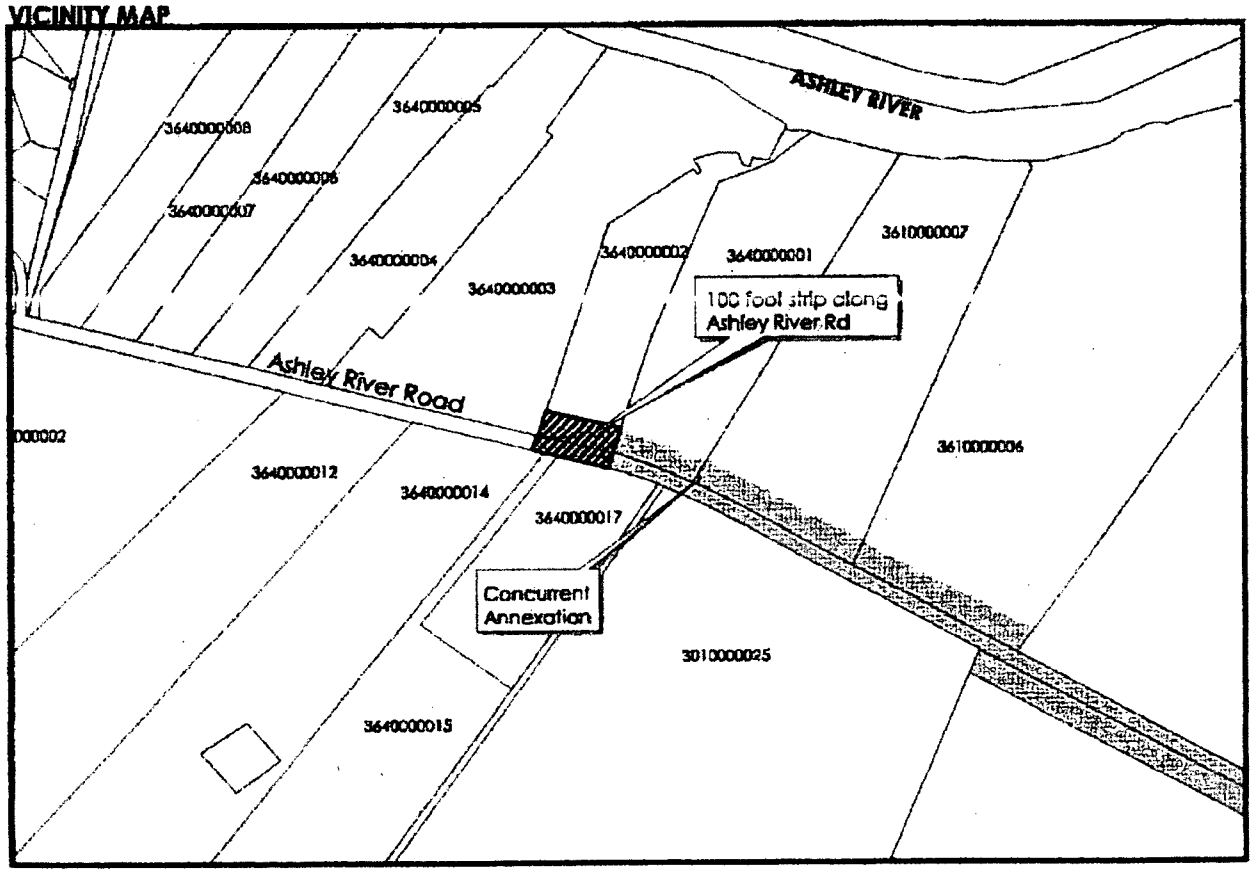
TMS #: 364-00-00-002
(100 foot strip along
the northern side of
Ashley River Rd)

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

N

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the southern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 364-00-00-012 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

Katharyne Hanahan Rike 4-30-05

Katharyne Hanahan Rike
As To TMS Number 364-00-00-012
Charleston County

RECEIVED
MAY 2 2005
8:33 am
CLERK OF COUNCIL OFFICE
CITY OF CHARLESTON

Orianna Hanahan Jenkins Kirby 4/30/05

Now known as OHK

Orianna Hanahan Jenkins Kirby
As To TMS Number 364-00-00-012
Charleston County

See attached Fax

Now known as

Jeanne Hanahan Smith Hanahan
As To TMS Number 364-00-00-012
Charleston County

See attached Fax

Roger Parke Hanhan, Jr.
As To TMS Number 364-00-00-012
Charleston County

Now known as

Muriel Ross Hanahan 5-1-05

Muriel Hanahan Duncan nee Hanahan
As To TMS Number 364-00-00-012
Charleston County

Orianna Hanahan Jenkins Kirby 4/30/05
Orianna Hanahan Jenkins Kirby
As To TMS Number 364-00-00-012
Charleston County

Jeanne Hanahan Smith 4/30/05
Jeanne Hanahan Smith
As To TMS Number 364-00-00-012
Charleston County

Roger Parke Hanhan, Jr.
As To TMS Number 364-00-00-012
Charleston County

Muriel Hanahan Duncan
As To TMS Number 364-00-00-012
Charleston County

Orianna Hanahan Jenkins Kirby 4/30/05
a/k/a Orianna Hanahan Jenkins
AK As To TMS Number 364-00-00-012
Charleston County

See attached Fax
Jeanne Hanahan Smith Hanahan
a/k/a As To TMS Number 364-00-00-012
Charleston County

Roger Parke Hanahan JR 5/01/05
Roger Parke Hanhan, Jr
As To TMS Number 364-00-00-012
Charleston County

a/k/a Muriel Rees Hanahan 5-1-05
Muriel Hanahan Duncan Hanahan
As To TMS Number 364-00-00-012
Charleston County

City of Charleston
Annexation Map

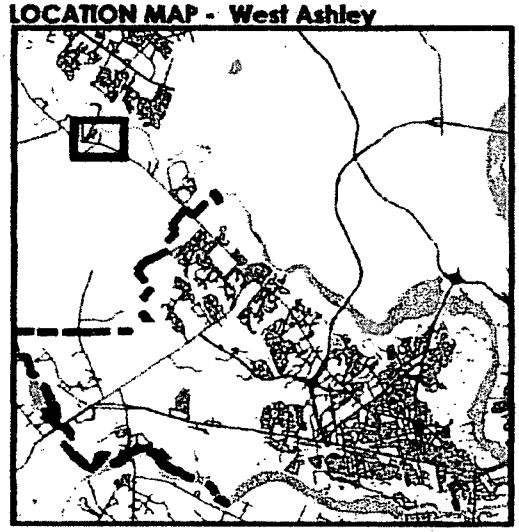
EXHIBIT A

Parcel Address:
Ashley River Rd

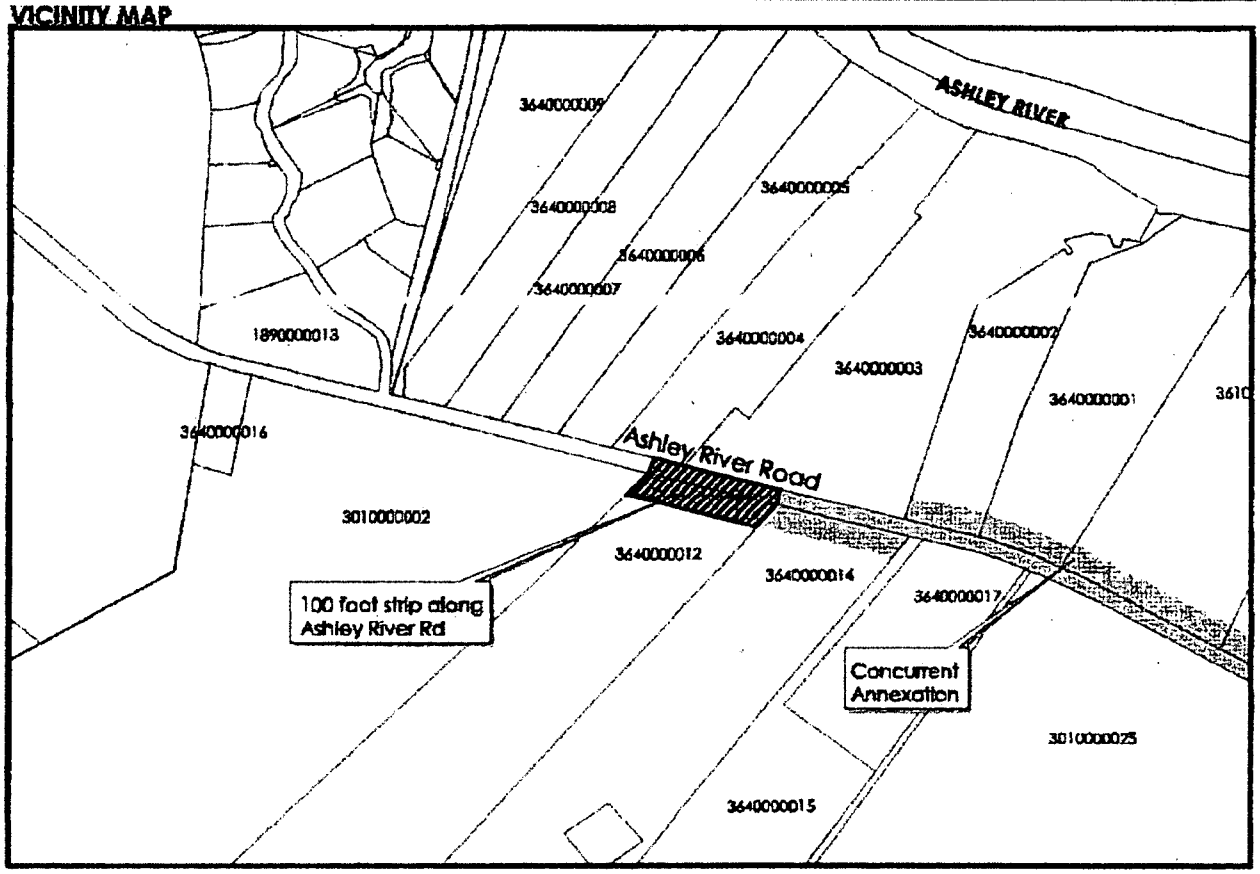
TMS #: 364-00-00-012
(100 foot strip along
the southern side of
Ashley River Rd

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON:

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

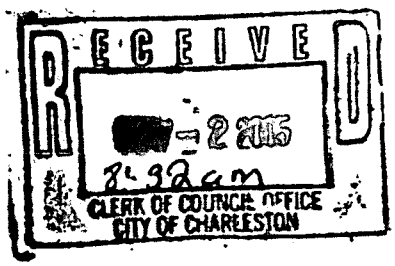
> SAID area to be annexed is an area consisting of a hundred (100) foot strip immediately contiguous to and on the southern side of Hwy. 61, located in Charleston County, South Carolina and is identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 364-00-00-014 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDER(S) DATED

Muriel Ross Hanahan 5-1-05

Muriel Ross Hanahan
As To TMS Number 364-00-00-014
Charleston County



✓ Roger Parke Hanahan, JR 5/01/05

Roger Parke Hanahan, Jr.
As To TMS Number 364-00-00-014
Charleston County

Orianna Hanahan Kirby 4/30/05

Orianna Hanahan Kirby
As To TMS Number 364-00-00-014
Charleston County

Jeanne DeForest Hanahan

Jeanne DeForest Hanahan
As To TMS Number 364-00-00-014
Charleston County

Katharyne Hanahan Rike 4-30-05

Katharyne Hanahan Rike
As To TMS Number 364-00-00-014
Charleston County

See attached Fax

Roger Parke Hanahan, Jr.
As To TMS Number 364-00-00-014
Charleston County

Orianna Hanahan Kirby 4/30/05

Orianna Hanahan Kirby
As To TMS Number 364-00-00-014
Charleston County

See attached Fax

Jeanne DeForest Hanahan.
As To TMS Number 364-00-00-014
Charleston County

Katharyne Hanahan Rike 4-20/05

Katharyne Hanahan Rike
As To TMS Number 364-00-00-014
Charleston County

Roger Parke Hanahan, Jr.
As To TMS Number 364-00-00-014
Charleston County

4/30/05

Orianna Hanahan Kirby
As To TMS Number 364-00-00-014
Charleston County

4/30/05

Jeanne DeForest Hanahan.
As To TMS Number 364-00-00-014
Charleston County

Katharyne Hanahan Rike
As To TMS Number 364-00-00-014
Charleston County

City of Charleston Annexation Map

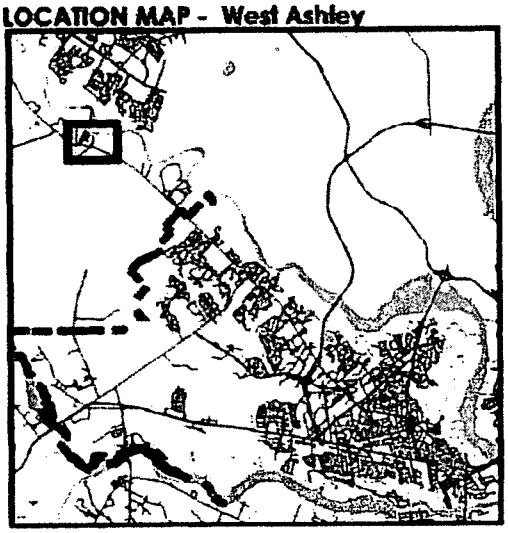
EXHIBIT A

Parcel Address:
Ashley River Rd

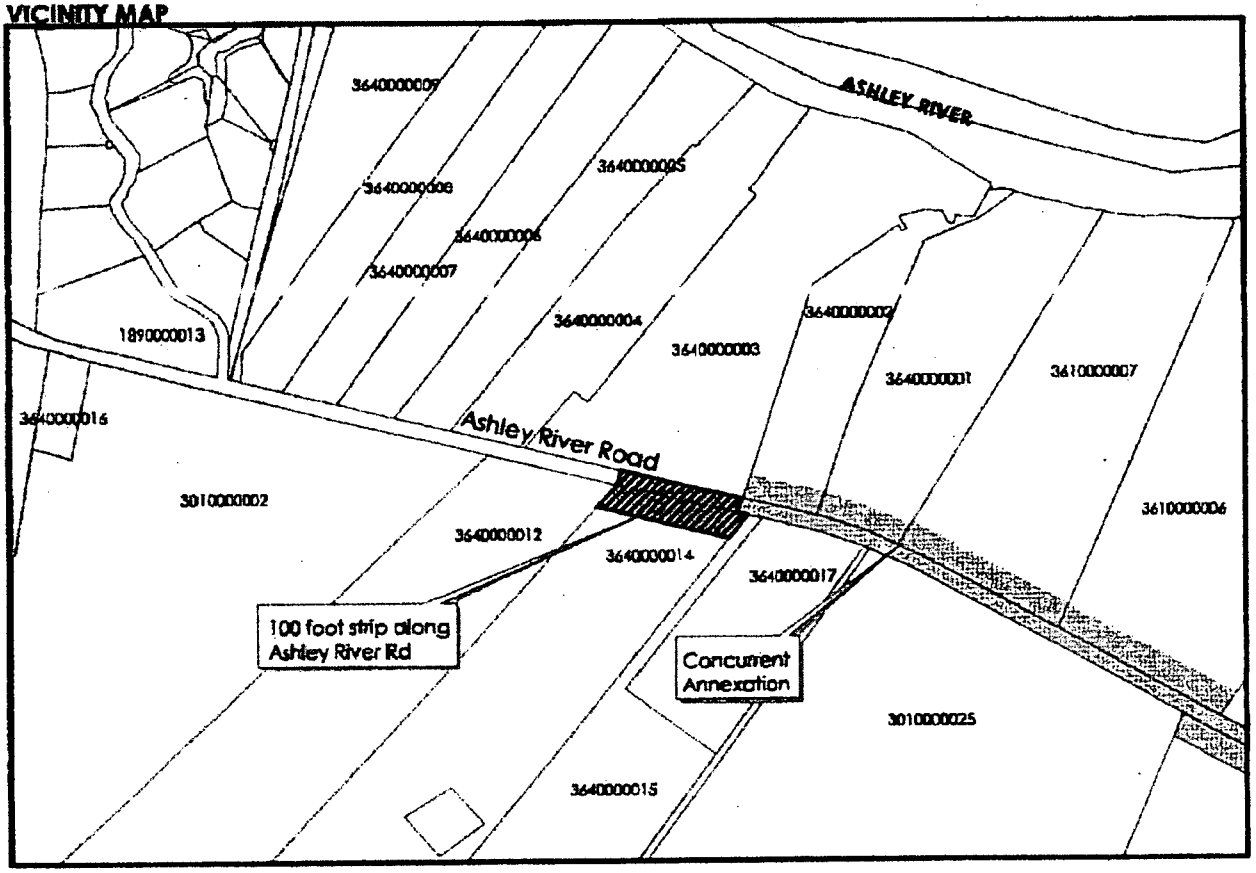
TMS #: 364-00-00-014
(100 foot strip along
the southern side of
Ashley River Rd

City Council District: 10

LOCATION MAP - West Ashley



VICINITY MAP



Subject Property
City of Charleston Corporate Limits

CITY OF CHARLESTON ANNEXATION MAP

EXHIBIT I

Legend

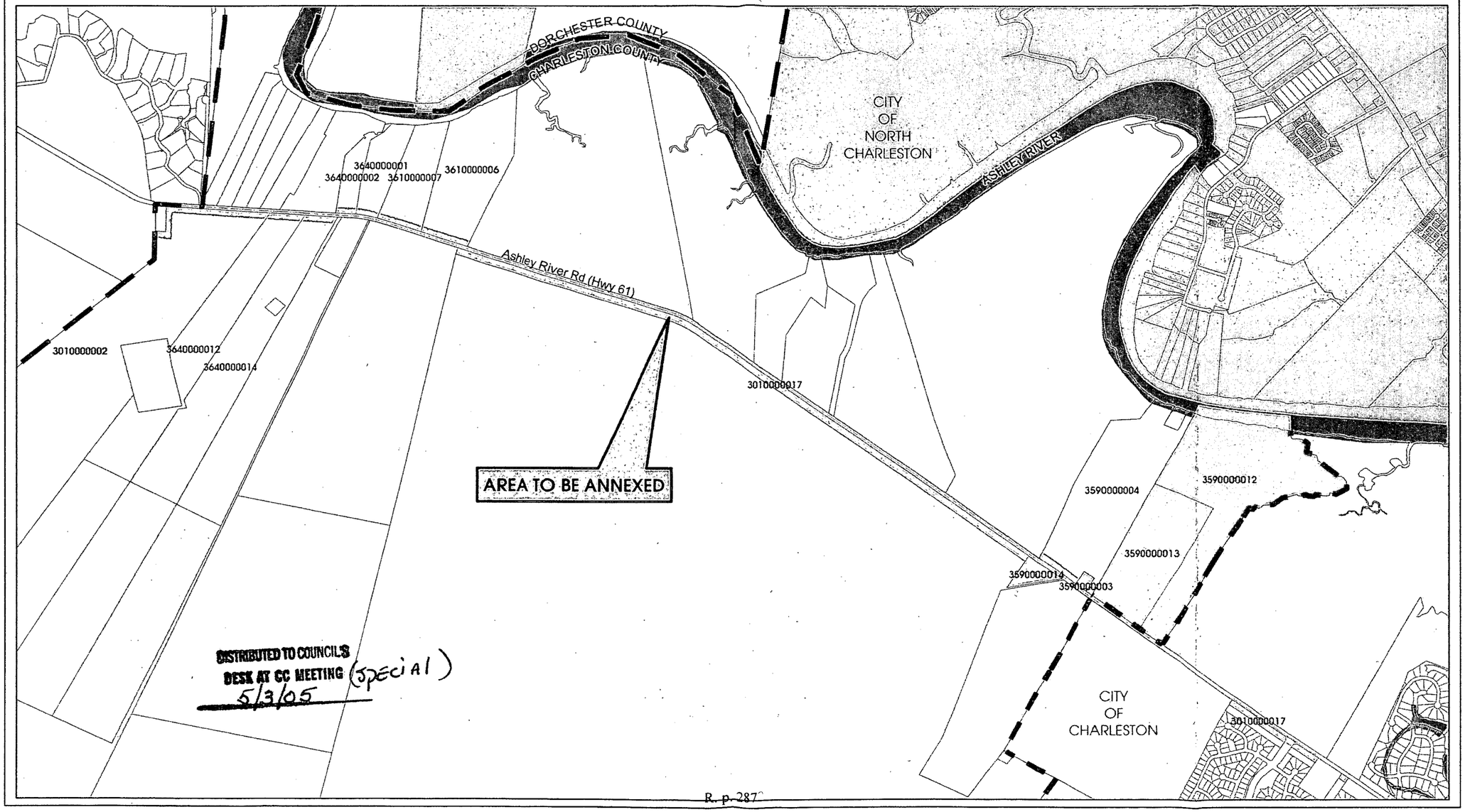
- City of Charleston Corporate Limits
- City of North Charleston Corporate Limits
- County Boundary Line
- City of Charleston Annexation
- Water
- Suburban/Rural Boundary

1:16,000

0 1,000 2,000 3,000 4,000 Feet

0 Miles

N



DISTRIBUTED TO COUNCILS
DESK AT CC MEETING (special)
5/3/05

R. p. 287

Appendix 290

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA:

The undersigned, being at least 75 percent of the freeholders owning at least 75 percent of the assessed value of the property in the contiguous territory described below and shown on the attached plat(s), hereby petition for annexation of said territory to the City pursuant to South Carolina Code Section 5-3-150(1).

The territory to be annexed is described as follows:

Parcel One:
ALL that certain piece, parcel. Lot or tract of land, situate, lying and being between South Carolina Highway 61 (Ashley River Road) and the Ashley River, in the County of Charleston, State of South Carolina and being a portion of Millbrook Plantation.
BEGINNING at a concrete post on the North side of said SC Highway 61; thence, following the right-of-way of said Highway Northe sixty (60) degrees, fifty-five (55) minutes West, seven hundred thirty-four and 18/100 (734.18') feet, a little more or less, to a point on said Highway; thence North twenty-five (25) degrees, zero (0) minutes East, one thousand six hundred fifty (1,650') feet, more or less to a point on the South bank of the Ashley River; thence, following the edge of said river in a generally northwesterly direction to a concrete on the South bank of said river, thence, from said concrete post South five (5) degrees, ten (10) minutes West, seven hundred ninety and 68/100 (790.68') feet across the marshlands of the Ashley River to an iron pipe on the edge of the highland; thence South thirty-one (31) degrees forty-eight (48) minutes West one thousand five hundred fifty-six and 28/100 (1,556.28') feet to the concrete post on the North side of said SC Highway 61, the point or place of beginning.

BUTTING AND BOUNDING on the South on SC Highway 61 (Ashley River Road); East on lands now or formerly of Ramsey; North on the Ashley River; and West on tract of land of Grayson G. Hanahan.

TMS No. 361-00-00-006

And

Parcel Two
ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Charleston, State of South Carolina, and being known as "Tract C1", containing approximately 21.22 acres, more or less, owned by Grayson G. Hanahan, as shown and designated on a plat entitled, "Plat showing Resubdivision of a Portion of Millbrook Tract, St. Andrews Parish, Charleston Co. SC", dated May 4, 1983, made by W. L. Gaillard and recorded in the RMC Office for Charleston County in Plat Book AX at Page 138 on June 23, 1983. Said Tract having

such size, shape, dimensions, buttings and bounds as will be reference to said plat more fully appear.

TMS. No. 361-00-00-007

And

Parcel Three
All that certain piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, as shown on a Plat entitled "Plat Showing Re-subdivision of a Portion of the Millbrook Tract, St. Andrews Parish, Charleston Co., S.C." by W. L. Gaillard dated May 4, 1983, said Plat being recorded in the R. M. C. Office for Charleston County in Plat Book AX, at page 138, said tract being shown thereon as Tract "H", 15.13 ac., all as with reference to said plant more fully appear.

TMS No. 364-00-00-001

And

Parcel Four

TMS. No. 364-00-00-002
(See attachments: individual plats)

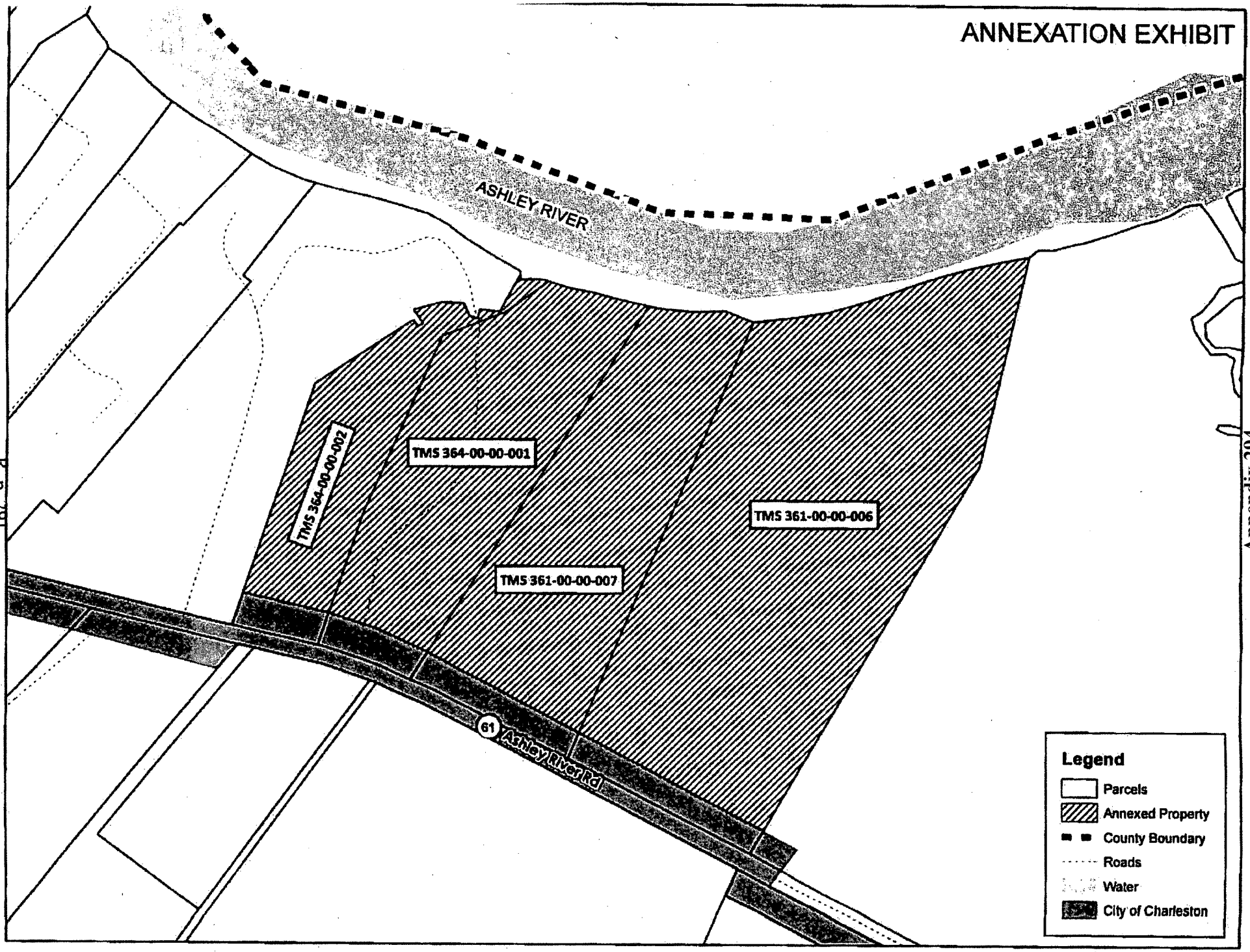
The property is designated as follows on the County Tax Maps: 361-00-00-006; 361-00-00-007; 364-00-00-001; and 364-00-00-002

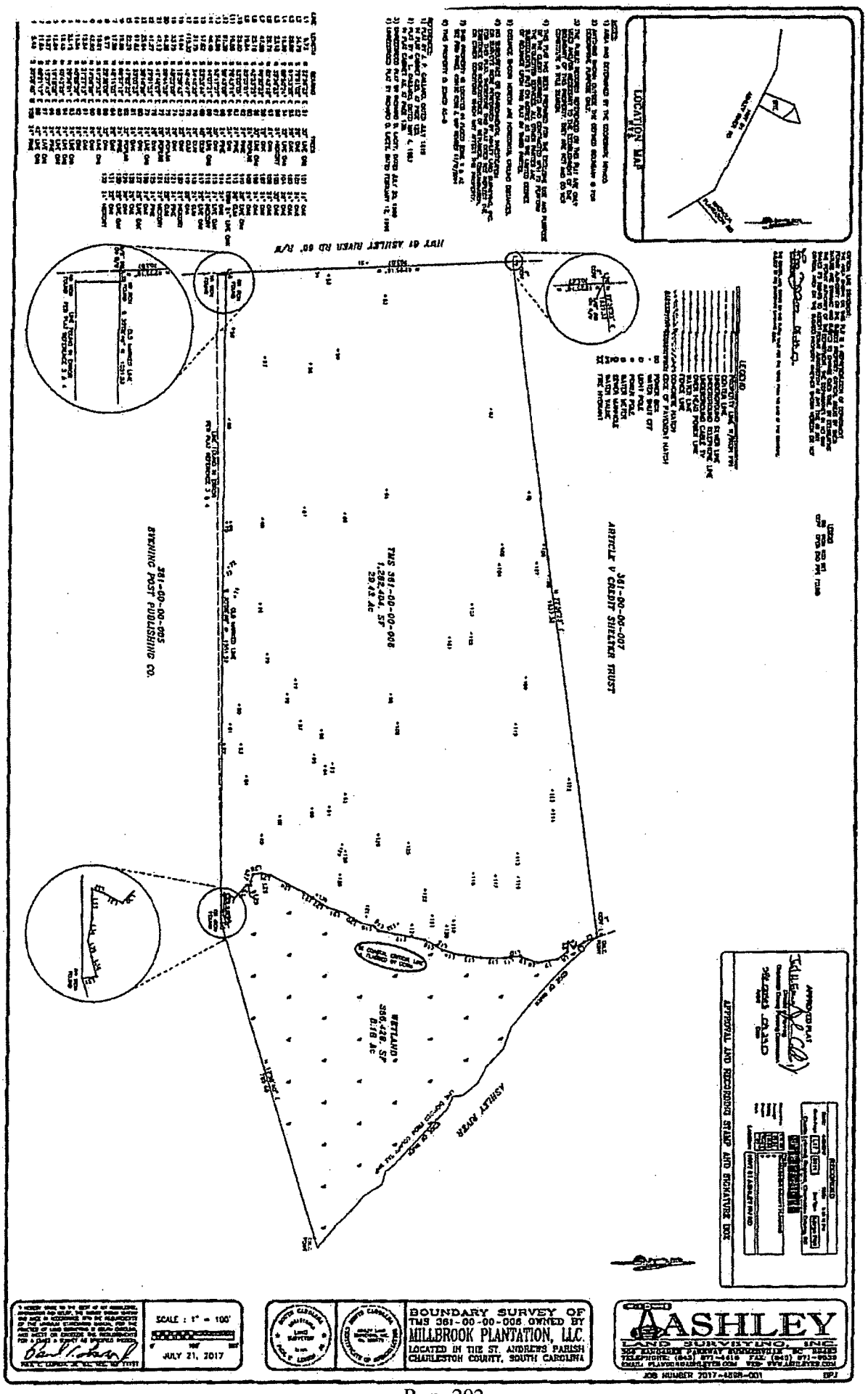
(See attachments: annexation exhibit)

Dated: December 11, 2017

Parcel Four

All that certain piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, as shown on a Plat entitled "Plat Showing Re-subdivision of a Portion of the Millbrook Tract, St. Andrews Parish, Charleston Co., S.C." by W.L. Gaillard dated May 4, 1983, said Plat being recorded in the R.M.C. Office for Charleston County in Plat Book AX, at page 138, said tract being shown thereon as Tract "G", 8.4 ac., all as reference to said plat will more fully appear.


ANNEXATION EXHIBIT
ASHLEY RIVER
TMS 364-00-00-002
TMS 364-00-00-001
TMS 361-00-00-006
TMS 361-00-00-007
61
Ashley River Rd
Legend
Parcels
Annexed Property
County Boundary
Roads
Water
City of Charleston


LOCATION MAP
SCALE : 1" = 100'
JULY 21, 2017
BOUNDARY SURVEY OF
TMS 361-00-00-006 OWNED BY
MILLBROOK PLANTATION, LLC.
LOCATED IN THE ST. ANDREWS PARISH
CHARLESTON COUNTY, SOUTH CAROLINA
ASHLEY
LAND SURVEYING, INC.
JOB NUMBER 7017-4808-001
361-00-00-005
BENNING POST PUBLISHING CO.
TMS 361-00-00-006
1,382,484. SF
31.73 AC
361-00-00-007
ARTICLE V CREDIT SHELTER TRUST
WETLAND
356,428. SF
8.18 AC
ASHLEY RIVER
APPROVED FOR
SEWER SERVICE
CHARLESTON COUNTY
APPROVAL AND RECORDING STAMP AND SIGNATURE BOX

TMS No. 361-00-00-006
Millbrook Plantation, LLC
By _____
Its: _____
Date: _____

TMS No. 361-00-00-007
Elizabeth A. Hanahan and
T. Heyward Carter, Jr., Co-Trustees of the
Article V Credit Shelter Trust u/w/o Grayson G. Hanahan

Elizabeth A. Hanahan, Co-Trustee
Date: 12/12/17

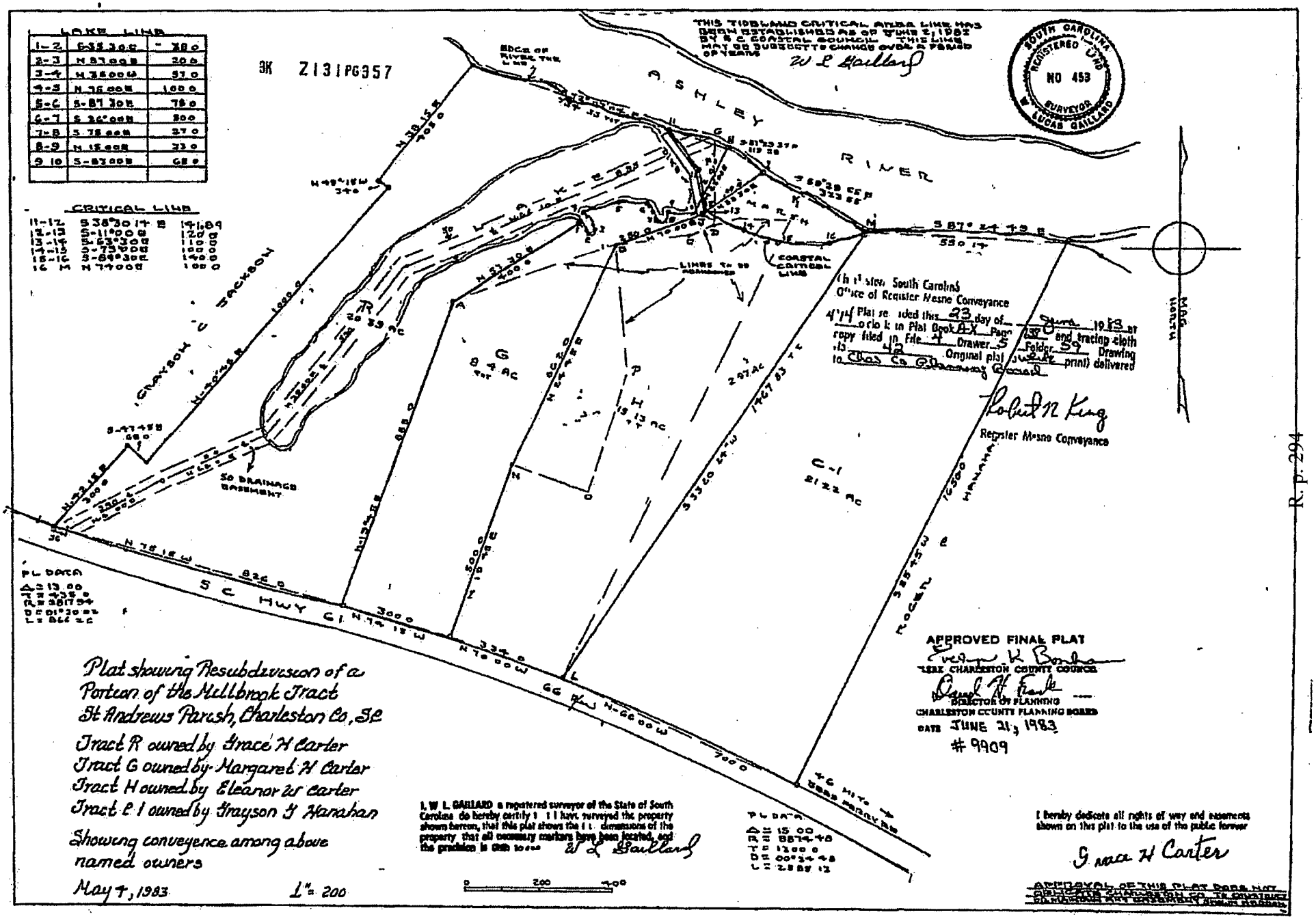
T. Heyward Carter, Jr., Co-Trustee
Date: 12/11/17

TMS No. 364-00-00-001

Eleanor W. Carter, Trustee under South Carolina
Personal Residence Trust of Eleanor W. Carter
Date: 12/11/17

TMS No. 364-00-00-002

Margaret Hartley Carter
Date: Dec. 12, 2017


BK Z131PG357
ASHLEY RIVER
GRAYSON V JACKSON
S C HWY 61
50 DRAINAGE EASEMENT
COASTAL CRITICAL LINE
MARSH
MARSH
MARSH

City Hall
80 Broad Street
December 19, 2017
5:00 p.m.
AS AMENDED

CITY COUNCIL

A. Roll Call

B. Invocation – Councilmember Lewis

C. Pledge of Allegiance

D. Presentations and Recognitions

E. Public Hearings

1. An ordinance amending Ordinance No. 2007-232 in order to supplement the plan for the redevelopment of such area by including as a Redevelopment Project in such Ordinance affordable housing as defined at Section 31-6-30(6), South Carolina Code of Laws, 1976, **(AS AMENDED.) (SECOND READING)**

2. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 10 Society Street and two vacant parcels on Society Street (Peninsula) (0.62 acre) (TMS #458-01-04-002, 458-01-04-004 and 458-01-04-021) (Council District 1), be rezoned from General Business (GB) classification to Mixed-Use/Workforce Housing (MU-2/WH) classification. The property is owned by Leonard Storage Co, Inc and John T. Leonard, Inc.

3. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 32 Laurens Street and a vacant parcel on Laurens Street (Peninsula) (1.32 acres) (TMS #458-01-04-003 and 458-01-02-017) (Council District 1), be rezoned from General Business (GB) and Light Industrial (LI) classifications to Mixed-Use/Workforce Housing (MU-2/WH) classification. The property is owned by Roy F. Cole, Jr. et al.

4. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 3265 Maybank Highway (Johns Island) (1.40 acres) (TMS #279-00-00-205) (Council District 5), be rezoned from Commercial Transitional (CT) classification to General Office (GO) classification. The property is owned by George Gratzick.

5. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that West Ashley Circle at Glenn McConnell Parkway (West Ashley) (approximately 21.76 acres) (a portion of TMS# 301-00-00-027) (Council District 5), be rezoned from Gathering Place (GP) classification to General Business (GB)

classification. The property is owned by Whitfield Construction Company.

6. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that property located on Clements Ferry Road at I-526 (Cainhoy) (approximately 67.98 acres) (TMS #271-00-02-024, 271-00-02-025, 271-00-02-026 and 271-00-02-069) (Council District 1), be rezoned from Gathering Place (GP) classification to General Business (GB) classification. The property is owned by Hotel Holdings LLC, SCT Properties LLC and Joka III LLC.

7. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 1849 Westfield Road (West Ashley) (0.49 acre) (TMS #350-10-00-124) (Council District 5), annexed into the City of Charleston November 28, 2017 (#2017-143), be zoned Single-Family Residential (SR-1) classification. The property is owned by Ann and Seth Bomgren.

8. An ordinance to amend Section 54- 943(c) of the Code of the City of Charleston (Zoning Ordinance) to modify the vote required of City Council in the event a matter is disapproved by the Planning Commission or when a petition in opposition to a matter signed by owners of twenty percent of the area of lots subject to the matter, or of those immediately adjacent on the sides and rear or directly opposite thereto is presented to council to a simple majority of a quorum of the City Council **(AS AMENDED). (SECOND READING) (The Planning Commission recommends disapproval; requires a ¾ vote of City Council.)**

F. Act on Public Hearing Matters

G. Approval of City Council Minutes:

1. November 28, 2017

2. December 11, 2017 *(Deferred)*

H. Citizens Participation Period

I. Petitions and Communications:

i. Low Battery Design Update

ii. Act on request to close a portion of Sheppard Street

J. Council Committee Reports:

1. Committee on Public Works and Utilities: (Meeting was held on Tuesday, December 19, 2017 at 3:00 p.m.)

a. Acceptance and Dedication of Rights-of-Way and Easements

i. **Ashley Park, Phase 5** – Abandonment of a portion of a drainage easement in Ashley Park, Phase 5.
- Abandonment of Drainage Easement
- Exclusive Stormwater Drainage Easement
- Plat

ii. **Ashley Park, Phase 5** – Acceptance and Dedication of a new drainage easement in Ashley Park, Phase 5.
- Exclusive Stormwater Drainage Easement
- Plat

iii. **South Point, Phase 2** – Dedication and Acceptance of an extension of Hatchet Bay Drive (R/W varies, 360 LF). All infrastructures with the exception of the sidewalks have been completed. The sidewalks have been bonded.
- Title of Real Estate
- Affidavit for Taxable or Exempt Status
- Exclusive Stormwater Drainage Easement
- Plat

iv. **Ashley River Residences -** Abandonment of a portion of a 40' drainage easement at Ashley River Residences.
- Abandonment of Drainage Easement

2. **Committee on Ways and Means:**

(Bids and Purchases

(Office of Cultural Affairs: Approval to accept funds from the Gaylord and Dorothy Donnelley Foundation in the amount of $17,500. Funds will be used to support the City's 2017-2018 festival season (MOJA Arts Festival, Free Verse Poetry Festival and the Piccolo Spoleto Festival). Due to time constraints, this grant award was accepted on December 15, 2017. No City match is required.

(Mayor's Office for Children Youth and Families: Approval to submit a grant application for $20,000 from Youth Volunteer Corps Headquarters to continue success and sustainability through increased youth volunteers, service projects and volunteer hours. No City match is required.

(Traffic and Transportation: Approval of the City's share of matching funds in the amount of $400,000 for the ReThink Folly Road Project submitted by Charleston County to CHATS. The match will come from 2018 Hospitality funds.

(Request approval for the Mayor to execute:

-- on behalf of the City a Quitclaim Deed to the Commissioners of Public Works [Ordinance], and

- The Commissioners of Public Works Quitclaim Deed to the City to correct a deed transfer contemplated in the 2015 Memorandum of Understanding between the City and CPW relating to a parcel SCDOT transferred to the City which contains CPW infrastructure

(Grace Bridge Street and Morrison Drive; a portion of both: 459-06-01-072 and 459-06-01-071)

The property is owned by the City of Charleston.

(Request approval to execute:

- the First Amendment to Lease Agreement with Charleston Digital Corridor extending the lease initial term and extended terms, and to allow for an increase in square footage and parking [Ordinance]
- the License Agreement whereby the City will temporarily use property leased to Charleston Digital Corridor for a park-and-ride facility

(999 Morrison Drive; TMS: 461-13-01-038)

The property is owned by the City of Charleston.

(Request approval to execute the Temporary License Agreement for Park and Ride Operation whereby CARTA will operate a park and ride parking lot and provide shuttle service to and from 999 Morrison Drive and the Central Business District (999 Morrison Drive: TMS: 461-13-01-038)

(Request approval to execute the First Amendment to Public Infrastructure Improvements Agreement whereby extending the notice period when Ashley River Investors, LLC may terminate the current lease from 45 days to 36 months prior to the effective date of termination. The property is owned by the City of Charleston. [Ordinance]

(Request approval to execute the First Amendment to the Magnolia Development Agreement to include Ashley I, Ashley II, and the ARI Affiliates as parties to the Development Agreement, to reflect the current Property Owners with respect to the Magnolia Property, update the Development Schedule, reset the Commencement Date, and clarify certain other matters included in the Development Agreement. [Ordinance] (TMS: 464-00-00-012, 464-00-00-029, 466-00-00-019, 466-00-00-028, 466-00-00-029, 466-00-00-030, 466-00-00-031, 466-00-00-035, 466-00-00-036, 466-00-00-049, 464-00-00-025, 464-00-00-026, 464-00-00-028, 464-00-00-039, 464-00-00-040, 464-13-00-013, 464-13-00-012, 464-13-00-011, 464-00-00-008, 464-13-00-023, 466-00-00-016, 466-00-00-017, 466-00-00-018, 466-00-00-032, 466-00-00-033, 466-00-00-034, 466-00-00-037, 466-00-00-044, 466-00-00-046, 466-00-00-051, 460-00-00-002, 466-00-00-021, 464-14-00-136 and 464-00-00-019)

(Consider the following annexation:

-1 Riverdale Drive (TMS#418-14-00-080) 0.26 acre, West Ashley (District 11). The property is owned by Maho Holdings LLC.

Give first reading to the following bills coming from Ways and Means:

An ordinance authorizing the Mayor to execute on behalf of the City a Quitclaim Deed to the Commissioners of Public Works of the City of Charleston pertaining to that certain property designated as "REVERTER PARCEL AS DEFINED BY C,H,I,J,D,C 0.164 ACRES" and shown as contained between the lines running between the points designated C, H, I, J, D and C on a plat entitled "PLAT SHOWING THE PROPERTY LINE ADJUSTMENT TMS PARCEL 459-06-01-072 & 459-06-01-071 AND NEW REVERTER PARCEL GRACE BRIDGE STREET & MORRISON DRIVE CITY OF CHARLESTON CHARLESTON COUNTY, S.C." by Lewis Smith Moore, p.l.s. no. 21621, dated February 9, 2017, revised October 23, 2017 of record in the RMC Office for Charleston County, South Carolina and also that certain property contained between the lines running between

the points designated s, c, d, e and s on the aforementioned plat.

An ordinance authorizing the Mayor to execute on behalf of the City a First Amendment to Lease Agreement pertaining to the Lease Agreement between the City and the Charleston Digital Corridor Foundation of property located at 999 Morrison Drive.

An ordinance authorizing the Mayor to execute on behalf of the City a First Amendment to the Public Infrastructure Improvements Agreement with Ashley River Investors, LLC pertaining to the construction and funding of public infrastructure improvements in the Charleston Neck Redevelopment Project area with Tax Increment Fund Bond Proceeds and Tax Increment Fund Revenues.

An ordinance authorizing the Mayor to execute on behalf of the City a First Amendment to the Development Agreement between the City and Ashley River Investors, LLC, St. Matthews Lutheran Church and the Bishop of Charleston pertaining to lands located in upper peninsula area of the City comprising approximately 326 acres and bearing Charleston County Tax Map Numbers 464-00-00-012, 464-00-00-029, 466-00-00-019, 466-00-00-028, 466-00-00-029, 466-00-00-030, 466-00-00-031, 466-00-00-035, 466-00-00-036, 466-00-00-049, 464-00-00-025, 464-00-00-026, 464-00-00-028,464-00-00-039, 464-00-00-040, 464-13-00-013, 464-13-00-012, 464-13-00-011, 464-00-00-008, 464-13-00-023, 466-00-00-016, 466-00-00-017, 466-00-00-018, 466-00-00-032, 466-00-00-033, 466-00-00-034, 466-00-00-037, 466-00-00-044, 466-00-00-046, 466-00-00-051, 460-00-00-002, 466-00-00-021, 464-14-00-136 and 464-00-00-019.

An ordinance to provide for the annexation of property known as 1 Riverdale Drive (0.26 acre) (TMS# 418-14-00-080), West Ashley, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 11. The property is owned by Maho Holdings LLC.

K. Bills up for Second Reading:

1. *An ordinance providing for the distribution of funds for fiscal year 2017 generated by the Municipal Accommodations Fee as required by Ordinance No. 1996-18.*

2. *An ordinance providing for the distribution of funds for fiscal year 2018 generated by the Municipal Accommodations Fee as required by Ordinance No. 1996-56.*

3. *An ordinance to make appropriations to meet the liabilities of the City of Charleston for the fiscal year ending December 31, 2018.* ***(AS AMENDED)***

4. *An ordinance to raise funds for the fiscal year ending December 31, 2018 and to meet the appropriation of $211,967,306 authorized by Ordinance 2017-_____ ratified the 19th day of December, 2017.* ***(AS AMENDED)***

5. *An ordinance to amend the Code of the City of Charleston, South Carolina, Chapter 19,*

Section 270 to provide further clarification on residential parking district decal issuance. ***(AS AMENDED)***

6. *An ordinance to provide for the annexation of property known as 1419 Adele Street (0.10 acre) (TMS# 351-07-00-046), West Ashley, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 7. The property is owned by John Kerr.*

7. *An ordinance to amend Section 54-420 of Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) to add provisions allowing the repair, replacement or relocation of non-conforming off premises signs along interstate system roads under certain conditions.*

8. *An ordinance to provide for the annexation of property known as Oakville Plantation Road (approximately 18.61 acres) (TMS# 317-00-00-007), Johns Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 5. The property is owned by Keith W. Lackey et al. (DEFERRED)*

9. *An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by revising Section 54-220 (B) (1) (E) (15) pertaining to limits on the number of rooms in facilities. (DEFERRED FOR PUBLIC HEARING)*

10. *An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 221 Spring Street, 194 Cannon Street and adjacent zoned right-of-way (Peninsula) (approximately 2.379 acres) (TMS #460-10-04-011, 460-10-04-013) (Council District 6), be rezoned so as to be included in the Accommodations Overlay (A) classification designated as "A-7": 175 room maximum. (DEFERRED FOR PUBLIC HEARING)*

11. *An ordinance to amend Ordinance No. 2017-083, establishing a Temporary Moratorium on the acceptance or processing of applications pertaining to properties on James Island located in non-residentially zoned districts that exceed 4 units or 25,000 square feet, so as to extend the expiration date of the Temporary Moratorium until December 31, 2017. (DEFERRED FOR PUBLIC HEARING)*

12. *An ordinance to amend Ordinance No. 2017-060 that established a Temporary Moratorium on the acceptance or processing of applications for new construction on properties located in the 100 year floodplain within the Church Creek Drainage Basin for an additional period of six months. (DEFERRED FOR PUBLIC HEARING)*

13. *An ordinance to provide for the annexation of property known as property on Bees Ferry Road (approximately 17.13 acres) (a portion of TMS# 286-00-00-040), West Ashley, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 5. The property is owned by Julia E Bradham, Margaret Bradham Thornton and John M. Bradham. (DEFERRED)*

14. *An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that property located on Bees Ferry Road (West Ashley) (approximately 17.13 acres) (a portion of TMS #286-00-00-040) (Council District 5), be zoned Limited Business (LB) classification. The property is owned by Julia E. Bradham et al. (DEFERRED FOR PUBLIC HEARING)*

15. *An ordinance to provide for the annexation of property known as 251 Louise P. Gardner Street (0.10 acre) (TMS# 343-03-00-246), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 11. The property is owned by Christopher DiMattia. (DEFERRED)*

16. *An ordinance to provide for the annexation of property known as property on Folly Road and Grimball Road Extension (approximately 10.0 acres) (TMS# 427-00-00-020, 039, 106, 110, 111), James Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 6. The property is owned by the Estate of Willie Moultrie et al. (DEFERRED)*

17. *An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that property on Folly Road and Grimball Road Extension (James Island) (approximately 10.0 acres) (TMS #427-00-00-020, 039, 106, 110 and 111) (Council District 6), be zoned Limited Business (LB) classification and Folly Road (FR) Overlay Zone classification. The property is owned by Willie B. Moultrie Trustee. (DEFERRED FOR PUBLIC HEARING)*

M. Bills up for First Reading

1. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 1 Riverdale Drive (West Ashley) (0.26 acre) (TMS #418-14-00-080) (Council District 11), be zoned Single-Family Residential (SR-1) classification. The property is owned by Maho Holdings LLC.

2. An ordinance authorizing the Mayor to execute on behalf of the City a Lease between the City, as Landlord, and Emanuel African American M.E. Church of Charleston, as tenant, pertaining to property owned by the City located at 113 Calhoun Street (*DEFERRED*)

3. An ordinance authorizing the Mayor to execute on behalf of the City Quit-Claim Deeds, approved as to form by the Office of Corporation Counsel, to the owners of those properties abutting each side of Hayne Street, running from Church Street to Anson Street, conveying to such owners one-half of the width of Hayne Street as said street abuts the respective owner's property, subject to any and all easements or other matters of record. *(DEFERRED)*

4. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that property located on Oakville Plantation Road

(Johns Island) (approximately 89.0 acres) (portions of TMS# 317-00-00-089 and 317-00-00-011) (Council District 5), be rezoned from Light Industrial (LI) classification to Rural Residential (RR-1) classification. The property is owned by Keith W. Lackey et al. *(DEFERRED)*

5. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that property located on Oakville Plantation Road (Johns Island) (approximately 18.61 acres) (TMS #317-00-00-007) (Council District 5), be zoned Rural Residential and Conservation (RR-1 and C) classifications. The property is owned by Keith W. Lackey et al. *(DEFERRED)*

N. Miscellaneous Business:

1. The next regular meeting of City Council will be Tuesday, January 9, 2018 at 5:00 p.m. at City Hall, 80 Broad Street.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.

AN ORDINANCE

ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-S IN CHARLESTON COUNTY (TMS #361-00-00-006) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9 AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED NOVEMBER 30, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S".

IT IS FOUND BY THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON AS FOLLOWS:

THE FREEHOLDERS OF AN AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, CONTIGUOUS AND ADJACENT TO THE CITY OF NORTH CHARLESTON HAVE PETITIONED THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON TO ANNEX THAT AREA PURSUANT TO SECTION 5-3-150 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED;

THROUGH LEGAL COUNSEL, SAID PETITION HAS BEEN PLACED BEFORE CITY COUNCIL, HAS BEEN EXAMINED AS TO FORM, REGULARITY AND AUTHENTICITY AND IT HAS BEEN FOUND THAT 100% OF THE FREEHOLD PROPERTY OWNERS OF RECORD ACCORDING TO THE ASSESSMENT AND TAX ROLLS OF THE ASSESSOR AND AUDITOR OF CHARLESTON COUNTY REPRESENTING 100% OF THE ASSESSED VALUE OF PROPERTY LOCATED IN SAID AREA HAVE SIGNED SAID PETITION FOR ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED NOVEMBER 30, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S."

THE CITY COUNCIL OF NORTH CHARLESTON REPRESENTS THE INTERESTS OF THE CITIZENS OF THE CITY OF NORTH CHARLESTON AND HAS DETERMINED THAT IT IS IN THE BEST INTEREST AND WELFARE OF BOTH THE PRESENT CITY AND THE AREA PROPOSED FOR ANNEXATION THAT SAID PETITION BE ACCEPTED AND AGREED TO AND THAT THE AREA SHOULD BE ANNEXED AND MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH CHARLESTON, IN COUNCIL ASSEMBLED, THAT THE CORPORATE LIMITS OF THE CITY OF NORTH CHARLESTON SHALL HEREAFTER INCLUDE THE FOLLOWING DESCRIBED PROPERTY, MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

> The property to be annexed, consisting of approximately 50.1 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated November 30, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S", a copy of same being attached hereto for purposed of this annexation, with the property being further described by reference to said map as follows:

Beginning at Point A, at the intersection of a perpendicular line as extended from the southeasternmost corner of parcel designated TMS #181-00-00-046 with the middle of the Ashley River, which point is on the present city limits line of the City of North Charleston; thence, in a generally westerly direction a distance of 1,122 feet along the present city limits line of the City of North Charleston to Point B, which point is on the intersection of a perpendicular line as extended from the northwesternmost corner of parcel designated TMS #361-00-00-006 and the middle of the Ashley River which point is on the present city limits of the City of North Charleston; thence, in a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS #361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of way of Ashley River Road to Point D, which point is on the southeasternmost corner of parcel designated TMS #361-00-00-006; thence, in a generally northeasterly and northerly direction a distance of 2,812 feet along the easternmost property line of parcel designated TMS #361-00-00-006 t to Point A, which is the point of beginning and is on the present city limits line of the City of North Charleston, with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #361-00-00-006

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS ADOPTION BY CITY COUNCIL.

Ordained in City Council this 28th day of December, in the Year of Our Lord, 2017 and in the 241st year of Independence of the United States of America.

R. KEITH SUMMEY, MAYOR

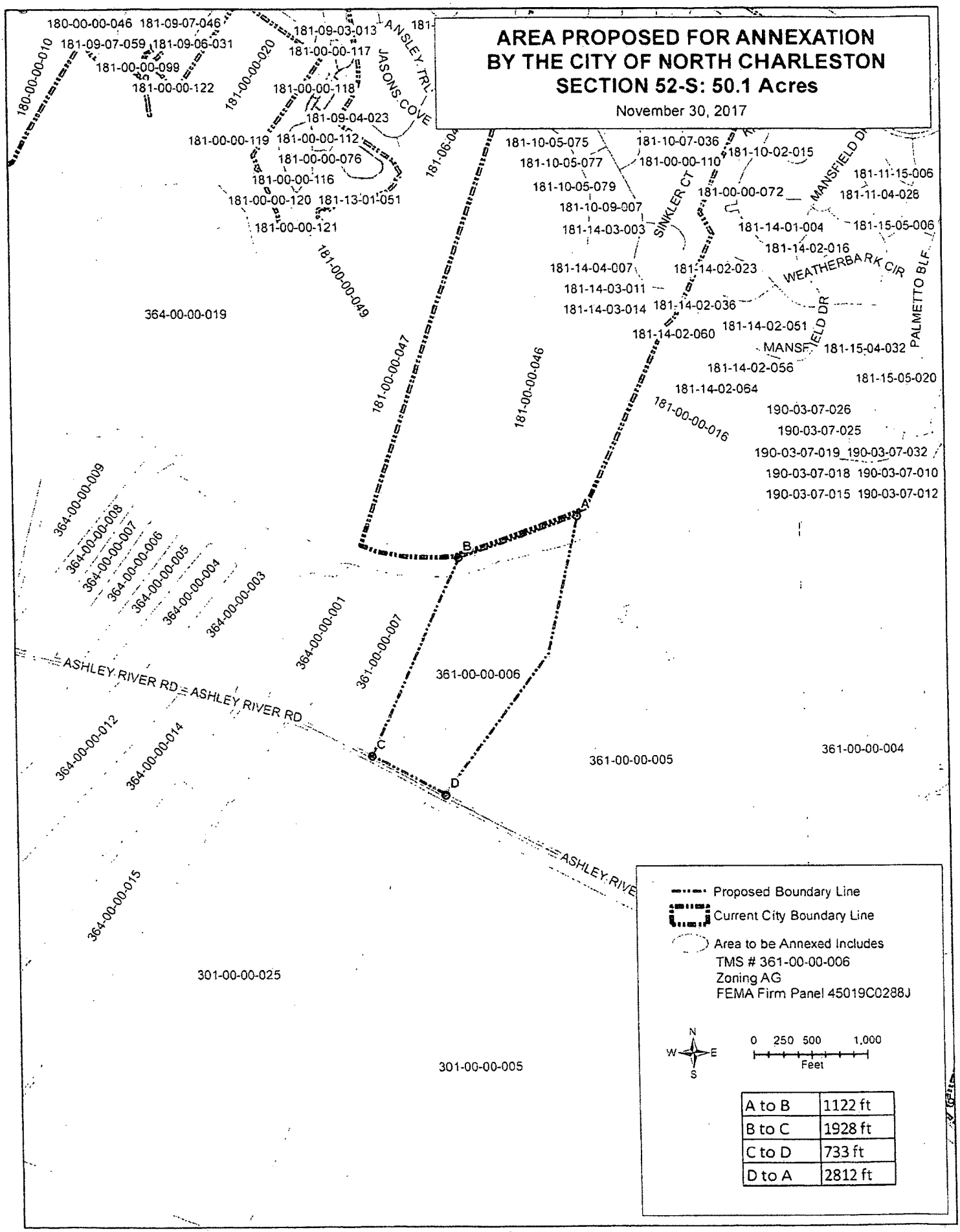
APPROVED AS TO FORM:

01-11-2018

LEGAL COUNSEL

ATTEST:

ELLEN CLARK, MUNICIPAL CLERK


AREA PROPOSED FOR ANNEXATION
BY THE CITY OF NORTH CHARLESTON
SECTION 52-S: 50.1 Acres
November 30, 2017
180-00-00-046
181-09-07-046
181-09-07-059
181-09-06-031
181-00-00-099
181-00-00-122
181-09-03-013
181-00-00-117
181-00-00-118
181-09-04-023
181-00-00-119
181-00-00-112
181-00-00-076
181-00-00-116
181-00-00-120
181-13-01-051
181-00-00-121
181-00-00-020
JASONS COVE
ANSLEY TRL
181-06-04
181-10-05-075
181-10-05-077
181-10-05-079
181-10-09-007
181-14-03-003
181-10-07-036
181-00-00-110
181-10-02-015
181-00-00-072
SINKLER CT
MANSFIELD DR
181-11-15-006
181-11-04-028
181-14-01-004
181-15-05-006
181-14-02-016
WEATHERBARK CIR
PALMETTO BLF
181-14-04-007
181-14-02-023
181-14-03-011
181-14-03-014
181-14-02-036
181-14-02-060
181-14-02-051
MANSFIELD DR
181-15-04-032
181-14-02-056
181-15-05-020
181-14-02-064
190-03-07-026
190-03-07-025
190-03-07-019
190-03-07-032
190-03-07-018
190-03-07-010
190-03-07-015
190-03-07-012
181-00-00-049
181-00-00-047
181-00-00-046
181-00-00-016
364-00-00-019
364-00-00-009
364-00-00-008
364-00-00-007
364-00-00-006
364-00-00-005
364-00-00-004
364-00-00-003
364-00-00-001
361-00-00-007
361-00-00-006
A
B
C
D
ASHLEY RIVER RD
ASHLEY RIVER RD
364-00-00-012
364-00-00-014
361-00-00-005
361-00-00-004
364-00-00-015
301-00-00-025
301-00-00-005
Proposed Boundary Line
Current City Boundary Line
Area to be Annexed Includes
TMS # 361-00-00-006
Zoning AG
FEMA Firm Panel 45019C0288J
N
W
E
S
0 250 500 1,000
Feet
A to B 1122 ft
B to C 1928 ft
C to D 733 ft
D to A 2812 ft

NORTH CHARLESTON CITY COUNCIL
SPECIAL MEETING
AGENDA ITEM

Meeting of December 28, 2017

DATE: December 27, 2017

ITEM TITLE: Ordinance – Final Reading & Report
An Ordinance Annexing an Area Known as Section 52-S Charleston County (TMS #361-00-00-006), Ashley River Rd and make it part of present City Council District 9, Proposed Zoning AG, Agricultural District

SUBMITTED BY: Julie Elmore, Executive Department
Adam MacConnell, Executive Department

CONTACT PERSON: Adam MacConnell, 740-5821

SUMMARY EXPLANATION:
This annexation is for a 50 acre parcel identified as TMS #361-00-00-006, in Charleston County located on Ashley River Road and known as Millbrook Plantation. This property is in the vicinity of the City's recently annexed Runneymede Planation. Proposed City zoning is AG. 100% of the freeholders representing 100% of the assessed value have signed a petition for this annexation; therefore, no public hearing is required. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9.

STAFF RECOMMENDATION:
Approval of the Annexation

CITY COUNCIL COMMITTEE RECOMMENDATIONS:

CITY COUNCIL ACTION:
On December 21, 2017 the City Council voted to approve the Ordinance for first reading and moved it to final reading. (7-1-0)

Exhibits
_____Resolution ____Ordinance____Contract____Minutes___Plan/Map___Transfer of Funds____Other

Ordinance #2018-017

AN ORDINANCE

CORRECTING ORDINANCE #2017-083 TO CONFORM TO A RECENT CHANGE IN THE COUNTY TMS MAPPING

Whereas, The City of North Charleston recently annexed Parcel TMS #361-00-00-006; and

Whereas, the clearly expressed intent of the ordinance was to annex parcel 006; and

Whereas, based upon then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road; and

Whereas, County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, TMS #361-00-00-0061; and

Whereas, it was North Charleston's intent to annex unincorporated parcel TMS #361-00-00-006, not TMS #361-00-00-061; and

Whereas, the attached ordinance would amend Ordinance #2017-083 to make the boundaries consistent with this intent and consistent with the now-corrected County data for parcel -006.

Now, Therefore, Be it Ordained by the Mayor and Council, in Council assembled, that Ordinance #2017-083 be hereby amended to clarify the *exclusion* from annexation of any portion of property now shown on County tax map records as TMS #361-00-00-0061 (a 100' deep strip parallel to Ashley River Road as shown on the map herein), with all other portions of Ordinance #2017-083 to remain unchanged.

THE WITHIN ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION BY CITY COUNCIL.

Ordained in City Council this 22nd day of March, in the Year of Our Lord, 2018, and in the 241st year of Independence of the United States of America.

R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:

LEGAL COUNSEL

ATTEST:

ELLEN CLARK, MUNICIPAL CLERK

NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM

Meeting of March 22, 2018

Date: March 19, 2018

Item Title: Ordinance – Final Reading
An Ordinance Correcting Ordinance 2017-083 to conform to a recent change in County TMS mapping.

Submitted by: Derk Van Raalte, Legal Department 843-740-2550

Contact Person: Derk Van Raalte, 843-740-2550

SUMMARY EXPLANATION:
The City of North Charleston recently annexed Parcel 361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

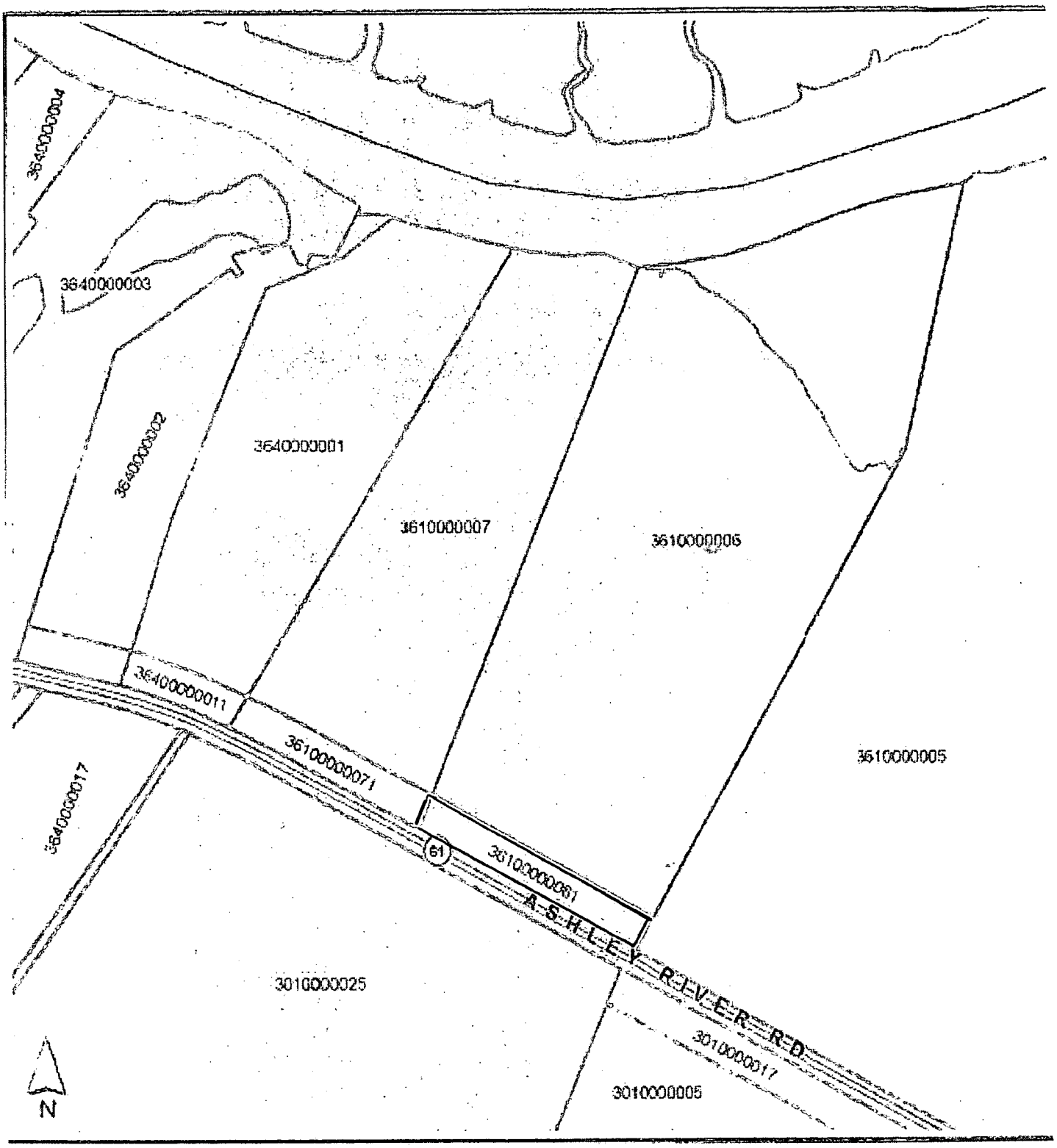
STAFF RECOMMENDATION:
Staff recommends approval.

BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:

COUNCIL COMMITTEE RECOMMENDATION:

COUNCIL ACTION:
At a special meeting on March 15, 2018 the City Council voted unanimously to approve the Ordinance for first reading and moved it to final reading. (8-0-0)

Exhibits
___Resolution_X__Ordinance_ Contract__Minutes__X_Plan/Map___Transfer of Funds __Other



Charleston County SC

0 237.5 475 950 Feet

1 inch = 374 feet

Parcel ID: 3610000006
OWNER1: MILLBROOK PLANTATION LLC
PROP_ST_NO: 4056
PROP_ST_NAME: ASHLEY RIVER
PROP_TYPE: RD
ACREAGE: 31.00

CLASS_CODE: 800 - AGRICULTURAL
PLAT_BOOK_PAGE: L17- 0511
DEED_BOOK_PAGE: 0834-213
Jurisdiction: CITY OF NORTH CHARLESTON

CHARLESTON COUNTY

Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the

Sec. 2-24. - Adoption of ordinances.

(a) A proposed ordinance shall be introduced in writing and in the form required for final adoption. City council shall by ordinance establish its own rules and procedures to the adoption of ordinances. No ordinance shall have the force of law until it has been read two (2) times on two (2) separate days at least six (6) days between each reading. Further, any ordinance providing for the adoption of the annual city budget shall be presented to city councilmembers at least two (2) weeks prior to its first reading.

(b) The city council may adopt any standard code or technical regulation by reference thereto in the adopting ordinance. The procedure and requirements governing such ordinance shall be as prescribed by state law. Copies of any ordinance adopting a code of technical regulations shall be made available by the municipal clerk for distribution or for purchase at a reasonable price.

(Ord. No. 1977-71, § 1, 11-8-77; Ord. No. 1998-01, § 1, 1-13-98)

State Law reference— Similar provisions, S.C. Code 1976, §§ 5-7-270, 5-7-280.

CHARLESTON
SOUTH CAROLINA

Annexation Eligibility

Annexation eligibility is determined by the location of your property in connection with the existing City limits. The City of Charleston eligibility requirements are governed by South Carolina State Law Title 5, "Municipal Corporations."

How to Annex

Select Language ▼

To annex into the City of Charleston, your property must be:

- Approved by the City Council
- Contiguous or "touching" the city limits

Annexation Eligibility

- Ask our Annexation Coordinator: Send your address or tax map number by emailing the Annexation Coordinator to request an eligibility review. We will review your location and contiguity on a map to determine if your property is eligible.
- Check your eligibility online: Go to your county's geographic information systems (GIS) online service to review a map of your property. Their online services also allow you to review your zoning, buildings, fire stations, etc.

Charleston County Property Owners

Follow these steps to locate your property online:

1. Go to Charleston County's GIS maps online (please note Charleston County's terms of agreement)
2. Enter your address or parcel id number (TMS) in the search fields
3. Turn on the municipal limits layer by checking the box in the right hand column labeled "Municipal Limits"
4. Review whether your gray property "touches" the city limits shown in pink

Berkeley County Property Owners

Follow these steps to locate your property online:

1. Go to Berkeley County's GIS maps online (please note Berkeley County's terms of agreement)
2. Enter your address or parcel id number (TMS) in the search fields
3. Turn on the zoning layer by checking the box in the right hand column labeled "Berkeley County Zoning"
4. Review whether your colored property "touches" the Charleston city limits shown in white

CITIZEN SERVICES DESK
843-724-7311

Select Language ▼

CHARLESTON SC

FAQs

How do I obtain a residential garbage container?

What is the holiday garbage and trash pick-up schedule?

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539

FILED
2019 MAY 28 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

NOTICE OF APPEAL

Appellant City of Charleston (the "City") appeals the orders of the Honorable Eugene C. Griffith, Jr., filed on March 1, 2019, March 5, 2019, and May 1, 2019, in the above-referenced cases, which were consolidated for all purposes by order filed on December 19, 2018.

On March 4, 2019, the City received written notice of entry of the order filed on March 1, 2019 (the "Original Order"). The same order was re-filed on March 5, 2019 (the "Re-Filed Order"). On March 6, 2019, the City received written notice of entry of the Re-Filed Order.

On March 14, 2019, the City timely served a notice of motion and motion to reconsider, alter, or amend (the "Motion to Reconsider") the Original Order and the Re-Filed order. Also on March 14, 2019, the City filed the Motion to Reconsider and served a copy on the Honorable Eugene C. Griffith, Jr.

On May 2, 2019, the City received written notice of entry of the order denying the City's Motion to Reconsider, which was filed on May 1, 2019.

May 24, 2019

Susan J. Herdina
S.C. Bar No. 13165

Corporation Counsel
E-mail: herdinaj@charleston-sc.gov

Frances I. Cantwell
Of Counsel
S.C. Bar No. 01121
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr.
Assistant Corporation Counsel
S.C. Bar No. 06802
E-mail: mcqueeneyd@charleston-sc.gov

City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

Other Counsel of Record:

J. Brady Hair, Esquire
Derk Van Raalte
Legal Department
2500 City Hall Lane
North Charleston, SC 29406
Attorneys for Respondent City of North Charleston

Bruce E. Miller, Esquire
Bruce E. Miller, ~~P.A.~~
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
Attorney for Respondent Millbrook Plantation LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539

FILED
2019 MAY 28 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent City of North Charleston, by depositing a copy of it in the United States Mail, postage prepaid, on May 24, 2019, addressed to its attorneys of record, as follows:

J. Brady Hair, Esquire
Derk Van Raalte
Legal Department
2500 City Hall Lane
North Charleston, SC 29406

I also certify that I have served the Notice of Appeal on Respondent Millbrook Plantation LLC by depositing a copy of it in the United States mail, postage prepaid, on May 24, 2019, addressed to its attorneys of record, as follows:

Bruce E. Miller, Esquire
Bruce E. Miller, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412

May 24, 2019

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
E-mail: mcqueeneyd@charleston-sc.gov
(843) 724-3730
Attorney for Appellant City of Charleston

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
FEB 19 2020
SC Court of Appeals

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 29, 2020

Daniel S. ("Chip") McQueeney, Jr. (S.C. Bar No. 6802)
mcqueeneyd@charleston-sc.gov

City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorney for Appellant City of Charleston

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED
FEB 19 2020
SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

FINAL BRIEF OF APPELLANT CITY OF CHARLESTON

Susan J. Herdina (S.C. Bar No. 13165)

Email: herdinas@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 01121)
Email: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr. (S.C. Bar No. 06802)
Email: mcqueeneyd@charleston-sc.gov
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN CONCLUDING THAT THE SUPREME COURT OF SOUTH CAROLINA HAS DECLINED TO ADOPT THE PRIOR JURISDICTION DOCTRINE?

2. DID THE CIRCUIT COURT ERR IN DISMISSING CHARLESTON'S CLAIMS DESPITE CHARLESTON'S STANDING TO ASSERT THAT THE PRIOR JURISDICTION DOCTRINE APPLIES?

3. DID THE CIRCUIT COURT ERR IN DETERMINING, AS A MATTER OF LAW, THAT A PARTY ALLEGING AN INFRINGEMENT OF THE PARTY'S PROPRIETARY INTERESTS AND STATUTORY RIGHTS DOES NOT HAVE STANDING TO CHALLENGE A 100% ANNEXATION?

4. DID THE CIRCUIT COURT ERR IN LIMITING STANDING TO CHALLENGE A 100% ANNEXATION TO THE STATE OF SOUTH CAROLINA, AS A MATTER OF LAW?

5. DID THE CIRCUIT COURT ERR IN DISMISSING CHARLESTON'S CLAIMS DESPITE CHARLESTON'S ASSERTIONS THAT NORTH CHARLESTON'S ORDINANCES INFRINGED UPON CHARLESTON'S PROPRIETARY INTERESTS AND STATUTORY RIGHTS?

6. DID THE CIRCUIT COURT ERR IN INTERPRETING NORTH CHARLESTON'S 2017 ORDINANCE TO ANNEX ONLY PROPERTY OUTSIDE CHARLESTON'S MUNICIPAL LIMITS?

7. DID THE CIRCUIT COURT ERR IN CONTRUING THE ALLEGATIONS IN CHARLESTON'S COMPLAINTS AGAINST CHARLESTON TO CONCLUDE THAT NORTH CHARLESTON'S 2017 ORDINANCE ANNEXED ONLY PROPERTY OUTSIDE CHARLESTON'S MUNICIPAL LIMITS?

STATEMENT OF THE CASE

This appeal arises from three consolidated actions challenging cross-annexations by Appellant City of Charleston ("Charleston") and Respondent City of North Charleston ("North Charleston") of certain real property (the "Millbrook Parcel") owned by Respondent Millbrook Plantation, LLC ("Millbrook").[1]

On February 15, 2018, Charleston filed a notice of intent in Millbrook I to contest North Charleston's ordinance purportedly annexing the Millbrook Parcel (the "2017 Ordinance"). (R. pp. 40-41). The following day, Charleston served and filed the notice of intent with North Charleston's Clerk of Council. (R. pp. 40-41, p. 46, ¶ 17).

On March 27, 2018, Charleston filed the summons and complaint in Millbrook I, asserting that the 2017 Ordinance was invalid because (1) the 2017 Ordinance illegally included property annexed by Charleston in 2005; and (2) Charleston took the first step to annex the remainder of the property before North Charleston, entitling Charleston to proceed with its annexation without interference from North Charleston. (R. pp. 45-47, ¶¶ 5, 16, 19).

On April 24, 2018, Millbrook filed a notice of intent, summons, and complaint in Millbrook II challenging Charleston's ordinance (the "Charleston Ordinance") annexing the balance of the Millbrook Parcel, a portion of which had already been annexed by Charleston in 2005. (R. pp. 85-99).

On May 18, 2018, Charleston filed a notice of intent, summons and complaint in Millbrook III challenging an ordinance adopted by North Charleston (the "2018 Ordinance") to amend or

[1] These actions are individually designated as Case Nos. 2018-CP-10-0846 ("Millbrook I"); 2018-CP-10-2131 ("Millbrook II"); and 2018-CP-10-2539 ("Millbrook III"). On December 19, 2018, the circuit court consolidated Millbrook I, Millbrook II, and Millbrook III for all purposes. (R. pp. 38-39).

clarify the property previously annexed by North Charleston by omitting territory annexed by Charleston in 2005. (R. pp. 105-117). Charleston alleged in Millbrook III that Charleston obtained prior jurisdiction over the Millbrook Parcel "by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing the Millbrook Parcel into the City prior to North Charleston's beginning the process of passing [the 2018 Ordinance]." (R. p. 114, ¶ 40). Charleston also alleged that the 2018 Ordinance could not "cure" the substantive defect regarding the legal description of the area purportedly annexed under the 2017 Ordinance. (R. p. 114, ¶¶ 38-39).

On October 4, 2018, Millbrook moved to dismiss Millbrook I and Millbrook III, arguing that Charleston lacked standing to challenge the annexations. (R. pp. 144-147). On October 24, 2018, the circuit court held a hearing on Millbrook's motions and took them under advisement. (R. pp. 196-243).

On March 1, 2019, the circuit court entered an order granting Millbrook's motion to dismiss (the "Order"). (R. pp. 1-18). Charleston received written notice of entry of the Order on March 4, 2019. (R. p. 182). On March 5, 2019, the circuit court refiled the same order (the "Refiled Order"), and Charleston received written notice of entry of the Refiled Order on March 6, 2019. (R. pp. 19-36, p. 182).

On March 14, 2019, Charleston served a notice of motion and motion to alter, amend, and reconsider the Order and the Refiled Order. (R. pp. 181-195). On May 1, 2019, the circuit court entered an order denying Charleston's motion. (R. p. 37). Charleston received written notice of entry of the order denying reconsideration on May 2, 2019. (R. p. 314). On May 24, 2019, Charleston served a notice of appeal of the Order, the Refiled Order, and the order denying Charleston's motion to alter, amend or reconsider. (R. pp. 314-317).

FACTS

The Millbrook Parcel consists of approximately 31 acres of real property located on South Carolina Highway 61, also known as Ashley River Road, in Charleston County, South Carolina. (R. pp. 44-45, ¶ 4, pp. 109-110, ¶ 4). In 1998, the General Assembly designated this portion of Highway 61, which dates back to colonial times, as a South Carolina Scenic Byway, subjecting it to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee for Scenic Byways pursuant to Sections 57-3-110 and 57-23-60. See S.C. Code Ann. § 57-23-230(A).

On May 10, 2005, Charleston adopted Ordinance No. 2005-093 (the "2005 Ordinance") annexing the portion of the Millbrook Parcel lying within 100 feet of Highway 61. (R. p. 45, ¶ 9, p. 111, ¶ 14). There is no dispute that the 2005 Ordinance included the portion of the Millbrook Parcel lying within 100 feet of Highway 61. (R. p. 45, ¶ 5, p. 50, ¶ 5, p. 111, ¶ 14, pp. 119-20, ¶ 14, p. 141, ¶ 5). No party has ever challenged the validity of the 2005 Ordinance.

Charleston commenced the annexation of the remainder of the Millbrook Parcel on December 19, 2017, by accepting an annexation petition under the "75% Annexation Method" authorized by section 5-3-150(1) of the South Carolina Code; and by ordering the statutorily-required public hearing. See S.C. Code Ann. § 5-3-150(1)(6) ("not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing . . . "). (R. p. 45, ¶¶ 10-11, p. 111, ¶¶ 15-16).

On December 21, 2017, North Charleston gave first reading to the 2017 Ordinance to annex the Millbrook Parcel under the auspices of section 5-3-150(3) of the South Carolina Code, the "100% Annexation Method." (R. p. 46, ¶ 14, p. 112, ¶ 19). On December 28, 2017, North Charleston adopted the 2017 Ordinance. (R. p. 46, ¶ 15, p. 112, ¶ 20). The 2017 Ordinance, which

is attached as Exhibit 1 to the Order, describes the property annexed as commencing in the middle of the Ashley River at the corporate limits of North Charleston, eventually extending as follows:

> [I]n a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS 361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 [sic] with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of-way of Ashley River Road to Point D . . . .

(R. pp. 12-15, pp. 303-306) (emphasis added). The description clearly includes 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies immediately adjacent to Ashley River Road. (R. pp. 304-305). As a result, the description includes the portion of the Millbrook Parcel lying within 100 feet of Highway 61, annexed by Charleston in 2005. (R. pp. 303-306).

On January 23, 2018, the City Council of Charleston held a public hearing on, and gave first reading to, the Charleston Ordinance, which included the annexation of the portion of the Millbrook Parcel lying outside Charleston's then-existing corporate limits. (R. p. 46, ¶ 12, p. 111, ¶ 17). On April 10, 2018, City Council adopted the Charleston Ordinance. (R. p. 111, ¶ 18).

In the meantime, on March 15, 2018, North Charleston gave first reading to the 2018 Ordinance, purporting to amend or clarify the 2017 Ordinance by removing the portion of the Millbrook Parcel annexed by Charleston under the 2005 Ordinance. (R. pp. 307-309). On March 22, 2018, North Charleston adopted Ordinance No. 2018-017, i.e., the 2018 Ordinance. (R. p. 113, ¶ 37). The 2018 Ordinance, attached as Exhibit 2 to the Order, includes recitals based upon the following summary explanation, in pertinent part:

> The City of North Charleston recently annexed Parcel TMS #361-00-00-006. The clearly expressed intent of the ordinance was to

> annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of any another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

(R. p. 17) (emphasis added).

By the time North Charleston took these actions, Charleston had not only accepted the annexation petition for the Millbrook Parcel and ordered a public hearing, but had also held the required public hearing and given first reading to the Charleston Ordinance. (R. p. 114, ¶ 40).

STANDARD OF REVIEW

"In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). "A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "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." Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE SUPREME COURT OF SOUTH CAROLINA HAS DECLINED TO ADOPT THE PRIOR JURISDICTION DOCTRINE.

Before North Charleston gave first reading to either the 2017 Ordinance or the 2018 Ordinance, the City Council of Charleston had, in accordance with section 5-3-150(1) of the South Carolina Code, already accepted a petition to annex the portion of the Millbrook Parcel not annexed by Charleston in 2005 and ordered a public hearing on the matter. (R. p. 17, pp. 111-113, ¶¶ 15-16, 19, 37). Charleston pled these acts as entitling Charleston to complete the annexation without interference from North Charleston under the common law "prior jurisdiction doctrine," also called the "prior pending proceedings rule." (R. pp. 45-47, ¶¶ 5, 16, 19.b, pp. 114-115, ¶¶ 40, 46.a).

The circuit court disagreed, holding: "The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise declines." (R. pp. 28-29). This holding is erroneous, as the Supreme Court has not declined to adopt the prior jurisdiction doctrine. It merely found the doctrine was not applicable to the case then before it.

"The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority." City of Columbia v. Town of Irmo, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) (emphasis added), citing 1 Antieau Municipal Corporation Law § 1A.16 (1993); 2 McQuillan Municipal Corporations § 7.22A (1966). The Supreme Court refused to address Irmo's argument in favor of the doctrine because Irmo failed to commence a valid annexation proceeding before Columbia:

> We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court . . . . Here, there

> is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31.

Id. at 196, 447 S.E.2d at 857 (emphasis in original). At the very least, this erroneous reading of Irmo warrants reversal to consider whether and under what circumstances the prior jurisdiction doctrine should apply.

II. THE CIRCUIT COURT ERRED IN DISMISSING CHARLESTON'S CLAIMS BECAUSE CHARLESTON HAD STANDING TO ASSERT THAT THE PRIOR JURISDICTION DOCTRINE APPLIES.

The issue of whether, and to what extent, the prior jurisdiction doctrine should be recognized in South Carolina is novel. "In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court." Madison v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 656 (2006). This Court should tackle the issue, for reasons of sound public policy.

"The rule that among separate equivalent proceedings relating to the same subject matter, that one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted, applies, generally speaking, to and among proceedings for the municipal incorporation, annexation, or consolidation of a particular territory." 2 McQuillin, Municipal Corporations § 7.39 (3d ed. 2006). "In proceedings of this character, while the one first commenced is pending, jurisdiction to consider and determine others concerning the same territory is excluded." Id. "Thus, where two or more bodies or tribunals have concurrent jurisdiction over a subject matter, the one first acquiring jurisdiction may proceed, and subsequent purported assumptions of jurisdiction in the premises are a nullity." Id.

"This principle of the common law is based upon the general public policy of the promotion of orderly administration of government and justice." Id. "Thus, the first of two or more annexation proceedings prevails over those subsequently commenced relating to the same territory." Id. "The

jurisdictional priority based on priority in time ordinarily is determined by the time of commencement or initiation of the proceedings, and not by the time of completion, nor by another time or date." Id. "The taking of the first mandatory public procedural step in the statutory process for incorporation or annexation of territory ordinarily fixes the date of the commencement of the proceedings, for the purpose of the rule as to jurisdictional priority." Id.; see also Lincolnshire v. Highbaugh Realty Co., 278 S.W.2d 636, 637 (Ky. 1955) ("It seems to be the general rule that in the case of rivalry between two annexing municipalities the one that takes the first 'public' procedural step takes priority.").

In City of Burlington v. Town of Elon College, 314 S.E.2d 534 (N.C. 1984), the Supreme Court of North Carolina applied the prior jurisdiction doctrine under facts practically identical to those in the present case. The City of Burlington had taken the "first mandatory public procedural step" to annex certain real property by adopting a resolution of its intent under the North Carolina procedures for involuntary annexations. Id. at 537. The Town of Elon College then commenced several voluntary annexations of some of the same territory. Id. Elon College concluded its annexations before Burlington. Id. at 536.

Under the prior jurisdiction doctrine, the Supreme Court of North Carolina concluded that Burlington had jurisdiction to complete its involuntary annexation without interference from Elon College. Id. at 537. The Court explained: "[T]he prior jurisdiction rule is the majority rule and is applied 'universally' in 'conflicts between two municipalities attempting to assert jurisdiction over the same territory.'" Id. at 537, quoting Comment, Municipal Corporations: Prior Jurisdiction Rule, 7 W.F.L. Rev. 77, 79 (1970). The Court continued:

> [I]n cases where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. We believe adherence

> to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of our annexation statutes.

Id. at 538.

"The prior jurisdiction rule applies where the proceedings are equivalent." 2 McQuillin, Municipal Corporations § 7.39 (3d ed. 2006). In Burlington, the Court rejected Elon College's argument that the prior jurisdiction doctrine should not apply because Burlington's involuntary annexation and Elon College's voluntary annexations were not "equivalent" proceedings:

> For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are 'equivalent proceedings,' and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the *involuntary* annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes.

Id. at 538 (emphasis in original).

Courts and commentators overwhelmingly endorse the prior jurisdiction doctrine in the context of annexation litigation. And not without good reason. "Perhaps the most significant attribute of the prior jurisdiction rule is that it enhances the predictability and order of annexation proceedings." Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule, 63 N.C.L. Rev. 1260, 1265 (Aug. 1985). "Because the prior jurisdiction rule looks to the time of commencement rather than to the time of completion of proceedings, it guarantees that the first annexation proceedings begun will not be undermined by subsequently initiated plans." Id. at 1265-66. "Thus, the rule ensures predictability and eliminates the incentive for a rush to the finish line." Id. at 1266.

The prior jurisdiction doctrine affords protection to a municipality taking the first public procedural step toward annexation. It ensures that municipal annexations result from thoughtful decisions, made by informed councils, after considering the impact of an annexation on the

municipality's comprehensive plan, existing facilities, and its residents. It promotes order in the workings of government. See 63 N.C.L. Rev. at 1267 ("Although none of the alternatives . . . is without drawbacks, the policy statements and the universal acceptance of the prior jurisdiction rule suggest widespread agreement that proceedings first begun are more likely to be well conceived than those subsequently begun.").

To eschew the rule will invite competing municipalities to "race to the finish line." Cf. Lincolnshire, 278 S.W.2d at 637 ("It is contended by the appellants that neither party has actually annexed the territory until all procedural steps toward that end have been taken, and, as a consequence, the municipality which gets there 'firstest with the mostest' should be the victor. But the true rule to apply appears to be to the contrary."). "A rule declaring as the winner the first municipality to *complete* its proceedings would only encourage North Carolina municipalities to rush annexation proceedings in order to thwart the success of other proceedings begun earlier." 63 N.C.L. Rev. at 1265 (emphasis in original).

Such a practice would discourage municipalities from investing the necessary time and resources to evaluate an annexation and would promote "jurisdiction shopping" by those seeking to obtain, and the government willing to give, maximum development rights. "Individuals are more likely to resist annexation because of personal grievances or fears about a neighboring municipality and to seek annexation by one municipality solely to prevent annexation by another . . . ." 63 N.C.L. Rev. at 1266. "In doing so individuals probably will not consider either the likely impact of annexation on an entire urban area or whether one municipality is better equipped than another to extend municipal service to an annexed area." 63 N.C.L. Rev. at 1266-67.

Such a practice would also create a disincentive for municipalities to plan for adequate public facilities, increased population densities, and intensification of uses. See 63 N.C.L. Rev. at

1265 ("Such a rule should ensure that annexation proceedings are predictable and orderly and that the better conceived plan, which furthers the interests of the greatest number of persons in an urban area, prevails.").

On the other hand, the prior jurisdiction doctrine is in keeping with the General Assembly's mandate for comprehensive planning in the field of local government planning and land development, as set out in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, codified in Chapter 29 of Title 6 of the South Carolina Code. See, e.g., S.C. Code Ann. § 6-29-510 (instructing local planning commissions to "develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction," based on "surveys and studies," including "an inventory of exiting conditions," "a statement of needs and goals," and "implementation strategies").

As applied here, Charleston is entitled to assert protection under the prior jurisdiction doctrine because Charleston took the first mandatory public procedural step of accepting an annexation petition and calling for the statutorily required public hearing before North Charleston did anything. Cf. Sherman v. Reavis, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979) ("An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.").

Charleston is also entitled to the protection of the rule because Charleston gave first reading and held a public hearing on its annexation of the remainder of the Millbrook Parcel prior to North Charleston commencing any *valid* legal proceedings to annex the same territory. See City of Columbia v. Town of Irmo, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("Here, there is no

showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31." (emphasis in original)); Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive defect" that may not be corrected through a subsequent ordinance). As discussed *infra,* the 2018 Ordinance, passed after Charleston had accepted a petition to annex the remainder of the Millbrook Parcel, held a public hearing on the annexation, and given first reading to its annexation ordinance, could not cure the defects of the 2017 Ordinance.

The circuit court did not address how and when the prior jurisdiction rule should apply, having erroneously concluded that the Supreme Court had refused to adopt the rule. Charleston respectfully urges the adoption of the rule and its application to the facts of this case. At the very least, the circuit court's order should be reversed and the matter remanded, either with instructions to consider the novel issues associated with applying the prior jurisdiction rule or with instructions clarifying when and to what extent the rule applies. The instructions should also direct the circuit court to consider whether any facts need to be developed further before rendering a final judgment on the issue. See McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 196, 743 S.E.2d 843, 849 (Ct. App. 2013) ("The trial court failed to consider whether this case posed a novel issue and whether the facts should have been developed further.").

III. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN DENYING STANDING TO CHARLESTON BASED ON AN ASSERTED INFRINGEMENT OF CHARLESTON'S PROPRIETARY INTERESTS AND STATUTORY RIGHTS.[2]

Charleston alleges that the 2017 and 2018 Ordinances infringe on its "proprietary interests or statutory rights" because the 2017 Ordinance included lands already in Charleston and because

[2] This Section III addresses Issues 3, 4, and 5 in the Statement of Issues on Appeal.

the 2018 Ordinance could not cure the substantive defect contained in the 2017 Ordinance. (R. pp. 45-47, ¶¶ 5, 16, 19, pp. 110-115, ¶¶ 5, 10, 11, 44, 46).

The circuit court limited standing to the State of South Carolina to contest 100% annexations, ignoring well-recognized precedent that parties such as Charleston have standing to challenge annexations infringing upon their proprietary interests or statutory rights. It is also axiomatic that a municipality has standing to challenge the annexation of property already lying within such municipality's corporate limits, and Charleston asserted a number of statutory rights that are infringed by the 2017 and 2018 Ordinances. The circuit court's ruling that Charleston lacked standing to assert a violation of these rights should therefore be reversed.

A. THE CIRCUIT COURT MISINTERPRETED THE GENERAL STANDING FRAMEWORK IN THE CONTEXT OF ANNEXATION CHALLENGES.

The circuit court held Charleston lacked standing to contest the 2017 and 2018 Ordinances because, unlike the statute authorizing the 75% Annexation Method and listing who may challenge such an annexation, the statute authorizing the 100% Annexation Method does not accord standing to specific parties. The circuit court relied on Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991), in reaching this conclusion. (R. pp. 6-8). The circuit court misconstrued Quinn.

The Supreme Court in Quinn held that none of the parties had standing to challenge the annexation as owners of property within the area annexed. See Quinn, 303 S.C. at 407, 401 S.E.2d at 166 ("It is undisputed that none of the Respondents own real property in the annexed portions of the Subdivision and, therefore, lack standing under § 5-3-150(3)."). However, nothing in Quinn suggests that any other basis for standing was offered, and appellate courts do not address questions which have never been raised. Cf. Langley v. Boyter, 284 S.C. 162, 181-82, 325 S.E.2d 550, 561 (Ct. App. 1984) ("The question here before us has never been answered because it has never been asked.").

The standing issue in Quinn turned, not on statutorily-accorded standing under the 100% Annexation Method, but on whether the challenged annexation was of such public importance so as to imbue standing to other interested parties—often designated as "non-statutory" parties or "strangers" to the annexation. Quinn acknowledged that, unless an ordinance was absolutely void, it was not subject to challenge by private individuals, *i.e.*, non-statutory parties, who were "strangers" to the annexation. Id. at 407, 401 S.E.2d at 166. As the challengers in Quinn contested the method of annexation, but did not contend the ordinance was unauthorized by law, the Supreme Court held that they did not establish standing:

> Similarly, we reject the contention that the matter is of such public importance as to confer standing. Generally, unless an annexation ordinance is "absolutely void", i.e., *not authorized by law,* private individuals may not challenge its validity. *See, Annot.* 13 A.L.R.2d 1279, 1292 (1950).
>
> Here, although Respondents challenge the *method* of annexation in seeking to have it declared void, they raise no claim that it was unauthorized by law. Accordingly, we find that Respondents lack standing to challenge the ordinance.

Id. at 407, 401 S.E.2d at 166-67 (emphasis in original).

Post-Quinn case law repeatedly confirms that standing to challenge a 100% Annexation is accorded to those who can allege the annexation infringes on their own "proprietary interests or statutory rights." See County of Lexington v. Columbia, 303 S.C. 300, 300, 400 S.E.2d 146, 147 (1991) ("Absent an issue of overriding public concern, a political subdivision must establish it is a real party in interest in order to maintain a suit . . . . It must allege an infringement of its own propriety interests or statutory rights to establish standing."); State v. City of Columbia, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992) ("In [Quinn and Lexington] we held that the challenging party must assert an infringement of its own proprietary interests or statutory rights in order to establish standing under statutory provisions governing challenges to the one hundred percent

landowner petition method of annexation."); State ex rel. Condon v. City of Columbia, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000) ("A party may ask the court to declare his or her statutory or proprietary rights affected by the annexation in a declaratory judgment action.").

It is clear under Quinn and subsequent case law that Charleston has standing to challenge any annexation infringing upon its proprietary interests or statutory rights. The circuit court's contrary conclusion should be reversed.

B. THE CIRCUIT COURT ALSO MISREAD ST. ANDREWS AS LIMITING STANDING TO CHALLENGE A 100% ANNEXATION TO THE STATE OF SOUTH CAROLINA.

In St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 603, 564 S.E.2d 647, 647-48 (2002), the Supreme Court reviewed a decision by the Court of Appeals that held a public service district had standing to contest 100% annexations because the district had alleged that the annexations were unauthorized by law, and, thus, met the public importance exception articulated in Quinn. The Supreme Court reversed the decision of the Court of Appeals and overruled the public importance exception established by Quinn. Id. It did not, however, displace or alter the law according standing to those who can demonstrate an annexation infringes on their proprietary interests or statutory rights.

Instead, St. Andrews laid out the requisites necessary to support standing to contest an annexation:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. State by State Budget & Control Bd. v. City of Columbia, 308 S.C. 487, 419 S.E.2d 229 (1992).
>
> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its

> residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987). Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.

Id. at 604-05, 564 S.E.2d at 648.

> Despite the lack of statutory standing, the Court of Appeals found respondent had standing under our decision in Quinn v. City of Columbia, supra. In Quinn, we adopted a rule that permitted a "stranger" to the annexation to challenge that proceeding if the annexation ordinance was "'absolutely void', i.e. *not authorized by law* . . . ." Id. at 407, 401 S.E.2d at 166-167. Nine years later, we held that "The State, providing it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." State ex rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000).
>
> We now overrule Quinn, and hold that the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit "outsider" annexation challenges to those brought by the State "acting in the public interest." Therefore, we reverse the Court of Appeals' holding that respondent has standing to challenge these annexations.

Id. at 605, 564 S.E.2d at 648 (emphasis in original).

St. Andrews specifically identifies parties with **statutory standing** to challenge annexations under section 5-3-150, *to wit*: "Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area." Id. at 605, 564 S.E.2d at 648. "In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights." Id. at 604, 564 S.E.2d at 648. St. Andrews stands for the proposition that, absent statutory standing, only the State may challenge a 100% annexation, when acting in the public interest.

The continued efficacy of this premise is established by post-St. Andrews case law. See Ex parte State ex rel. Wilson, 391 S.C. 565, 579, 707 S.E.2d 402, 410 (2011) ("We made clear in St. Andrews Public Service District that a party seeking to challenge a 100% petition annexation 'must assert an infringement of its own proprietary interests or statutory rights.'"); Vicary v. Town of Awendaw, 425 S.C. 350, 356, 822 S.E.2d 600, 603 (2018) ("In *St. Andrews*, the Court held non-statutory parties lacked standing to challenge a purportedly unauthorized annexation.").

The circuit court's conclusion that only the State may challenge a 100% Annexation contradicts St. Andrews and subsequent decisions, requiring reversal.

C. THE CIRCUIT COURT LIKEWISE MISINTERPRETED VICARY AS IMPLICITLY ABROGATING THE RIGHT OF A PARTY TO CHALLENGE A 100% ANNEXATION THAT VIOLATES THE PARTY'S PROPRIETARY INTERESTS OR STATUTORY RIGHTS.

Relying on Vicary v. Town of Awendaw, 425 S.C. 350, 822 S.E.2d 600 (2018), the circuit court held: "In *Vicary*, the court also noted the public importance exception to standing." (R. pp. 7-8). "More importantly, the court failed to note an exception, which [Charleston] argues, that when a party alleges an infringement of a statutory and proprietary right [sic]." (R. p. 8).

Vicary does not abrogate the general framework for standing to challenge 100% annexations set forth in Quinn, St. Andrews, and other cases, as the circuit court held. Instead, Vicary establishes that the public importance *exception* to the general standing requirements would apply, at the very least, when "nefarious conduct" is alleged. See id. at 358, 822 S.E.2d at 603-04 ("Although *St. Andrews* and *Town of Yemassee* set forth the general framework for resolving questions of standing pursuant to section 5-3-150, those cases are premised on a good faith attempt by the annexing body to comply with the statutory requirements."); id. at 360, 822 S.E.2d at 605 ("While this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute, the unique facts present here compel a contrary decision.").

Charleston does not seek, as the circuit court suggests, to establish a "sliding scale" approach to standing in challenges to 100% annexations. (R. p. 7). Instead, Charleston simply seeks to protect its proprietary interests and statutory rights in and to land legally within its borders, consistent with precedent of this State.

D. THE CIRCUIT COURT ERRED BY FINDING CHARLESTON LACKED STANDING TO CHALLENGE THE 2017 AND 2018 ORDINANCES, BOTH OF WHICH INFRINGE UPON CHARLESTON'S PROPRIETARY INTERESTS OR STATUTORY RIGHTS.

North Charleston twice attempted to annex the Millbrook Parcel utilizing the 100% Annexation Method. There is no question that, in Millbrook I and Millbrook III, Charleston alleges that the 2017 and 2018 Ordinances infringe upon Charleston's own statutory and proprietary rights over the Millbrook Parcel. (R. p. 46, ¶ 16, pp. 110-115, ¶¶ 7-11, 44, 46).

It is undisputed that the 2005 Ordinance annexed a portion of the Millbrook Parcel to Charleston. (R. p. 45, ¶ 5, p. 50, ¶ 5, p. 111, ¶ 14, pp. 119-20, ¶ 14, p. 141, ¶ 5). Thus, since 2005, Charleston has had the statutory right to exclusive municipal jurisdiction over this property, as well as proprietary functions and interests of governmental dominion and control over this property, to include matters pertaining to taxation, land use, and the like. See, e.g., S.C. Code Ann. § 5-7-30 (listing municipality's statutory rights with respect to property within its boundaries); S.C. Code Ann. § 5-21-110 (right to levy and collect taxes on personal and real property); S.C. Code Ann. § 5-7-80(1) (authority to abate nuisances); S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee); S.C. Const. Ann. Art. VIII, § 15 (outlining constitutional right of municipal consent); S.C. Code Ann. § 5-3-150(1) (statutory right to annex property under 75%

Annexation Method); S.C. Code Ann. § 5-7-280 (prescribing procedure under which corporate limits may be reduced).

Charleston has statutory standing because the 2017 Ordinance infringes on these statutory and proprietary rights by attempting to annex land within Charleston's municipal limits since 2005. It defies logic to suggest that one municipality may not challenge the annexation by another of property already within such municipality's corporate limits. See Glaze v. Grooms, 324 S.C. 249, 255-56, 478 S.E.2d 841, 845 (1996) (holding Charleston, "which owns the territory Town seeks to use to establish contiguity, claims a sufficient infringement of its interests to confer standing."); St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605 n.2, 564 S.E.2d 647, 648 (2002) (recognizing Charleston had standing under Glaze to challenge an attempted incorporation of property already within its borders). The circuit court erred in its interpretation of the 2017 Ordinance, and erred in finding Charleston lacked standing to contest it.

Charleston also has statutory standing to contest the 2018 Ordinance, as its viability directly impacts Charleston's statutory and proprietary rights acquired in annexing the remainder of the Millbrook Parcel. As discussed *supra*, the prior jurisdiction rule protects Charleston's annexation of the remainder of the Millbrook Parcel because, prior to North Charleston giving the 2018 Ordinance its first reading, Charleston had accepted a petition for the annexation of the remainder of the Millbrook Parcel, held the required public hearing, and given the ordinance first reading. (R. p. 17, p. 114, ¶ 40). However, even if Charleston cannot avail itself of the protection of the prior jurisdiction rule, it nonetheless has standing to contest the 2018 Ordinance, as the validity of the 2018 Ordinance may have a direct bearing on the validity of the Charleston Ordinance.

The 2018 Ordinance attempted to amend the legal description of the property annexed by the 2017 Ordinance, to exclude land already in Charleston. (R. pp. 16-18). It was the responsibility of North Charleston to ensure the sufficiency of the legal description of the property being annexed. If that description was fatally defective, it cannot be cured by way of a corrective ordinance. See Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) ("We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property. Ordinance 0-07-89 bestowed authority to annex only the property listed and described in the petitions. Hence, no subsequent action by the City could validate a portion of the ordinance which was a nullity upon origination."); 2 McQuillin, Municipal Corporations § 7.5 (3d ed. 2006) ("The description of municipal boundaries or of municipal territory is invalid and ineffective where it is indefinite and uncertain"). Under Millbrook's reasoning, one municipality may destroy another's statutory standing through the simple expedient of passing an amendatory or clarifying ordinance. It is self-evident that a party has standing to challenge any action intended to deprive it of its existing standing.

The description of the annexed area in the 2017 Ordinance was "flawed from its inception" because it included land within Charleston. Because the 2018 Ordinance attempted to cure that deficiency, and if upheld, will affect Charleston's statutory and proprietary rights, including its rights relating to the remainder of the Millbrook Parcel and its standing to challenge the 2017 Ordinance, Charleston has standing to have the 2018 Ordinance judicially vetted.

The circuit court erred in disregarding Charleston's allegations that the 2017 and 2018 Ordinances infringed upon Charleston's proprietary interests and statutory rights. It should therefore be reversed.

IV. THE CIRCUIT COURT ERRED IN INTERPRETING THE 2017 ORDINANCE TO ANNEX ONLY PROPERTY OUTSIDE CHARLESTON'S MUNICIPAL LIMITS.

The circuit court held that the 2017 Ordinance "did not attempt . . . to annex property (the 100' strip) which was part of [Charleston]." (R. p. 10). As a result, the circuit court concluded: "Without this, City's claim fails to state any valid claim for relief." (R. p. 10). This holding and conclusion do not comport with the pleadings, the annexation ordinances attached to the Order, or the arguments of counsel.

As a preliminary matter, such a ruling would not impact Charleston's standing to assert that, under the prior jurisdiction doctrine, the 2017 Ordinance was invalid because Charleston took the first public step toward annexing the remainder of the Millbrook Parcel before North Charleston, as discussed *supra*.

The ruling is also an inaccurate legal conclusion. "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Mikell v. Cty. of Charleston, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009). "When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." Id. "The determination of legislative intent is a matter of law." Charleston Cty. Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). "An appellate court may decide questions of law with no particular deference to the trial court." Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010).

The 2005 Ordinance annexed to Charleston the portion of the Millbrook Parcel lying within 100 feet of the right-of-way line for Highway 61, i.e. Ashley River Road. The 2017 Ordinance is attached as Exhibit 1 to the Order. The description of the area to be annexed clearly runs 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies immediately adjacent to Ashley River

Road. (R. pp. 12-15). These facts are uncontroverted and belie the holding of the circuit court that the 2017 Ordinance did "not attempt to annex" land in Charleston. (R. p. 10).

The 2018 Ordinance, which is attached as Exhibit 2 to the Order and which attempted to fix the delict in the 2017 Ordinance, provides, in pertinent part: "[B]ased upon the then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road . . . ." (R. p. 17) (emphasis added).

During the October 24, 2018 hearing before the circuit court, North Charleston explained:

> When The City of North Charleston in December annexed the Millbrook tract as everybody has mentioned, The City of Charleston's hundred foot strip was not shown on the county records and so when you go down and you check the county property records and get the TMS numbers to annex, we annexed TMS 006 which is the Millbrook TMS number and later the county came back, I think The City of Charleston notified the county that their records were wrong and the county assigned a different TMS number to that hundred foot strip on the front. It was like 006-1. And so at that point we came back at The City of North Charleston and passed an ordinance that said we meant what we said when we were taking 006 and there's the newly identified 006-1 and we never said that we took it and we don't claim to have taken it.

(R. p. 219, line 21-p. 220, line 13) (emphasis added).

North Charleston's protests to the contrary notwithstanding, legislation must be construed in light of the conditions obtaining at the time the legislation was passed, not based on after-acquired knowledge. See Durant v. Bennett, 54 F.2d 634, 639 (D.S.C. 1931) ("As has been pointed out by the Supreme Court in many cases, a statute must be construed . . . in the light of the condition obtaining at the time the statute was passed."); see also State ex rel. Attorney Gen. v. Kizer, 164 S.C. 383, 397, 162 S.E. 444, 449 (1932) (adopting Durant as the opinion of the Supreme Court of South Carolina); Soc'y of Divine Word v. Cty. of Cook, 247 N.E.2d 21, 25 (Ill. App. Ct. 1969)

("[W]e believe the intention should properly be determined with regard to general conditions at the time of enactment.").

The record demonstrates that, when the 2017 Ordinance was enacted, North Charleston believed, rightly or wrongly, inadvertently or otherwise, that the entire Millbrook Parcel lay within unincorporated Charleston County. As a result, North Charleston intended to, and in fact did, annex to the right-of-way line of Highway 61. (R. pp. 12-18). The record demonstrates that, when the 2017 Ordinance was enacted, it included land annexed by Charleston in 2005. If such were not the case, the enactment of the 2018 Ordinance would be tantamount to an exercise in futility. Legislative bodies are not presumed to engage in futile acts. Cf. Centex Int'l, Inc. v. S.C. Dep't of Revenue, 406 S.C. 132, 145, 750 S.E.2d 65, 72 (2013) ("Because the legislature is presumed to be aware of prior legislation and does not perform futile acts, we find the 2008 amendment represents a conscious decision by the legislature to preclude partnerships from earning and passing through certain tax credits.").

The circumstance of the 2017 Ordinance reciting that "[t]he area proposed for annexation includes the parcel designated TMS # 361-00-00-006" is not dispositive of the issue of whether other property was also annexed. (R. p. 13). That becomes especially clear when considering the annexed area does, in fact, include other property, that being the waters and river bottom of the Ashely River. (R. pp. 12-15).

The circumstance of the 2017 Ordinance reciting all distances being more or less does not affect the placement of points described in the Ordinance, but would only affect, perhaps, the exact distances between those points. See Kirven v. Bartell, 266 S.C. 385, 389, 223 S.E.2d 597, 599 (1976) (explaining that the words "more or less," when used in connection with distance, intend to "cover some slight or unimportant inaccuracy" and enable an adjustment of distances "to the

imperative demands of fixed monuments and boundaries"). But it is undeniable that the 2017 Ordinance establishes points at the northern right-of-way line of Ashley River Road and describes the southwestern line of the area annexed as "along the northernmost right-of-way of Ashley River Road." (R. pp. 12-13).

Whether intentionally or not, the area annexed by the 2017 Ordinance includes the territory annexed by Charleston in 2005. This circumstance gives Charleston standing to contest its validity. See Glaze v. Grooms, 324 S.C. 249, 235, 478 S.E.2d 841, 845 (1996) (finding the City of Charleston had standing to contest incorporation of the Town of James Island because areas of the Town included lands already in Charleston); Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (upholding North Charleston's challenge to Summerville's invalid attempt to annex territory which North Charleston also annexed). As discussed *supra*, this circumstance also casts a cloud on whether, and when, North Charleston commenced a valid attempt to annex the Millbrook Parcel, for purposes of the prior jurisdiction rule.

V. THE CIRCUIT COURT ERRED IN CONSTRUING CHARLESTON'S ALLEGATIONS IN A LIGHT MOST FAVORABLE TO MILLBROOK.

The circuit court, in interpreting the allegations in Charleston's complaints, concluded: "Examining the complaints, it is clear that the 100' strip of land was identified by the court records, prior to and on December 21, 2017, as TMS 361-00-00-006-1." (R. p. 8). "This is the land City had annexed in 2005." (R. pp. 8-9). "To succeed under any of City's causes of action, this court must interpret the 2017 Ordinance that it was annexing TMS 361-00-00-006-1." (R. p. 9).

Neither this ruling nor the conclusion drawn therefrom comports with the allegations or the law requiring construction in a light most favorable to Charleston. See McCormick v. England, 328 S.C. 627, 633, 494 S.E.2d 431, 433-34 (Ct. App. 1997) (in ruling on a motion to dismiss,

"[t]he question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief.").

Initially, Charleston can prevail under the prior jurisdiction doctrine regardless of what North Charleston intended to annex under the 2017 Ordinance because Charleston took the first public procedural step to annex the balance of the Millbrook Parcel before North Charleston did anything relating to the 2017 Ordinance.

The circuit court misconstrued Charleston's allegations, as emphasized in Charleston's motion to reconsider. (R. pp. 190-192). Specifically, the circuit court construed the complaints as alleging that TMS No. 361-00-00-006-1 had been established before North Charleston's purported annexation of the Millbrook Parcel, such that the 2017 Ordinance's reference to TMS No. 361-00-00-006 could only be interpreted to include property outside Charleston's municipal limits. This construction is not correct.

The allegations in Millbrook I, read in a light most favorable to Charleston, establish that, at the time North Charleston passed the 2017 Ordinance, North Charleston's City Council purported to annex property, **currently** designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1." (R. pp. 44-45, ¶ 4) (emphasis and double-emphasis added). This allegation clearly indicates that TMS 361-00-00-006-1 had been created by the time the complaint in Millbrook I was filed. It does not suggest that TMS 361-00-00-006-1 had been created at the time the 2017 Ordinance was given first reading or adopted, as the circuit court concludes.

In Millbrook III, challenging the 2018 Ordinance, Charleston alleges:

> This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging Ordinance No. 2018-017 (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on March 22, 2018, purporting to amend and supplement Ordinance No. 2017-083, adopted by the City of North Charleston on December 28, 2017, whereby the City

> of North Charleston purported to annex, upon petition of Millbrook that certain tract of land **previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel")**."

(R. pp. 109-110, ¶ 4) (double-emphasis added).

While Charleston alleged in the Millbrook III complaint (¶ 21), relied upon by the circuit court, that "[p]rior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston," Charleston never alleged that this portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 21, 2017. (R. p. 112, ¶ 21). The same may be said for Paragraph 22 of the Millbrook III Complaint, also relied upon by the circuit court, which contains no allegations that a portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 28, 2017. (R. p. 112, ¶ 22).

Although a portion of the Millbrook Parcel was annexed to Charleston in 2005, and although the County's records reflect this annexation, it is unclear when a separate TMS number was created for the portion annexed by Charleston in 2005. The allegations in Charleston's complaint, construed in a light most favorable to Charleston, establish that Charleston pled: (1) the County's records reflected that a portion of the Millbrook parcel had been annexed into Charleston in 2005; and (2) TMS No. 361-00-00-006-1 was shown at the time Charleston filed its complaints. This construction is buttressed by the recitations in the 2018 Ordinance that the new TMS number was created after North Charleston adopted the 2017 Ordinance on December 28, 2017, and by North Charleston's explanation at the hearing on Millbrook's motions to dismiss. (R. p. 219, line 24-p. 220, line 13, p. 308).

The circuit court misconstrued Charleston's complaints and misapplied its standard of review. This error colored its ruling both on whether Charleston had standing to challenge the 2017 and 2018 Ordinances as violating Charleston's statutory rights; *and* the acts which Charleston had undertaken to annex the remainder of the Millbrook Parcel prior to North Charleston's commencing any valid annexation proceeding of its own, implicating the pending jurisdiction doctrine.

CONCLUSION

Charleston has standing because, prior to North Charleston taking any action on the 2017 Ordinance or the 2018 Ordinance, Charleston commenced valid legal proceedings to annex the same property. The appellate court should so find, reverse the circuit court, and remand the matter. In the alternative, the appellate court should reverse and remand the matter either for a consideration of the circumstances under which the prior jurisdiction rule applies or with instructions as to when the prior jurisdiction rule applies.

Additionally, or in the alternative, Charleston has statutory standing to challenge the 2017 and 2018 Ordinances because these ordinances infringe on Charleston's proprietary interests or statutory rights. The circuit court misinterpreted Quinn and its progeny, which limits only "outsider" standing to the State of South Carolina.

The circuit court also misinterpreted the 2017 Ordinance and the pleadings in ruling that the 2017 Ordinance annexed only portions of Millbrook's property lying outside Charleston's municipal boundaries. These errors not only impact Charleston's standing under St. Andrews to challenge the 2017 and 2018 Ordinances, but also affect the application of the prior jurisdiction doctrine.

Under any or all of these scenarios, the motions to dismiss should have been denied, and the circuit court's order should therefore be reversed.

Respectfully Submitted,

Susan J. Herdina (S.C. Bar No. 13165)
Corporation Counsel
E-mail: herdinaj@charleston-sc.gov

Frances I. Cantwell (S.C. Bar No. 01121)
Of Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr (S.C. Bar No. 06802)
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

February 7, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Hon. Eugene Griffith

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appeal No. 2019-000903

RECEIVED
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SC Court of Appeals

The City of Charleston, Appellant

v.

City of North Charleston and Millbrook Plantation, LLC, Respondents.

AND

Millbrook Plantation, LLC Plaintiff,

v.

City of Charleston Defendant

AND

City of Charleston Plaintiff

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

FINAL BRIEF OF RESPONDENT CITY OF NORTH CHARLESTON

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Hon. Eugene Griffith

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appeal No. 2019-000903

The City of Charleston, Appellant

v.

City of North Charleston and Millbrook Plantation, LLC, Respondents.

AND

Millbrook Plantation, LLC Plaintiff,

v.

City of Charleston Defendant

AND

City of Charleston Plaintiff

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

FINAL BRIEF OF RESPONDENT CITY OF NORTH CHARLESTON

Derk Van Raalte and Brady Hair
Legal Dept., 2500 City Hall Lane
North Charleston, SC 29406
843-740-2550 derk@bradyhair.com

Attorneys for the Respondent
City of North Charleston

Other Counsel of Record:

Susan Herdina
Francis Cantwell
Daniel ("Chip") McQueeney, Jr.
50 Broad Street
Charleston, SC 29401
mcqueeneyd@charleston-sc.gov
843-724-3730
Attorneys for the City of Charleston

Bruce Miller
Bruce Miller, PA
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412

Attorney for Millbrook Plantation

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Statement of Issues on Appeal

I. Prior Pending Proceedings Rule

A. Judge Griffith Correctly Ruled that Our Supreme Court Declined to Adopt the "Prior Pending Proceedings" Rule.

B. Charleston Was Not First In Line in Any Event

II. North Charleston Did Not Annex Land Previously Annexed by Charleston.

III. Charleston Has No Standing To Challenge This 100% Annexation.

Statement of the Case

North Charleston has no material objection regarding Appellant's procedural history.

Statement of Facts

Timing

Prior to this dispute TMS 361-00-00-006 ("Parcel 006"), was bounded to the East by North Charleston and to the West by Charleston. Both cities sought to annex the property. Parcel 006's owner asked North Charleston to annex it by the 100% method. North Charleston completed annexation of Parcel 006 on December 28, 2017. R.OA. p. 303 (Ordinance No. 2017- 083.)

Weeks later, in January of 2018, Charleston gave first reading to an annexation ordinance for the same Parcel 006 that North Charleston had previously annexed the prior year. On April 10, 2018, Charleston gave final reading to complete that ordinance.[1] By then Charleston was just closing the barn door after the horse had already escaped.

[1] Charleston City Council, at its meeting of December 19, 2017, claims to have "acted" by receiving or accepting a seventy-five percent annexation petition to take Parcel 006 against the owner's wishes. There was no annexation ordinance on the Charleston Council agenda for a reading that night. North Charleston does not believe a municipality may take official "action" by merely receiving delivery or "agreeing to accept something for possible consideration later."

Annexation Description

Unknown to North Charleston at the time Ordinance 2017- 083 was framed[2], next to unincorporated Parcel 006 lay a separate 100' shoestring parcel[3], TMS 361-00-00-006-1 ("Parcel 006-1".) Though Ordinance 2017-83 correctly listed its annexation target parcel by name (Parcel 006) and excluded any listing of Parcel 006-1 in the ordinance or map, the legal description mistakenly described Parcel 006's boundary as Ashley River Road which would conflict with Parcel 006-1. See R.OA. p. 303 (Ordinance No. 2017- 083.)

Parcel 006-1 is important here because in 2005 Charleston annexed that tract. Charleston thus argued below that the minor disparity in the Parcel 006 description in North Charleston Ordinance 2017-083 amounted to North Charleston trying to annex property already governed by Charleston.

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[2] North Charleston contends its annexation descriptions for Parcel 006 were drawn in faithful compliance with the then-existing County RMC maps. Subsequent to North Charleston's annexation Charleston County amended its maps to effectively reduce the size of Parcel 006 and create a never-before-mapped parcel designated TMS 361-00-00-006-1. As a result of its discovery of this Charleston County record change, North Charleston passed on March 22, 2018, Ordinance 2018-017 (the "Corrective Ordinance.") R.O.A. 307 The Corrective Ordinance confirmed the intent stated in North Charleston's original annexation – namely to annex only Parcel 006. The Corrective Ordinance further confirmed that, to the extent Charleston County records had been updated to reduce the size of Parcel 006, that the City's annexation records would be similarly reduced. Given the Rule 12(b)(6) posture of the motion before the Court, Judge Griffith did not delve into such details about when various County RMC records were updated. Instead, he properly assumed to be true the City of Charleston's allegations that County records were correct as of December 27, 2017. Since this appeal is of a Rule 12(b)(6) dismissal North Charleston's argument herein will proceed in the same vein, but it reserves the right to argue all facts should reversal occur.

[3] Back in 2005 when the City of North Charleston first annexed across the Ashley River the City of Charleston apparently annexed a curiously undevelopable one hundred (100') string along the edge of Ashley River Road parallel to North Charleston's prior boundary, the Ashley River.

Standard of Review

North Charleston has no material objection regarding Appellant's Standard of Review.

Argument

The City of Charleston lost because it lacks standing. Only an annexed landowner or the South Carolina Attorney General may challenge a 100% method annexation. Vicary v. Town of Awendaw, 417 S.C. 631, 637-38 (SC App. 2016). Charleston is neither. It offers two basic arguments to try to avoid this elephant in the room:

- Charleston claims the Prior Pending Proceedings Rule let it beat North Charleston to the punch to annex Parcel 006. The problem? That rule has never been adopted and Charleston wasn't first!
- Charleston claims that North Charleston annexed two parcels (not one) including Charleston territory. The problem? North Charleston did not!

I. Prior Pending Proceedings Rule

A. Judge Griffith Correctly Ruled that Our Supreme Court Declined to Adopt the "Prior Pending Proceedings" Rule.

Charleston faults Judge Griffith for concluding the South Carolina Supreme Court "has declined to adopt this [Prior Proceedings] rule", but in this very appeal acknowledges the South Carolina Supreme Court saying ***exactly that***. Pet. Brief at p. 7 (Quoting the Supreme Court as saying "We decline to reach the issue of whether the 'prior proceedings" rule should be adopted by this Court."[4]) While Charleston may wish for the rule to be adopted, Judge Griffith applied the law as it exists.

[4] City of Columbia v. Town of Irmo, 316 SC 193, 196, 447 SE2d 855, 857 (SC 1994).

B. Charleston Was Not First in Line in Any Event[5]

Even were the Supreme Court interested in announcing a new rule, this would hardly be the case in which to do it. Charleston claims that it commenced its annexation of Parcel 006 prior to North Charleston. Just the opposite is true.

Charleston's dating argument, based upon the December 2017 *receipt* of a 75% petition, is hardly based on official "action." Charleston "receives" an annexation petition when a landowner decides to deliver it. This cannot be City "action." Charleston could not have truthfully denied having received the petition if it tried. Once delivered to Charleston it was "received" by Charleston whether Charleston wanted to accept it or not! Acknowledging delivery or agreeing to accept something for possible consideration later does nothing to change that or constitute "action" any more than a future "agreement to agree" can constitute a contract. The only official action Charleston could take was to vote up or down an ordinance in response to the submittal.

Focusing on Charleston's action (annexation ordinance) instead of focusing on a landowner's action (petition submittal) is completely consistent with Title 5 of the South Carolina Code of Laws. SC Code Ann. 5-7-260 tells us that a municipality may take "action" by "resolution" or "ordinance." S.C. Code Ann. 5-7-260 ("In matters other than those referred to in this section council may act either by ordinance or resolution.")(emphasis added.) Action on an annexation must taken by ordinance. See S.C. Code Ann. 5-3-150. The City of Charleston's own procedure for taking action on an ordinance requires that the ordinance "shall be introduced in

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[5] Given the 12(b)(6) setting before Judge Griffith he assumed Charleston's claim of being first in line to be correct. R.O.A. p. 8. However, under SCAR 220(c) an order may be affirmed for any ground appearing in the record. Under this authority North Charleston argues herein that Charleston's own description of the event (receipt of a petition (Pet. Brief, p. 7)) giving rise to its claimed first in line status is not sufficient even under a Prior Proceedings Rule.

writing and in the form required for final adoption" and that it must be read by council on two separate occasions. R.O.A. p.310. City of Charleston Ordinance 2-24. No statute creates a third way for city council "act" called "having a delivery dropped off", "receiving the mail", or "accepting for consideration of possible approval / disapproval later."

Against this backdrop, Charleston cannot prevail based on "receipt." Receipt is not "legal proceedings first instituted." It may reflect action by a landowner, but it is not government "action" (i.e. a reading of an "ordinance" or "resolution".)

Agreeing to accept a document is no different. This is particularly true in this instance where Section 5-3-150's requirement that an ordinance be passed means that "acceptance" of a petition expressly has no bearing on ultimate approval or rejection.[6]

Before Charleston ever even had a public hearing and gave first reading on its annexation ordinance, the City of North Charleston fully completed passage of its own earlier annexation. Considering the fact that our Supreme Court previously declined to adopt the Prior Proceedings rule, the fact pattern here is hardly the place for this Court to try to predict a reversal of prior Supreme Court guidance.

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[6] Other than perhaps signaling staff administratively to frame an ordinance for possible later consideration, the phrase "agreement to accept the petition" cannot have any legal significance in terms of annexation approval. Charleston City Council would clearly be free to vote down an annexation ordinance even after "agreeing to accept a petition", making clear that accepting a petition has no legal significance at all. This conclusion is actually consistent with the City of Charleston's own online guidance to property owners interested in annexation. On its own website Charleston unambiguously explains "How to Annex. To annex into the City of Charleston, your property must be: - approved by the City Council – Contiguous or 'touching' the city limits." ROA p. 311. https://www.charleston-sc.gov/839/Annexation-Eligibility . Charleston lists only one step by Council (approval), not the two (i.e. "accept petition" *and* "approve ordinance") it argues for this appeal.

II. North Charleston Did Not Annex Land Previously Annexed by Charleston.

North Charleston's original annexation ordinance was clear – it sought to annex the unincorporated land known as Parcel 006. That is exactly what it did. Charleston's argument is that North Charleston annexed both unincorporated Parcel 006 and the separate incorporated Parcel 006-1. However, North Charleston's ordinance listed only Parcel 006 as the parcel annexed. Parcel 006-1 was nowhere listed. Similarly, the accompanying annexation map showed Parcel 006 and nowhere listed a Parcel 006-1. Judge Griffith found that noteworthy. See ROA p. 10 (Order at Pg. 10 of 11.)

Admittedly, North Charleston's boundary description contained a factual error - it described the Parcel 006 boundary line as reaching Ashley River Road, and in that sense overlooked Parcel 006-1. However, the intent of North Charleston's council here was easy to discern. The Ordinance identified Parcel 006 by name and made no reference to Charleston's Parcel 006-1. That is unmistakable. Regarding the Ordinances' other description of Parcel 006, that description ended with the phrase "all distances being more or less." ROA p. 10 (Order of Judge Griffith, Pg. 10 of 11.) North Charleston Council told the world that if the boundaries of Parcel 006 might be slightly smaller described in the Ordinance, so be it. Here we are dealing with a roughly three percent (3%) annexation area disparity. That is hardly reversible error where the ordinance otherwise identified by the target parcel perfectly by name and expressly provided that boundary deviations might exist.

Charleston cannot reasonably fault North Charleston for the corrective ordinance. ROA p. 307 (Ord. 2018-17.) At the time of the initial ordinance North Charleston's paperwork reflected known public information. When updated information came to light, a potential for confusion arose. To alleviate any confusion North Charleston did the right thing – it updated its public

records to reflect updated County information. In so doing it expressly confirmed its original intent to annex only Parcel 006 (as stated in the original annexation) and disavowed any claim to lands previously annexed by Charleston under a different TMS number never mentioned in North Charleston's ordinance. It is hard to imagine what more could or should have been done. North Charleston does not claim land previously annexed by Charleston. Charleston cannot manufacture standing by pointing to a dispute that does not exist.

III. Charleston Has No Standing To Challenge This 100% Annexation.

Standing is required in order to pursue an annexation challenge. Vicary, 417 S.C. at 637-38. There are only two groups with standing to challenge a 100% annexation: (1) property owners of annexed land and (2) the Attorney General of South Carolina. Id.[7] Charleston falls into neither category.[8]

It is uncontested that North Charleston annexed Parcel 006 by way of the 100% method. It is uncontested that Charleston is not the owner of Parcel 006. (That property is owned by Respondent Millbrook Plantation, LLC. who asked North Charleston to annex it.) It is uncontested that Charleston is not the South Carolina Attorney General. Finally, it is uncontested that the South Carolina Attorney General did not file an objection and is not a party to this action. Application

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[7] Vicary v. Town of Awendaw, 417 S.C. at 637-638("Our case law provides that 'to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights,' and the State of South Carolina is the only non-statutory party which may challenge a municipal annexation. *See St. Andrews*, 349 S.C. at 604–05, 564 S.E.2d at 648.")

[8] Charleston argues in favor of a third category of standing for cases where one municipality claims to annex property already incorporated into another municipality. As discussed in the previous section, that did not occur in this case. Thus standing analysis for Charleston's further involvement in this challenge is governed by Vicary. There is no need to speculate about whether the Supreme Court would expand standing based on a scenario not before the Court in this case.

of Vicary to these facts is clear: Charleston lacks standing to challenge the annexation of main Parcel 006.

Conclusion

Charleston's appeal must be denied. It cannot invalidate North Charleston annexation of Parcel 006 by use of the Prior Proceedings Rule because (a) that rule is not the law of South Carolina and (b) Charleston was not first in any event. Charleston cannot invalidate North Charleston's action (or claim standing for further challenges) based upon North Charleston's annexation of Parcel 006-1 because North Charleston did not annex that Sub-parcel. No other standing for challenges exists and the appeal should be denied.

Respectfully submitted:

Derk Van Raalte and Brady Hair
Legal Dept., 2500 City Hall Lane
North Charleston, SC 29406
843-740-2550 derk@bradyhair.com

Attorneys for the Respondent
City of North Charleston

This 4th day of February, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED
FEB 19 2020
SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, ... Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC, ... Respondents.

AND

Millbrook Plantation, LLC, ... Plaintiff,

v.

City of Charleston, ... Defendant.

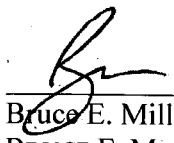
AND

City of Charleston, ... Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, ... Defendants.

FINAL BRIEF OF RESPONDENT MILLBROOK PLANTATION, LLC



Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR RESPONDENT MILLBROOK PLANTATION, LLC

Other Counsel of Record:

Susan J. Herdina
Frances I. Cantwell, Esq.
Daniel S. McQueeney, Jr., Esq.
50 Broad Street
Charleston, SC 29401
T: (843) 724-3730
herdinas@charleston-sc.gov
cantwellf@charleston-sc.gov
mcqueeneyd@charleston-sc.gov

Attorneys for City of Charleston

J. Brady Hair, Esq.
Derk Van Raalte IV, Esq.
Legal Department
2500 City Hall Lane
N. Charleston, SC 29406
T: (843) 572-8700
brady@bradyhair.com
derk@bradyhair.com

Attorneys for City of North Charleston

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly rule that Charleston has no standing to challenge a 100% annexation?

2. Did the circuit court correctly rule that the Supreme Court of South Carolina has declined to adopt the "Prior Pending Proceedings" Rule?

3. Did the circuit court correctly rule that North Charleston's 2017 Ordinance did not attempt to annex the 100' strip of land that had been annexed by Charleston in 2005?

STATEMENT OF THE CASE

Millbrook has no material objection regarding Appellant's procedural history.

STATEMENT OF FACTS

The circuit court granted Millbrook's Motion to Dismiss, therefore, the court assumed to be true the allegations of the Complaints. These facts were outlined by the circuit court in its Order (R. pp. 3-5) and Millbrook repeats those facts below:

1. May 10, 2005: Charleston adopted Ordinance No. 2005-93, annexing the following property into Charleston, which is a portion of the Millbrook Parcel:

> [A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.[1]

2. December 19, 2017: Charleston's Council accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain

[1] City later identifies this 100' strip as TMS 361-00-00-006-1 and alleges Charleston County records showed this by December 21, 2017, which is the date on which North Charleston gave first reading to 2017 Ordinance.

real property in the area requesting annexation, which included the Millbrook Parcel.

3. December 19, 2017: Charleston's Council voted to have a public hearing on the above-referenced petition.

4. December 21, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of Charleston.

5. December 21, 2017: North Charleston's Council gave first reading to 2017 Ordinance, purporting to annex the Millbrook Parcel, including that portion of the Millbrook Parcel previously annexed into Charleston.

6. December 28, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of Charleston.

7. December 28, 2017: North Charleston's Council adopted 2017 Ordinance.

8. January 23, 2018: Charleston's Council held a public hearing on the (75%) annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

9. March 22, 2018: North Charleston's Council adopted 2018 Ordinance, purporting to amend or supplement 2017 Ordinance by removing from 2017 Ordinance the portion of the Millbrook Parcel annexed into the Charleston in 2005.

10. April 10, 2018: Charleston's Council adopted an ordinance annexing the Millbrook Parcel into Charleston.

11. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of Charleston before Millbrook executed the annexation petition to annex the Millbrook Parcel into North Charleston.

12. North Charleston did not request information from Charleston about whether Charleston's municipal limits included a portion of the Millbrook Parcel on or

before December 19, 2017.

13. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2017 Ordinance, adopted by the North Charleston's Council on December 28, 2017, purporting to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance.

14. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2018 Ordinance, adopted by North Charleston's Council on March 22, 2018, purporting to amend and supplement 2017 Ordinance, whereby North Charleston purported to annex, upon petition of Millbrook that certain tract of land previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel").

15. 2017 Ordinance and 2018 Ordinance violate the statutory and proprietary rights of Charleston in that they purportedly annex land within the Charleston's corporate limits and land over which the Charleston had previously begun the process of annexation.

16. 2018 Ordinance purports to correct North Charleston's defective annexation of the Millbrook Parcel in the 2017 Ordinance, which included a portion of the Millbrook Parcel annexed to the Charleston in 2005.

STANDARD OF REVIEW

Millbrook has no material objection regarding Appellant's Standard of Review.

ARGUMENT

1. The circuit court correctly ruled that Charleston had no standing to challenge a 100% annexation.

Standing, in a 100% annexation case, has been directly addressed in *Quinn v. City of*

Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991). *Quinn's* facts are very similar to the present action. City of Columbia, like North Charleston, had adopted an ordinance approving a 100% annexation of land in the Harbison area. Irmo,[2] like Charleston, attempted to adopt an ordinance annexing the same land through the 75% method. Columbia filed a 12(b)(6) motion to dismiss. The court stated, "The sole issue we need address is that of Respondents' *standing*." *Id.*, at 406, 401 S.E.2d at 166 (emphasis added). The court then analyzed the allegations as follows:

> City's annexation of this property was pursuant to subsection (3) of S. C. Code Ann. § 5-3-150, the "100% method," which provides, in part: any area or property which is contiguous to a city or town may be annexed to the city or town by filing with the municipal governing body a petition signed [***3] by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed . . . the annexation shall be complete and [an] . . . election. . . shall not be required.
>
> Unlike subsection (1) of § 5-3-150, the "75% method," subsection (3) makes no provision for aggrieved *residents* to challenge an annexation.

Id., at 406-07, 401 S.E.2d at 166.

Thus, just like City of Columbia's annexation was complete upon the enactment of the ordinance, Millbrook's annexation into North Charleston was complete on December 28, 2017. This was completed prior to Charleston adopting its ordinance on April 10, 2018. Charleston lacks standing to challenge this 100% annexation.

South Carolina courts have made the standing issue even clearer in a later action in which Charleston was a party. Not only has the South Carolina Supreme Court ruled that a municipality has no standing to challenge a 100% annexation, but held "the only non-statutory party which may challenge a municipal annexation is the State, through a *quo warranto* action." *St. Andrews Pub.*

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[2] Irmo was a respondent with *Quinn*.

Serv. Dist. v. City Council of the City of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002).

Thus, Charleston not only lacks the essential requirement of standing in this action, the only party legally able to challenge the annexation by North Charleston is the State of South Carolina. Charleston is not the State; thus, this court should affirm the circuit court.

2. The circuit court correctly ruled that the Supreme Court of South Carolina has declined to adopt the "Prior Pending Proceedings" Rule.

Charleston alleges that it began the annexation of TMS #361-00-00-006 before North Charleston began its annexation proceedings.[3] Charleston argues this under what has been called the "prior pending proceedings" rule. In *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994) the Supreme Court of South Carolina declined to rule on its efficacy, explaining: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court . . . . Here, there is no showing that Irmo commenced **valid legal** proceedings prior to the effective date of City's Ordinances 90-30 and 90-31." *Id.* at 196, 447 S.E.2d at 857 (emphasis in original).

The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and the circuit court likewise declined to adopt it. Charleston argues that North Carolina has adopted it, therefore, South Carolina should follow; however, South Carolina has often declined

[3] Charleston argues that it started its 75% annexation on December 19, 2017. It infers that North Charleston and Millbrook, after this date, initiated 100% annexation proceedings in an effort to beat Charleston to the finish line. First, it is obvious that if Millbrook submitted a 100% annexation petition to North Charleston that it did not sign the 75% annexation petition to Charleston. Second, the record includes evidence that Millbrook had initiated annexation proceedings with North Charleston as early as November 30, 2017. See Order Granting Motion to Dismiss, Exhibit 1 (map attached Area Proposed for Annexation by the City of North Charleston dated **November 30, 2017**) (R. p. 14). Thus, Millbrook was already in discussion with North Charleston regarding 100% annexation several weeks before Charleston accepted the 75% annexation petition without any notice to Millbrook. This is a blatant abuse of property owner's rights.

to follow its neighbor to the north. In contract law, North Carolina has adopted the "Blue Pencil Rule" whereby the court rewrites illegal portions of the contract to make them legal. South Carolina has steadily declined to adopt the Blue Pencil Rule on the grounds that the parties should stand or fall as they have written the contract.

Likewise, this court should continue to decline to adopt the prior pending proceedings' rule because it can be used to subvert the landowner of his property rights. In this case, it is clear from the petition received by Charleston at its January 2018 Public Hearing that Millbrook had already exercised its property rights by annexing in North Charleston. Charleston arguing that the prior pending proceedings' rule should become the law of this state will be interfering with the property rights of individual landowners.

Like Irmo in *City of Columbia*, Charleston had not commenced **valid legal** proceedings prior to the effective date of North Charleston's 2017 Ordinance. Scheduling a public hearing is not valid legal proceedings. Charleston commenced its valid legal proceedings on January 23, 2018, which was almost one month after North Charleston had granted Millbrook's request to be annexed into North Charleston.

Thus, this court should not adopt the Prior Pending Proceedings Rule, or, in the alternative, rule that Charleston had not commenced valid legal proceedings prior to the effective date of North Charleston's 2017 Ordinance.

3. The circuit court correctly ruled that North Charleston's 2017 Ordinance did not attempt to annex the 100' strip of land that had been annexed by the Charleston in 2005.

In the complaints, Charleston made numerous references to the 2017 Ordinance and the 2018 Ordinance. Although Charleston did not attach those to the Complaints, Charleston made the ordinances, through its arguments, an essential element of each of its causes of action.

"[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *See Brazell v Windsor*, 384 S.C. 512, ___, 682 S.E. 2d 824, 826 (2009). The 2017 Ordinance and the 2018 Ordinance are statutes of North Charleston. "[T]he interpretation of a statute is a question of law . . . ." *Catawba Indian Tribe of S.C. v State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Thus, the circuit court properly took Charleston's allegations, which it considered to be true, interpreted the Ordinances, and applied the law.

Charleston alleges that the 2017 Ordinance purports to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance. According to Charleston, the 100' strip that Charleston annexed in 2005 is TMS 361-00-00-006-1. Charleston makes no claim that it annexed in 2005 the portion known as TMS 361-00-00-006.

In examining 2017 Ordinance, North Charleston stated, "An ordinance . . . annexing an area known as 52-S in Charleston County (**TMS #361-00-00-006**) . . . as shown on a map dated November 30, 2017 . . . . (emphasis added). Following the legal language of the ordinance, the property description is given. Included in the description are six (6) references to "TMS #361-00-00-006" while there are no references to TMS #361-00-00-006-1, which is the 100' strip that had been annexed into Charleston in 2005. At the end of the description, it ends with the phrase "all distances being more or less." *Id.* The 2017 Ordinance then states, "**The area proposed for annexation includes the parcel designated TMS #361-00-00-006.**"[4] (emphasis added). (R. pp.

[4] The map that is part of 2017 Ordinance also states, "Area to be annexed includes TMS # 361-00-00-006." It makes no reference to TMS #361-00-00-006-1. (R. p. 14).

12-13). The map that is part of Ordinance 2017 shows TMS #361-00-00-006, but fails to include TMS #361-00-00-006-1)R. 14).

The 2017 Ordinance never makes any claim to annex TMS # 361-00-00-006-1. The circuit court found that North Charleston did not attempt, in the 2017 Ordinance,[5] to annex property (the 100' strip) that was part of Charleston. Without this, Charleston's complaints failed to state any valid claim for relief.

Appellant argues that the circuit court failed to grant it every reasonable doubt. Charleston argues that when North Charleston adopted the 2017 ordinance that TMS # 361-00-00-006-1 was not in the county records, but that by the time it filed its first Complaint, March 27, 2018, TMS # 361-00-00-006-1 was in the records. Regardless of whether it was in the records or not, North Charleston's 2017 Ordinance only annexed TMS # 361-00-00-006.

Under a motion to dismiss, Charleston is entitled to every *reasonable* doubt, but not every scintilla of a doubt that it tries to create.

ADOPT BY REFERENCE

Pursuant to S.C. Appellate Court Rule 208(b)(6), Millbrook adopts by reference the Initial Brief of Respondent City of North Charleston.

CONCLUSION

The circuit court was correct in holding that Charleston has no standing to challenge a 100% annexation. This court should not adopt the Prior Proceedings Rule, or, in the alternative, it should determine that Charleston had not commenced valid legal proceedings prior to North Charleston adopting the 2017 Ordinance, or that Millbrook had started annexation proceedings

[5] Charleston also alleged that the 2018 Ordinance purported to correct the 2017 defective Ordinance. Because the circuit court found the 2017 Ordinance not to be defective, the court found that argument to be moot.

before action by Charleston. Lastly, the circuit court was correct in finding that the 2017 Ordinance did not attempt to annex TMS # 361-00-00-006-1.

This court should affirm the circuit court and remand this case for the circuit court to consider an award to Millbrook of its reasonable attorneys' fees pursuant to S.C. Code Ann. § 15-77-300.

Respectfully submitted:

Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR RESPONDENT MILLBROOK PLANTATION, LLC

February 17, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
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City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

FINAL REPLY BRIEF OF APPELLANT CITY OF CHARLESTON TO THE BRIEF OF RESPONDENT CITY OF NORTH CHARLESTON

Susan J. Herdina (S.C. Bar No. 13165)
Email: herdinas@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 01121)
Email: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr. (S.C. Bar No. 06802)
Email: mcqueeneyd@charleston-sc.gov
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

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FACTS

Appellant City of Charleston ("Charleston") reaffirms the Statement of the Case, Facts, and Statement of Issues on Appeal set forth in its Appellant's Brief. With respect to the Statement of Facts contained in Respondent City of North Charleston's ("North Charleston's") brief, Charleston replies as follows:

1. With respect to the "Timing" section of North Charleston's Statement of Facts, while footnote 1 therein acknowledges that, on December 19, 2017, Charleston received a petition to annex Parcel 006 under the "75% petition method" authorized by section 5-3-150(1) of the South Carolina, the footnote does not tell the whole story.[1]

What is omitted is that, at that same meeting, Charleston not only voted to consider the petition to annex a number of parcels of land, including Parcel 006, but also advertised to the public its intent to hold a public hearing on the petition, as required by section 5-3-150(1)(6). (R. p. 111, ¶¶ 15-16). While North Charleston does not "believe" such is "official" action, these acts on the part of Charleston are in lockstep with the requirements of section 5-3-150(1). See Argument IV, *infra*.

2. North Charleston states that North Charleston adopted its first ordinance attempting to annex Parcel 006 before Charleston completed its annexation of Parcel 006. (Resp.'s Br. p. 1).

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[1] For purposes of this reply brief, Charleston utilizes the term "Millbrook Parcel" to refer to the real property owned by Respondent Millbrook Plantation, LLC ("Millbrook"), including what is currently designated by Charleston County as TMS No. 361-00-00-006 (referred to herein as "Parcel 006") and TMS No. 361-00-00-006-1 (referred to herein as "Parcel 006-1"). Charleston emphasizes that Parcel 006-1 was created sometime *after* North Charleston first attempted to annex a portion of the Millbrook Parcel. (R. pp. 44-45, ¶ 4, pp. 109-110, ¶ 4, pp. 190-192). North Charleston concedes this point in its own brief: "Subsequent to North Charleston's annexation Charleston County amended its maps to effectively reduce the size of Parcel 006 and create a never-before-mapped parcel designated TMS 361-00-00-006-1." (Resp.'s Br. p. 2, n. 2) (emphasis added).

As set forth in its Appellant's Brief, Charleston asserts that North Charleston attempted to annex the entire Millbrook Parcel, not just Parcel 006. See App's Br. pp. 21-27.

What is omitted from North Charleston's Statement of Facts relevant to this point is that Charleston had taken the first public procedural steps to annex Parcel 006 before North Charleston ever started is efforts to annex the Millbrook Parcel—or any portion thereof. See Argument III, *infra*. On December 19, 2017, Charleston acted first. (R. p. 111, ¶¶ 15-16). North Charleston did not take any action until December 21, 2017, when first reading was given to Ordinance 2017-083, under which North Charleston began an invalid attempt to annex the Millbrook Parcel. (R. p. 112, ¶ 19).

3. North Charleston's Statement of Facts pertaining to the "Annexation Description" confirms what Charleston has contended in this case from the beginning: North Charleston Ordinance 2017-083 described the land annexed as being bound by the right-of-way of Ashley River Road, and that being the case, Ordinance 2017-083 improperly and illegally included the property now designated as Parcel 006-1, which had been in Charleston since 2005. (R. p. 112, ¶ 19); see Argument VI, *infra*. Moreover, and contrary to what North Charleston contends, not only did the legal description of the area to be annexed by North Charleston include land in Charleston, but the map of the annexation did as well. (R. pp. 303-306).

ARGUMENT IN REPLY

I. NORTH CHARLESTON ERRONEOUSLY CONFLATES THE SUPREME COURT'S DECLINATION TO REACH THE ISSUE OF THE ADOPTION OF THE PRIOR PENDING PROCEEDINGS RULE WITH A REFUSAL TO ADOPT THE RULE.

North Charleston mischaracterizes the circuit court's ruling on the status of the prior pending proceedings rule as being in line with precedent of the Supreme Court of South Carolina. See Resp.'s Brief p. 3. Such is not the case.

The circuit court held: "The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise declines." (R. pp. 10-11) (emphasis added). In City of Columbia v. Town of Irmo, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994), the Supreme Court explained: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." (Emphasis added).

The difference in wording is critical. Other than the circuit court's statement that the Supreme Court declined to adopt the prior pending proceedings rule, the circuit court failed to address whether and to what extent the rule should be adopted, instead simply concluding: "Without this [the adoption of the prior pending proceedings rule], North Charleston properly annexed TMS 361-00-00-006 on December 28, 2017 with the 2017 Ordinance." (R. p. 11). Charleston requested a substantive ruling on the issue via a motion to reconsider, which the circuit court denied without taking the opportunity to clarify its ruling. (R. p. 37, pp. 192-193).

This error of law warrants reversal. In the interest of judicial economy, Charleston urges the adoption of the rule and it application to the facts of this case, or, alternatively, a remand of the issue to the circuit court, with instructions as to the application of the rule. At the very least, the matter should be remanded for the circuit court to substantively consider the rule and its application.

II. IN THIS APPEAL, UNLIKE IN IRMO, THERE IS NO ALLEGATION THAT CHARLESTON FAILED TO COMMENCE A VALID ANNEXATION PRIOR TO NORTH CHARLESTON.

In this case, Millbrook moved for dismissal under Rule 12(b)(6), SCRCP, claiming that Charleston did not have standing to challenge North Charleston's annexation based on the allegations in the complaint. (R. pp. 144-147). The circuit court considered only the allegations in Charleston's complaints and the ordinances incorporated therein. (R. p. 2).

In contrast, City of Columbia v. Town of Irmo, 316 S.C. 193, 194, 447 S.E.2d 855, 856 (1994), involved an appeal from an order granting summary judgment to the City of Columbia. In Irmo, the Supreme Court specifically declined to address the issue of the prior pending proceedings rule because, on the facts before it, the Town of Irmo had failed to demonstrate it had commenced "*valid legal* proceedings" prior to the adoption of Columbia's annexation ordinances. Id. at 196, 447 S.E.2d at 857 (emphasis original). In fact, the Supreme Court emphasized: "Irmo has failed to present any evidence refuting the irregularities found in its petitions or its lack of contiguity to the Columbiana property." Id. (emphasis added).

There are no allegations in Charleston's complaints that Charleston's annexation ordinance was defective or invalid. The matter before the circuit court being a motion to dismiss based on the allegations of the complaints, it was incumbent for the complaints to be read in a light most favorable to Charleston. See McCormick v. England, 328 S.C. 627, 633, 494 S.E.2d 431, 433-34 (Ct. App. 1997) (in ruling on a motion to dismiss, "[t]he question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief.").

Construing the complaints in this manner compels a finding that Charleston received a petition to annex Parcel 006 under the 75% petition method, that the City Council of Charleston voted to consider the petition, and that the City Council of Charleston voted to set a public hearing on the petition, all on December 19, 2017. (R. p. 111, ¶¶ 15-16). These are all valid acts as required by the statute governing annexations under the 75% petition method. Unlike the Town of Irmo, Charleston established that it took the first valid, public procedural step toward annexing Parcel 006, in compliance with section 5-3-150(1), before North Charleston. The circuit court failed to

recognize this circumstance, and the nuance of Irmo, resulting in its misconstruction and misapplication of Irmo.

III. NORTH CHARLESTON IGNORES CHARLESTON'S ASSERTION THAT THE PRIOR PENDING PROCEEDINGS RULE APPLIES WHEN, AS IN THE PRESENT CASE, A MUNICIPALITY TAKES THE FIRST PUBLIC PROCEDURAL STEP TOWARD ANNEXING PROPERTY.

North Charleston largely ignores Charleston's argument that the prior pending proceedings rule applies when the first public procedural step toward annexation occurs, instead focusing on whether the "receipt" or "acceptance" of an annexation petition by a local governing body has any legal effect.

Charleston consistently advocated to the circuit court and on pages 7-12 of its Appellant's Brief that Charleston took the first public procedural step toward annexing Parcel 006, triggering the protection of the prior pending proceedings rule. (R. pp. 160-163). North Charleston does not address this argument or attempt to distinguish Charleston's citations to treatises and case law which support the adoption of the prior pending proceedings rule in this manner. See Turner v. S.C. Dep't of Health & Envtl. Control, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008) (explaining that appellate court may treat failure to respond as concession that appellant's position is correct). As more fully set forth in Argument IV, the allegations in Charleston's complaints, viewed in a light most favorable to Charleston, establish that Charleston took the first public procedural steps toward annexing Parcel 006.

IV. CHARLESTON WAS FIRST IN LINE.

Before North Charleston ever made a move to annex the Millbrook Parcel or any portion thereof, the City Council of Charleston voted to consider a petition to annex Parcel 006 under the 75% petition method and voted to hold the statutorily-required public hearing. Per section 5-3-

150(1) of the South Carolina Code, these are the first procedural steps required before annexing property under the 75% petition method.

Sherman v. Reavis, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979), strongly supports Charleston's position on this point, confirming that an ordinance may be considered "pending" even *before* a city council gives it first reading or holds a public hearing thereon. See App.'s Br. p. 11. Pursuant to Sherman, "[a]n ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning." Id. (emphasis added).

Sherman addressed the procedures for adopting and amending zoning regulations then in effect under state law, which required notice, a public hearing, and the adoption of an ordinance. Id. at 543-44, 257 S.E.2d at 736. Charleston annexed Parcel 006 under section 5-3-150(1), which also requires notice, a public hearing, and the adoption of an ordinance.

In accordance with the teaching of Sherman, Charleston alleges that, on December 19, 2017, the City Council of Charleston (1) resolved to consider the petition for annexation of Parcel 006 and other properties listed therein; and (2) advertised to the public its intention to hold a public hearing on the annexation. (R. p. 111, ¶¶ 15-16). These first public procedural steps by Charleston on the annexation petition are consistent with those that triggered the application of the pending ordinance doctrine in Sherman, and consistent with those that triggered the application of the prior pending proceedings rule in the treatises and case law cited in pages 7-12 of Appellant's Brief.

North Charleston's assertion that the only "official action" Charleston could have taken on an annexation petition is an up or down vote is incorrect. On December 19, 2017, City Council could have ignored the petition or taken no action with respect to it. It did not. Instead, City Council chose to accept and consider the petition, in addition to ordering the public hearing required by

law. City Council's action, taken by public vote or resolution,[2] complied with the mandates of section 5-3-150(1) and preceded North Charleston's first efforts to annex the Millbrook Parcel. Moreover, after taking these initial steps, Charleston proceeded to enact an ordinance annexing Parcel 006 and other parcels.

The prior pending proceedings rule is designed to avoid the very circumstances giving rise to this dispute, by recognizing the exclusive jurisdiction of the municipality taking the initial procedural steps to annex a property to complete its annexation and preventing the "race to the finish line" approach to annexation apparently championed by North Charleston.

V. THE NEW EVIDENCE SUBMITTED BY NORTH CHARLESTON IS OF NO MOMENT.

North Charleston's reference to a page from Charleston's website explaining the general process for annexations and section 2-24 of the City Code, governing Charleston's general procedure for adopting ordinances, is of no moment. [3] See Resp.'s Br. pp. 4-5. Neither the webpage nor section 2-24 abrogate the statutory requirements for notice and a public hearing applicable to Charleston's annexation under section 5-3-150(1) of the South Carolina Code, and Sherman belies North Charleston's notion that Charleston cannot be considered to have taken "official action" until it votes an ordinance up or down. Sherman clarifies that, under certain circumstances, a matter need not receive even a first reading to be considered "pending."

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[2] See Glasscock Co. v. Sumter Cty., 361 S.C. 483, 489, 604 S.E.2d 718, 721 (Ct. App. 2004) ("It is clear here that the adoption of the resolution was simply a first step in the process of County Council's formal, public consideration of the contract amendments.").

[3] This evidence was not presented to the circuit court. Rule 210(c), SCACR, admonishes: "The Record shall not . . . include matter which was not presented to the lower court or tribunal."

VI. AS A MATTER OF LAW, NORTH CHARLESTON'S FIRST ATTEMPT TO ANNEX THE MILLBROOK PARCEL INCLUDED LAND PREVIOUSLY ANNEXED BY CHARLESTON IN 2005.

North Charleston concedes that Ordinance No. 2017-083 describes the boundary of the area to be annexed as the right-of-way for Ashley River Road: "North Charleston's boundary description contained a factual error-it described the Parcel 006 boundary line as reaching Ashley River Road, and in that sense overlooked Parcel 006-1." See Resp.'s Br. p. 6. Likewise, by its own admission, North Charleston recognized the error and attempted to cure it by way of a corrective ordinance. See Resp.'s Br. p. 6. In light of these admissions, the issue turns to whether the flaw in Ordinance 2017-083 was curable, and, if it was, whether Charleston nonetheless is entitled to the protection of the prior pending proceedings rule.

North Charleston and Millbrook are charged with notice of Charleston's 2005 ordinance annexing what is now designated as Parcel 006-1, described as being immediately contiguous to and on the northern side of Ashley River Road. (R. p. 111, ¶ 14); see Labruce v. N. Charleston, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977) ("[C]ognizance of city ordinances is presumed."). The fact that North Charleston and Millbrook overlooked the ordinance or that appropriate inquiry was not otherwise made does not serve as a basis for defeating the lawful annexation of Parcel 006 by Charleston, commenced in advance of any act by North Charleston to annex any part of the Millbrook Parcel.

Charleston does not fault North Charleston for enacting a corrective ordinance. But Charleston's position is that Ordinance 2017-83 was fatally flawed and beyond cure by way of a corrective ordinance. See Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive

defect" that may not be corrected through a subsequent ordinance). And, in any event, the corrective ordinance was for naught because of the prior pending proceedings rule.[4]

VII. PRINCIPLES OF EQUITY DO NOT SUPPORT NORTH CHARLESTON'S AFTER-THE-FACT INTERPRETATION OF ITS FIRST ATTEMPT TO ANNEX THE MILLBROOK PARCEL.

North Charleston raises numerous "equitable arguments" as to why the "factual error" in the legal description of the property included in its first attempt to annex the Millbrook Parcel should be excused.

The interpretation of an ordinance is a matter of law. See Gorman v. S.C. Reinsurance Facility, 333 S.C. 696, 699, 511 S.E.2d 98, 100 (Ct. App. 1999) ("[T]he issue of interpretation of the statute is a question of law for the court."); Charleston Cty. Parks & Rec. 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."). Long-standing case law establishes that equitable principles may not be utilized to alter the expressed intent of a legislative body. See Beaty v. Richardson, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899) ("It has, therefore, been distinctly stated (quoting from Wilberforce on Stat. Law) from early times down to the present day, that judges are not to mould the language of statutes in order to meet an alleged convenience or an alleged equity . . . .").

It is also well-established that an ordinance may not be interpreted in the after-the-fact manner advocated by North Charleston:

> Ordinances, like statutes, are to be construed as they were intended at the time of their enactment. Thus, the language used in an ordinance is to be construed in accordance with its meaning at the

[4] Before the corrective ordinance was given first reading, Charleston had taken the steps of conducting a public hearing on its petition and giving first reading to an ordinance to annex the lands described therein, including Parcel 006. (R. p. 17, p. 111, ¶ 17). As set forth in Charleston's Appellant's Brief, these additional actions support application of the prior pending proceedings rule because they occurred prior to North Charleston taking any valid legal action to annex the same property. North Charleston ignores this argument.

> time the ordinance was enacted rather than in accordance with a meaning that might afterwards be given it. Expediency, born of changing circumstances and conditions, will not alter the meaning of plain and ordinary language used in an ordinance.

6 McQuillin Municipal Corporations § 20.51 (3d ed. 2007).

Even if equity were a consideration, Charleston should prevail. It is undisputed that North Charleston and Millbrook only began the process of annexing the Millbrook Parcel after the City Council of Charleston, in public session, announced its receipt of a petition to annex the remainder of the property, resolved to consider the annexation, and advertised its intent to hold a public hearing thereon. (R. pp. 111-112, ¶¶ 15-16, 19-20).

While claiming extraneous circumstances beyond its control excuse the errors in its first attempt to annex the Millbrook Parcel, North Charleston attempts to analogize Charleston's purported "delay" in adopting its annexation ordinance—a "delay" caused only by Charleston's compliance with the statutory notice and hearing requirements applicable to the annexation—as "closing the barn door after the horse has already escaped." See Resp.'s Br. p. 1. Even if the analogy is apropos, which it is not, equity would not countenance North Charleston's keeping the horse.

This is not a situation in which Charleston "manufactured" standing, as North Charleston also asserts. See Resp.'s Br. p. 7. Millbrook and North Charleston made their *own* beds. This litigation was not triggered by Charleston's actions in placing the public, including North Charleston and Millbrook, on notice of Charleston's intent to consider the annexation of Parcel 006 on December 19, 2017. It was triggered by the subsequent actions of Millbrook and North Charleston in attempting to "fast-track" an ordinance annexing the Millbrook Parcel in an attempt to beat Charleston to the finish line.

North Charleston's attempt to annex property lying within Charleston's municipal limits may be mistaken, but this does not justify a reinterpretation of an otherwise unambiguous ordinance, especially when, as here, such mistake occurred during North Charleston's "last ditch" effort to deprive Charleston of its jurisdictional priority to annex Parcel 006.

VIII. CHARLESTON HAS STANDING TO CHALLENGE NORTH CHARLESTON'S ATTEMPTED ANNEXATIONS, WHICH INFRINGE UPON CHARLESTON'S PROPRIETARY INTERESTS AND STATUTORY RIGHTS.

Argument III in North Charleston's brief is mostly derivative of its incorrect assertion that North Charleston never annexed territory within the municipal limits of Charleston. See Resp.'s Br. p. 7 n. 8. Charleston's argument on this issue is amply covered on pages 12-20 of its Appellant's Brief, but Charleston writes to emphasize that, under well-settled law, one municipality has statutory standing to challenge the annexation of property within its corporate limits by another. This important principle, which seems axiomatic, was overlooked by the circuit court and North Charleston.

Precedent of this State recognizes two categories of parties who may contest an annexation, *to wit*: those with statutory standing and those without. As to the former category, under the 75% petition method, statutory standing is accorded to the municipality or any of its residents and any person residing or owing property in the area annexed. Under the 100% method, statutory standing is accorded to those who allege an infringement of their own proprietary interests or statutory rights:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. State by State Budget & Control Bd. v. City of Columbia, 308 S.C. 487, 419 S.E.2d 229 (1992).

> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987). Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.

St. Andrew's Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604-05, 564 S.E.2d 647, 648 (2002) (emphasis added).

It is only when a party cannot allege an infringement of its own proprietary interests or statutory rights that standing to challenge a 100% annexation is limited to the Attorney General or, under special circumstances, parties who assert standing under the "public importance" exception. See St. Andrews, 349 S.C. at 604-605, 564 S.E.2d at 648; Vicary v. Town of Awendaw, 425 S.C. 350, 358-59, 822 S.E.2d 600, 604 (2018) ("We hold today a party that can demonstrate the annexing body engaged in nefarious conduct in purportedly complying with section 5-3-150 has standing to challenge the annexation.").[5]

"The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing." Glaze v. Grooms, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996); see also County of Lexington v. Columbia, 303 S.C. 300, 400 S.E.2d 146, 147 (1991) ("Absent an issue of overriding public concern, a political subdivision must establish it is

[5] Vicary emphasizes that there are very limited circumstances under which the courts will recognize standing to challenge an annexation under the "public importance" exception. However, Vicary does not conclude that the *sole* circumstance for applying such exception is when a party alleges "nefarious" or "deceitful" conduct.

a real party in interest in order to maintain a suit . . . . It must allege an infringement of its own propriety interests or statutory rights to establish standing.").

South Carolina precedent repeatedly recognizes that a municipality may protect its proprietary interests and statutory rights over property within its corporate limits by challenging another municipality's attempt to annex such property. See Forest Acres v. Forest Lake, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (Town of Forest Acres had standing to challenge purported detachment of property without its consent); Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953) (permitting challenge to annexation of property within municipality's corporate limits, looking to case law emphasizing that detachment statutes afford "substantial right recognized in plaintiff, as a corporate entity, over its corporate territory"); Tovey v. Charleston, 237 S.C. 475, 479-80, 117 S.E.2d 872, 874 (1961) ("We have held that under our statutes governing extension and reduction of corporate limits, a portion of one municipality may not be annexed to another without submitting the question of said detachment to the voters of the municipality whose area is to be reduced.").

Here, Charleston alleges Ordinance 2017-083 violates its own proprietary interests and statutory rights because the Ordinance includes land already in Charleston, meeting the "statutory standing" test for challenges to 100% annexations. Charleston's standing is further buttressed by the prior pending proceedings rule. North Charleston's conclusory assertion that Ordinance 2017-083 did not include any land in Charleston is belied by North Charleston's own admissions. See Resp.'s Br. p. 2 n. 2. Even if inadvertent, the fact that Ordinance 2017-083, on its face, includes land in Charleston imbues Charleston with standing to at the very least have this issue, including whether it is curable and the effect of the prior pending proceedings rule, vetted. At this stage of

the proceedings, the Record does not support dismissal, and the circuit court erred in concluding to the contrary.

CONCLUSION

For the reasons set forth in its Appellant's Brief, as supplemented by this Reply Brief, Charleston respectfully requests that the circuit court's order of dismissal be reversed. Charleston asserts that the case should be remanded with instructions that the prior pending proceedings rule applies under the facts of this case. In the alternative, Charleston contends that the matter should be remanded with instructions as to the application of the rule. At the very least, a remand is warranted to require the circuit court to substantively address the rule.

Respectfully Submitted,

Susan J. Herdina (S.C. Bar No. 13165)
Corporation Counsel
E-mail: herdinaj@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 01121)
Of Counsel
E-mail: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr (S.C. Bar No. 06802)
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorneys for Appellant City of Charleston

February 7, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

FINAL REPLY BRIEF OF APPELLANT CITY OF CHARLESTON TO THE BRIEF OF RESPONDENT MILLBROOK PLANTATION, LLC

Susan J. Herdina (S.C. Bar No. 13165)
Email: herdinas@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 01121)
Email: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr. (S.C. Bar No. 06802)
Email: mcqueeneyd@charleston-sc.gov
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

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Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule, 63 N.C.L. Rev. 1260 (Aug. 1985) 5

Appellant City of Charleston ("Charleston") reaffirms the Statement of the Case, Facts, and Statement of Issues on Appeal set forth in its Appellant's Brief.

ARGUMENT IN REPLY

I. THE CIRCUIT COURT ERRED IN HOLDING THAT CHARLESTON DID NOT HAVE STANDING TO CONTEST ORDINANCE 2017-083, ADOPTED UNDER THE AUSPICES OF SECTION 5-3-150(3) OF THE SOUTH CAROLINA CODE, KNOWN AS THE 100% PETITION METHOD OF ANNEXATION.

Both Respondent Millbrook Plantation, LLC ("Millbrook") and the circuit court misread the interplay between Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991), and St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002). In Quinn, the Supreme Court of South Carolina established a rule regarding standing to contest a 100% annexation under section 5-3-150(3) of the South Carolina Code. That rule provided that a stranger could contest a 100% annexation on the grounds that the annexation was "'absolutely void,' i.e. *not authorized by law* . . . ." Quinn, 303 S.C. at 407, 401 S.E.2d at 166-67 (emphasis in original).

In St. Andrews, the Supreme Court revisited the rule established in Quinn. The St. Andrews Court made clear that only a party who could demonstrate that a 100% annexation infringed on its own proprietary interests or statutory rights had *statutory* standing to contest the annexation. Id. at 604, 564 S.E.2d at 648. The Court stated:

> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987). *Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.*

Id. at 604-05, 564 S.E.2d at 648 (emphasis added).

As to Quinn, the St. Andrews Court abrogated the rule that a stranger to an annexation could establish standing on the basis of an allegation that the annexation was not authorized by law. In such instances, standing was accorded to only the Attorney General, acting in the public interest. The Court explained:

> Despite the lack of statutory standing, the Court of Appeals found respondent had standing under our decision in Quinn v. City of Columbia, supra. In Quinn, we adopted a rule that permitted a "stranger" to the annexation to challenge that proceeding if the annexation ordinance was "'absolutely void', i.e. *not authorized by law* . . . ." Id. at 407, 401 S.E.2d at 166-167. Nine years later, we held that "The State, providing it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." State ex rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000).
>
> We now overrule Quinn, and hold that the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit "outsider" annexation challenges to those brought by the State "acting in the public interest." Therefore, we reverse the Court of Appeals' holding that respondent has standing to challenge these annexations.

Id. at 605, 564 S.E.2d at 648.

Thus when all is said and done, St. Andrews amounts to a restatement of the rules for statutory standing and establishes a new rule for non-statutory standing. Under the 100% annexation method, the method applicable in this case, statutory standing requires a demonstration of an infringement of one's own proprietary interests or statutory rights. Absent statutory standing, the appropriate party to contest an annexation is the State, acting in the public interest. See Ex parte State ex rel. Wilson, 391 S.C. 565, 572, 707 S.E.2d 402, 406 (2011) ("Notably, residents of the annexing municipality are not permitted to challenge a 100% petition annexation. Rather, '[i]n order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.'").

Here, Charleston has alleged that North Charleston Ordinance 2017-083 infringes on Charleston's proprietary interests and statutory rights by including territory previously annexed by Charleston *and* territory over which Charleston took the first public procedural step toward annexing. St. Andrews reaffirmed this standard as the test for statutory standing to contest a 100% annexation. The holding of the circuit court to the contrary was error and should be reversed.

II. THE CIRCUIT COURT ERRED IN HOLDING THAT THE SUPREME COURT OF SOUTH CAROLINA HAS DECLINED TO ADOPT THE "PRIOR PENDING PROCEEDINGS" RULE.

Contrary to what Millbrook alleges and the circuit court held, the Supreme Court of South Carolina has *not* declined to adopt the prior pending proceedings rule. City of Columbia v. Town of Irmo, 316 S.C. 193, 193, 447 S.E.2d 855, 856 (1994), did not eschew the rule. Instead, the Court "decline[d] to reach the issue of whether the 'prior pending proceedings' rule should be adopted" because there was no showing in the record that Irmo "commenced *valid legal* proceedings prior to" the City of Columbia. Id. at 196, 447 S.E.2d at 857 (emphasis in original).

Such is not the situation here. The allegations, taken in a light most favorable to Charleston, unequivocally demonstrate that, on December 19, 2017, the City Council of Charleston accepted a petition to annex property under the 75% petition method, including the portion of Millbrook's property not previously annexed by Charleston in 2005, and notified the world of its intent to hold a public hearing on the annexation petition. (R. p. 111, ¶¶ 15-16). These acts by City Council are statutorily required in order to annex under the 75% petition method. See S.C. Code § 5-3-150(1)(6) (establishing requirement for public notice and hearing on annexation petition under 75% method). The allegations also unequivocally reveal that these acts by the City Council of Charleston were accomplished prior to Respondent City of North Charleston ("North Charleston") taking any valid, public procedural step toward annexing any portion of Millbrook's property. (R. pp. 111-112, ¶¶ 15, 16, 19). It is not credible to contend that Charleston had not initiated any valid

legal proceedings when it undertook the very acts required by statute to commence an annexation under the 75% petition method.

For the first time on appeal, Millbrook asserts that Millbrook "was already in discussion with North Charleston regarding 100% annexation several weeks before Charleston accepted the 75% annexation petition without any notice to Millbrook." (Millbrook Br. p. 9, note 3). Millbrook relies solely upon the map attached to North Charleston Ordinance 2017-083, which is dated November 30, 2017. (Millbrook Br. p. 9, note 3). This map, which includes property annexed by Charleston in 2005, does not evince the commencement of a *valid* legal proceeding to annex any portion of Millbrook's property. (R. p. 305). There is also no evidence or allegation of any public procedural step taken by North Charleston or Millbrook prior to December 21, 2017, when North Charleston gave first reading to Ordinance No. 2017-083, including territory previously annexed by Charleston. See 2 McQuillin, Municipal Corporations § 7.39 (3d ed. 2006) ("The taking of the first mandatory public procedural step in the statutory process for incorporation or annexation of territory ordinarily fixes the date of the commencement of the proceedings, for the purpose of the rule as to jurisdictional priority.").

Millbrook's argument that the prior pending proceedings rule somehow interferes with private property rights is unsupportable. The General Assembly has seen fit to allow property to be annexed without the consent of a property owner, under specific circumstances. See S.C. Code Ann. § 5-3-150(1); S.C. Code Ann. § 5-3-300 (setting forth general annexation procedure by petition and election). If Millbrook has an issue with this premise, that is a matter for the legislature, not the courts. The prior pending proceedings rule, a rule of widespread application, simply provides a standard for establishing prior jurisdiction between municipalities competing for the same property. As explained in Argument II of Charleston's brief, this rule ensures stability

and predictability in the annexation process. See Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule, 63 N.C.L. Rev. 1260, 1265 (Aug. 1985) ("Perhaps the most significant attribute of the prior jurisdiction rule is that it enhances the predictability and order of annexation proceedings.").

Because the Supreme Court of South Carolina has *not* declined to adopt the prior pending proceedings rule, and because the City Council of Charleston had taken the first valid public procedural steps required to annex Millbrook's property under the 75% petition method prior to North Charleston commencing valid legal proceedings to annex any portion of Millbrook's property, this Court should reverse the circuit court on this issue and adopt the prior pending proceedings rule, or alternatively, remand the issue to the circuit court with instructions as to how the rule should be applied.

III. THE CIRCUIT COURT ERRED IN HOLDING THAT ORDINANCE 2017-083 DID NOT ATTEMPT TO ANNEX THE 100' WIDE TRACT OF LAND THAT HAD BEEN ANNEXED BY CHARLESTON IN 2005.

Millbrook contends that Ordinance 2017-083 did not include the 100' wide portion of Millbrook's property that abuts Ashley River Road and which had been annexed by Charleston in 2005. Curiously, North Charleston has conceded otherwise: "North Charleston's boundary description contained a factual error – it described the Parcel 006 boundary line as reaching Ashley River Road, and in that sense overlooked Parcel 006-1." (North Charleston Br., p. 6).

Millbrook hangs its hat on the number of times that Ordinance 2017-083 references a Tax Map Sequence ("TMS") number, i.e. TMS No. 361-00-00-006. Regardless of the TMS number cited, the fact remains that the legal description of the property purportedly annexed under Ordinance 2017-083 describes the boundaries of the annexed property as reaching and running along the right-of-way of Ashley River Road. (R. pp. 303-306). On its face, the description

includes the 100' wide portion of Millbrook's property that Charleston had annexed some 12 years earlier. (R. pp. 303-306). As explained in Argument V of Charleston's Appellant's Brief, the reference in North Charleston's ordinance to TMS No. 361-00-00-006 includes the entire Millbrook property because, at the time, the Millbrook property had not been designated with separate TMS numbers.

For reasons set forth in Argument II of Charleston's Appellant's Brief, Charleston contends the defect in the property description of Ordinance 2017-083 is substantive, incapable of being cured by way of corrective ordinance. See Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive defect" that may not be corrected through a subsequent ordinance). For the same reasons, Charleston has standing to challenge North Charleston's 2018 ordinance attempting to correct the error of the property description in Ordinance 2017-083.

IV. CHARLESTON HEREBY ADOPTS BY REFERENCE ITS REPLY BRIEF TO NORTH CHARLESTON'S RESPONDENT'S BRIEF.

Pursuant to Rule 208(b)(6), SCACR, Millbrook has adopted by reference North Charleston's Respondent's Brief. To come full circle and cover all squares, Charleston adopts by reference herein its Reply Brief to North Charleston's Respondent's Brief.

CONCLUSION

For the reasons set forth in Charleston's Appellant's Brief, as supplemented by this Reply Brief and Charleston's Reply Brief to North Charleston's Respondent's Brief, Charleston respectfully requests that the circuit court's order of dismissal be reversed.

The case should be remanded with instructions that the prior pending proceedings rule applies under the facts alleged herein. In the alternative, the matter should be remanded with instructions as to the application of the prior pending proceedings rule.

Respectfully Submitted,

Susan J. Herdina (S.C. Bar No. 13165)
Corporation Counsel
E-mail: herdinaj@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 1121)
Of Counsel
E-mail: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr (S.C. Bar No. 6802)
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorneys for Appellant City of Charleston

February 7, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston, Defendant.

AND

City of Charleston, Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

Appellate Case No. 2019-000903

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

Opinion No. 5966
Heard October 11, 2022 – Filed February 1, 2023

AFFIRMED

Frances Isaac Cantwell, of City of Charleston Legal Department; Julia Parker Copeland, of Hinchey Murray & Pagliarini, LLC; and Wilbur E. Johnson and Russell Grainger Hines, both of Clement Rivers, LLP, all of Charleston, all for Appellant.

Bruce E. Miller, of Bruce E. Miller, P.A., of Charleston, for Respondent Millbrook Plantation, LLC.

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

WILLIAMS, C.J.: This appeal arises from three consolidated actions[1] challenging cross-annexations by Appellant City of Charleston (Charleston) and Respondent City of North Charleston (North Charleston) of certain real property (Parcel 006) owned by Respondent Millbrook Plantation, LLC (Millbrook). Charleston argues the circuit court erred in concluding: (1) Charleston lacked standing to challenge North Charleston's annexation of Parcel 006 because North Charleston's 2017 Ordinance did not annex property previously annexed in 2005 (Parcel 006-1) and (2) the Supreme Court of South Carolina has declined to adopt the "prior jurisdiction doctrine." We affirm.

FACTS/PROCEDURAL HISTORY

Parcel 006 consists of approximately thirty-one acres of real property located on South Carolina Highway 61 in Charleston County. On May 10, 2005, Charleston adopted an ordinance (the 2005 Ordinance) annexing the portion of Parcel 006 located within 100 feet of Highway 61 (Parcel 006-1). On December 19, 2017, Charleston began the annexation of the remainder of Parcel 006 (the Charleston

[1] These actions are individually designated as Case Nos. 2018-CP-10-0846 ("*Millbrook I*"); 2018- CP-10-2131 ("*Millbrook II*"); and 2018-CP-10-2539 ("*Millbrook III*").

Ordinance) by accepting an annexation petition under the "75% Annexation Method" pursuant to subsection 5-3-150(1) of the South Carolina Code (2004) and voting to have a public hearing on the petition.

Two days later, North Charleston gave first reading to its petition to annex Parcel 006 (the 2017 Ordinance) under the "100% Annexation Method" of subsection 5-3-150(3), which was adopted seven days later. The 2017 Ordinance's property description unintentionally included Parcel 006-1, which Charleston previously annexed in 2005. Weeks later, on January 23, 2018, Charleston City Council held a public hearing and gave first reading to the Charleston Ordinance, which attempted to annex the same parcel North Charleston annexed the prior month.

At the time North Charleston drafted the 2017 Ordinance, Charleston County records did not reflect the existence of Parcel 006-1. Therefore, on March 15, 2018, North Charleston gave first reading to the 2018 Ordinance, purporting to clarify the 2017 Ordinance's legal description by discounting any perceived intent to annex Parcel 006-1 and reaffirming its intent to annex only the remainder of Parcel 006. The 2018 Ordinance states in part:

> The City of North Charleston recently annexed Parcel TMS #361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data[,] the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel. 361-00-00-006-1. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records[,] it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of any another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

On March 22, 2018, North Charleston adopted the 2018 Ordinance. Five days later, Charleston filed the summons and complaint in *Millbrook I*, asserting that the 2017 Ordinance was invalid because (1) the 2017 Ordinance illegally included Parcel 006-1 and (2) Charleston took the first step to annex the remainder of Parcel 006 before North Charleston, entitling Charleston to proceed with its annexation without interference pursuant to the "prior pending jurisdiction rule." Additionally, Charleston City Council adopted the Charleston Ordinance on April 10, 2018. Shortly thereafter, Millbrook filed the summons and complaint in *Millbrook II* challenging the Charleston Ordinance.

On May 18, 2018, Charleston filed the summons and complaint in *Millbrook III* challenging the 2018 Ordinance adopted by North Charleston. Charleston alleged in *Millbrook III* that it obtained prior jurisdiction over Parcel 006 based upon the "prior pending proceedings rule . . . by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing [Parcel 006] into the City prior to North Charleston's beginning the process of passing [the 2018 Ordinance]." Further, Charleston alleged the 2018 Ordinance could not cure the substantive defect contained in the 2017 Ordinance's legal description incorporating Parcel 006-1.

Millbrook moved to dismiss *Millbrook I* and *Millbrook III*, arguing Charleston lacked standing to challenge a 100% annexation petition. The circuit court granted Millbrook's motion to dismiss and held Millbrook's annexation into North Charleston was complete on December 28, 2017, upon the enactment of the 2017 Ordinance. The circuit court stated our supreme court has ruled that a municipality has no standing to challenge a 100% annexation petition and the only non-statutory party that may challenge a municipal annexation is the State through a *quo warranto* action. Charleston acknowledged that the State has not challenged either the 2017 or the 2018 Ordinance. Furthermore, the circuit court examined the language of the 2017 Ordinance and found it never made any claim to annex Parcel 006-1 and thus did not attempt to annex it. Lastly, the circuit court held our supreme court declined to adopt the prior pending proceedings rule in *City of Columbia v. Town of Irmo* and likewise declined to do so. *See* 316 S.C. 193, 447 S.E.2d 855 (1994). As a result, the circuit court found North Charleston's 2017 Ordinance properly annexed Parcel 006 on December 28, 2017, and Charleston had no standing to challenge this annexation.

ISSUES ON APPEAL

I. Did the circuit court err in concluding North Charleston's 2017 Ordinance did not intend to annex Parcel 006-1?

II. Did the circuit court err in concluding the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine?

STANDARD OF REVIEW

"In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Sloan Constr. Co. v. Southco Grassing, Inc*., 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008).

> A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.

Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "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." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

LAW/ANALYSIS

I. Statutory Standing

Charleston argues it possesses standing to challenge North Charleston's annexation of Parcel 006 as the 2017 and 2018 Ordinances infringe upon its "proprietary interests or statutory rights" because the 2017 Ordinance included Parcel 006-1, which was annexed into Charleston in 2005. Charleston relies on *Bostick v. City of Beaufort* in arguing that the 2017 Ordinance was fatally flawed because the inaccuracies in the description of the proposed property to be annexed created a substantive defect that could not be corrected through a subsequent ordinance. *See* 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992). We disagree.

Our supreme court in *Bostick* held:

> Procedural or technical deficiencies in an ordinance may be corrected by a subsequent ordinance, but not substantive defects. We conclude that omission of the date from two of the petitions constituted a technical flaw in Ordinance 0-07-89. This flaw was corrected by Ordinance 0-31-89, which effectively ratified the valid portion of Ordinance 0-07-89. Conversely, the omission of descriptions for the area to be annexed and failure to also shade such property on the plat which shows shaded the area to be annexed is a substantive defect in the petitions. We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property.

307 S.C. at 350, 415 S.E.2d at 391. The court specifically referenced the property description requirement of subsection 5-3-150(1), which states, "*The petition shall contain a description of the area to be annexed and there shall be attached to the petition a plat of the area to be annexed . . . .*" *Bostick*, 307 S.C. at 349–50, 415 S.E.2d at 391. Therefore, the court found the *omission* of the property description for the area to be annexed and the failure to show this area on the plat was substantive because it was in direct contravention of subsection 5-3-150(1)'s statutory requirements.

Here, the 2017 Ordinance does not omit the property description but inadvertently incorporates Parcel 006-1 (a parcel that did not exist at the time North Charleston drafted the 2017 Ordinance). Subsection 5-3-150(1) requires that "the petition must contain a description of the area to be annexed and there must be attached to the petition a plat of the area to be annexed." S.C. Code Ann. § 5-3-150(1) (2004). The record demonstrates that North Charleston sufficiently complied with both of subsection 5-3-150(1)'s requirements by including a description of the property to be annexed and attaching a plat of the area. North Charleston's inadvertent inclusion of Parcel 006-1 based upon then existing county information was a technical deficiency capable of correction by the 2018 Ordinance. *See Bostick*, 307 S.C. at 350, 415 S.E.2d at 391; *see also* 62 C.J.S. Municipal Corporations § 102 ("[W]here a statute or ordinance so requires, a map, plan, or plat must be filed or recorded and approved by municipal or other authorities. A substantial

compliance with the statutes is sufficient."); § 8:33 Boundary changes—Procedures, 1 Local Government Law § 8:33 ("Courts have generally held that a description which conforms substantially to the provisions of the pertinent statute suffices, allowing leeway for slight or trivial errors . . . ."). Further, South Carolina does not require scientific precision when describing property in other property disputes. *See Hoyler v. State*, 428 S.C. 279, 295, 833 S.E.2d 845, 853–54 (Ct. App. 2019) ("While a property description need not be perfect, it must allow one examining it to identify the property conveyed; otherwise, the conveyance is void.").

We therefore affirm the circuit court's finding that the 2017 Ordinance was lawful as it did not attempt to annex Parcel 006-1 but, instead, attempted to clarify its intent to annex only Parcel 006. Consequently, Charleston's argument that it possesses standing based on infringement of its statutory and proprietary rights is moot. *See Futch v. McAllister Towing of Georgetown, Inc*., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address remaining issues when a prior issue was dispositive); *Ex parte State ex rel. Wilson*, 391 S.C. 565, 572, 707 S.E.2d 402, 406 (2011) ("The 100% petition method provides neither an express notice provision nor an authorization for third parties to challenge the annexation. . . . Rather, '[i]n order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.'" (quoting *St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002))); *id.* at 573–74, 707 S.E.2d at 407 ("The ordinance recites that the annexation was achieved using the 100% petition method. If we went behind that assertion without a proper plaintiff, we would be inviting a sliding scale for standing: the more meritorious a claim appears, the more relaxed the standing requirement would be. We rejected such reasoning when we overruled *Quinn v. City of Columbia*.").

II. Prior jurisdiction doctrine

Charleston argues that before North Charleston gave first reading to either the 2017 Ordinance or the 2018 Ordinance, Charleston's City Council already accepted a petition to annex Parcel 006 and ordered a public hearing on the matter. According to Charleston, under the common law "prior jurisdiction doctrine" also called the "prior pending proceedings rule," this entitled Charleston to complete the annexation without interference. However, our supreme court has previously declined to address whether these common law doctrines apply in South Carolina. *See City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("We *decline to reach the issue* of whether the 'prior pending proceedings'

rule *should be adopted by this Court*." (emphases added)). As such, the circuit court did not err in holding that Charleston lacks current or existing precedent supporting this alternative argument for standing.

Based on the foregoing analysis, the circuit court is

AFFIRMED.

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

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case Nos. 2019-CP-10-00846, -02131, and -02539
Appellate Case No. 2019-000903

City of Charleston,

Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC,

Respondents.

and

Millbrook Plantation, LLC

Plaintiff,

v.

City of Charleston,

Defendant.

and

City of Charleston,

Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC

Defendants.

APPELLANT'S PETITION FOR REHEARING

**Counsel identified on the following page*

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843)-724-3730

Attorneys for the City of Charleston

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

INTRODUCTION

This appeal concerns contests to two annexation ordinances enacted by Respondent the City of North Charleston ("North Charleston") pursuant to S.C. Code Ann. § 5-3-150(3), known as the "100% Annexation Method." The first ordinance was introduced on December 21, 2017 ("2017 Ordinance"). The second ordinance was introduced on March 15, 2018 ("2018 Ordinance").

The 2017 Ordinance included in the area subject to the annexation a parcel of land (the "Millbrook Parcel") owned by Respondent Millbrook Plantation, LLC ("Millbrook"). The description of the Millbrook Parcel in the 2017 Ordinance, as well as the sketches of the tract utilized for the annexation, showed its boundaries as extending to, and running along, the northernmost boundary of SC Highway 61. Since 2005, however, a portion of the Millbrook Parcel, that being a 100-foot-wide strip running along the northernmost boundary of SC Highway 61, had been within Charleston's corporate limits. Upon discovering the error, North Charleston introduced and ultimately enacted the 2018 Ordinance in an attempt to cure the defect of the 2017 Ordinance.

Prior to the 2017 and 2018 Ordinances being introduced or acted upon, however, Charleston, on December 19, 2017, had already commenced annexation proceedings pursuant to S.C. Code Ann. § 5-3-15(1), known as the "75% Annexation Method" (the "Charleston Annexation"). Part of the area subject to the Charleston Annexation included the remainder of

the Millbrook Parcel, the property North Charleston now claims was the only portion of the tract it sought to annex.

The circuit court rejected Charleston's challenge to the 2017 and 2018 Ordinances for lack of standing. Most respectfully, this Court erred in affirming the circuit court via the Subject Opinion, as the Court has overlooked and/or misapprehended a number of material points, as set forth herein.

BACKGROUND

This appeal arises from three consolidated actions challenging cross-annexations by Charleston and North Charleston of the Millbrook Parcel.[1]

The Millbrook Parcel consists of approximately 31 acres of real property located on SC Highway 61, also known as Ashley River Road, in Charleston County, South Carolina. (R. pp. 44–45 ¶ 4, pp. 109–110 ¶ 4.) In 1998, the General Assembly designated this portion of Highway 61, which dates back to colonial times, as a South Carolina Scenic Byway, subjecting it to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee for Scenic Byways pursuant to S.C. Code Ann. §§ 57-3-110 and 57-23-60. *See* S.C. Code Ann. § 57-23-230(A).

On May 10, 2005, Charleston adopted Ordinance No. 2005-093 (the "2005 Ordinance"), which annexed the portion of the Millbrook Parcel lying within 100 feet of Highway 61. (R. p. 45 ¶ 9, p. 111 ¶ 14.) There is no dispute that the 2005 Ordinance included the portion of the Millbrook Parcel lying within 100 feet of Highway 61. (R. p. 45 ¶ 5, p. 50 ¶ 5, p. 111 ¶ 14, pp. 119–120 ¶ 14, p. 141 ¶ 5.) No party has ever challenged the validity of the 2005 Ordinance.

[1] These actions are individually designated as Cases Nos. 2018-CP-10-00846 ("*Millbrook I*"), 2018-CP-10-02131 ("*Millbrook II*"), and 2018-CP-10-02539 ("*Millbrook III*"). On December 19, 2018, the circuit court consolidated them for all purposes. (R. pp. 38–39.)

Charleston commenced the annexation of the remainder of the Millbrook Parcel (i.e., the Charleston Annexation) on December 19, 2017, by accepting an annexation petition under the 75% Annexation Method authorized by § 5-3-150(1) and ordering the statutorily-required public hearing. *See* S.C. Code Ann. § 5-3-150(1)(6) ("not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing . . . ."). (R. p. 45 ¶¶ 10–11, p. 111 ¶¶ 15-16.)

On December 21, 2017, North Charleston gave first reading to the 2017 Ordinance to annex the Millbrook Parcel under the auspices of the 100% Annexation Method in § 5-3-150(3). (R. p. 46 ¶ 14, p. 112 ¶ 19.) On December 28, 2017, North Charleston adopted the 2017 Ordinance. (R. p. 46 ¶ 15, p. 112 ¶ 20.) The 2017 Ordinance describes the property annexed as commencing in the middle of the Ashley River at the corporate limits of North Charleston, eventually extending as follows:

> [I]n a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS 361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 [sic] with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of-way of Ashley River Road to Point D . . . .

(R. pp. 12–15, pp. 303–306 (emphasis added).) The description clearly includes 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies immediately adjacent to Ashley River Road. (R. pp. 304–305.) As a result, the description includes the portion of the Millbrook Parcel lying within 100 feet of SC Highway 61, annexed by Charleston in 2005. (R. pp. 303–306.)

On January 23, 2018, Charleston held a public hearing on, and gave first reading to, its annexation ordinance with respect to the portion of the Millbrook Parcel lying outside Charleston's then-existing corporate limits (the "Charleston Ordinance"). (R. p. 46 ¶ 12, p. 111 ¶ 17.) On April 10, 2018, Charleston adopted the Charleston Ordinance. (R. p. 111 ¶ 18.)

In the meantime, on March 15, 2018, North Charleston gave first reading to the 2018 Ordinance, purporting to amend or clarify the 2017 Ordinance by removing the portion of the Millbrook Parcel annexed by Charleston under the 2005 Ordinance. (R. pp. 307–309.) On March 22, 2018, North Charleston adopted Ordinance No. 2018-017, i.e., the 2018 Ordinance. (R. p. 113 ¶ 37.) The 2018 Ordinance includes recitals based upon the following summary explanation, in pertinent part:

> The City of North Charleston recently annexed Parcel TMS #361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of any another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

(R. p. 17 (emphasis added).)

By the time North Charleston took these actions, Charleston had not only accepted the annexation petition for the Millbrook Parcel and ordered a public hearing, but had also held the required public hearing and given first reading to the Charleston Ordinance. (R. p. 114 ¶ 40.)

On February 15, 2018, Charleston filed a notice of intent in *Millbrook I* to contest the 2017 Ordinance. (R. pp. 40–41.) The following day, Charleston served and filed the notice of intent with North Charleston's Clerk of Council. (R. pp. 40–41, p. 46 ¶ 17.)

On March 27, 2018, Charleston filed the summons and complaint in *Millbrook I*, asserting that the 2017 Ordinance was invalid because (1) the 2017 Ordinance illegally included property annexed by Charleston in 2005, and (2) Charleston took the first step to annex the remainder of the property before North Charleston, entitling Charleston to proceed with its annexation without interference from North Charleston. (R. p. 45 ¶ 5, 46 ¶ 16, pp. 46–47 ¶ 19.)

On April 24, 2018, Millbrook filed a notice of intent, summons, and complaint in *Millbrook II*, challenging the Charleston Ordinance annexing the balance of the Millbrook Parcel, a portion of which had already been annexed by Charleston in 2005. (R. pp. 85–99.)

On May 18, 2018, Charleston filed a notice of intent, summons and complaint in *Millbrook III*, challenging the 2018 Ordinance attempting to amend or clarify the property previously annexed by North Charleston by omitting territory annexed by Charleston in 2005. (R. pp. 105–117.) Charleston alleged in *Millbrook III* that it had obtained prior jurisdiction over the Millbrook Parcel "by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing the Millbrook Parcel into the City prior to North Charleston's beginning the process of passing [the 2018 Ordinance]." (R. p. 114 ¶ 40.) Charleston also alleged that the 2018 Ordinance could not "cure" the substantive defect regarding the legal description of the area purportedly annexed under the 2017 Ordinance. (R. p. 114 ¶¶ 38–39.)

On October 4, 2018, Millbrook moved to dismiss *Millbrook I* and *Millbrook III*, arguing that Charleston lacked standing to challenge the annexations. (R. pp. 144–147.) On October 24,

2018, the circuit court held a hearing on Millbrook's motions and took them under advisement. (R. pp. 196–243.)

On March 1, 2019, the circuit court entered an order granting Millbrook's motion to dismiss (the "Order"). (R. pp. 1–18.) Charleston received written notice of entry of the Order on March 4, 2019. (R. p. 182.) On March 5, 2019, the circuit court refiled the same order (the "Refiled Order"), and Charleston received written notice of entry of the Refiled Order on March 6, 2019. (R. pp. 19–36, p. 182.)

On March 14, 2019, Charleston served a notice of motion and motion to alter, amend, and reconsider the Order and the Refiled Order. (R. pp. 181–195.) On May 1, 2019, the circuit court entered an order denying Charleston's motion. (R. p. 37.)

This appeal (of the Order, the Refiled Order, and the order denying Charleston's motion to alter, amend or reconsider) timely followed by notice served and filed May 24, 2019,[2] and in due course, it was briefed and made ready for decision. Following oral argument on October 11, 2022, this Court decided the appeal on February 1, 2023, via the Subject Opinion, affirming the circuit court.

This petition for rehearing timely follows.

STANDARD OF REVIEW

"In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). "A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts

[2] (R. pp. 314–317.)

alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "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." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

ARGUMENT

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

A. This Court erred in affirming the circuit court where the circuit court erred in concluding that the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine.

Before North Charleston gave first reading to either the 2017 Ordinance or the 2018 Ordinance, the City Council of Charleston had, in accordance with § 5-3-150(1), already accepted a petition to annex the portion of the Millbrook Parcel not annexed by Charleston in 2005 and ordered a public hearing on the matter. (R. p. 17, p. 111 ¶¶ 15–16, p. 112 ¶ 19, p. 113 ¶ 37.) Charleston pled these acts as entitling Charleston to complete the annexation without interference from North Charleston under the common law "prior jurisdiction doctrine," also called the "prior pending proceedings rule." (R. p. 45 ¶ 5, p. 46 ¶ 16, p. 47 ¶ 19.b, p. 114 ¶ 40, p. 115 ¶ 46.a.)

The circuit court disagreed, holding: "The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise declines." (R. pp. 28–29.) This holding is erroneous, as the Supreme Court has not declined to adopt the prior jurisdiction doctrine. It merely found the doctrine was not applicable to the case then before it.

"The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if

valid, have priority." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) (emphasis added), citing 1 Antieau *Municipal Corporation Law* § 1A.16 (1993); 2 McQuillan *Municipal Corporations* § 7.22A (1966). The Supreme Court declined to address Irmo's argument in favor of the doctrine because Irmo failed to commence a valid annexation proceeding before Columbia:

> We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court . . . . Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31.

Id. at 196, 447 S.E.2d at 857 (emphasis in original). At the very least, this erroneous reading of *Irmo* warrants reversal to consider whether and under what circumstances the prior jurisdiction doctrine should apply.

In affirming the circuit court, this Court overlooked and/or misapprehended the reason that our Supreme Court determined not to reach the issue of the efficacy of the prior pending proceedings doctrine in *Irmo.* Again, the *Irmo* Court did not *reject* the prior pending proceedings rule, but rather simply declined to *reach* the issue because the circumstances of *Irmo* where such that the *Irmo* Court did not need to reach the issue to decide the case. In particular, the *Irmo* Court declined to address Irmo's argument for the adoption of the rule because the record there did not show that Irmo had commenced a valid annexation proceeding before Columbia.

In stark *contrast* to the instant case, the record in *Irmo* suggested flaws in Irmo's annexation, with the *Irmo* Court noting that Irmo had not refuted the alleged flaws and thus could not claim it had instituted valid legal proceedings. That fact served as the basis of the *Irmo* Court's determination not to reach the issue of the prior pending proceedings rule. Here, however, the sole issue is Charleston's standing. There is no contention, much less any showing,

that the Charleston Ordinance was invalid or illegal. Most respectfully, this Court (like the circuit court) overlooked and/or misapprehended this material distinction between *Irmo* and the instant case.

B. This Court erred in affirming the circuit court where the circuit court erred in dismissing Charleston's claims because Charleston had standing to assert that the prior jurisdiction doctrine applies.

The issue of whether, and to what extent, the prior jurisdiction doctrine should be recognized in South Carolina is novel. "In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court." *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 656 (2006). This Court should tackle the issue, for reasons of sound public policy.

"The rule that among separate equivalent proceedings relating to the same subject matter, that one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted, applies, generally speaking, to and among proceedings for the municipal incorporation, annexation, or consolidation of a particular territory." 2 McQuillin, *Municipal Corporations* § 7.39 (3d ed. 2006). "In proceedings of this character, while the one first commenced is pending, jurisdiction to consider and determine others concerning the same territory is excluded." *Id.* "Thus, where two or more bodies or tribunals have concurrent jurisdiction over a subject matter, the one first acquiring jurisdiction may proceed, and subsequent purported assumptions of jurisdiction in the premises are a nullity." *Id.*

"This principle of the common law is based upon the general public policy of the promotion of orderly administration of government and justice." *Id.* "Thus, the first of two or more annexation proceedings prevails over those subsequently commenced relating to the same territory." *Id.* "The jurisdictional priority based on priority in time ordinarily is determined by

the time of commencement or initiation of the proceedings, and not by the time of completion, nor by another time or date." *Id.* "The taking of the first mandatory public procedural step in the statutory process for incorporation or annexation of territory ordinarily fixes the date of the commencement of the proceedings, for the purpose of the rule as to jurisdictional priority." *Id.*; *see also Lincolnshire v. Highbaugh Realty Co.*, 278 S.W.2d 636, 637 (Ky. 1955) ("It seems to be the general rule that in the case of rivalry between two annexing municipalities the one that takes the first 'public' procedural step takes priority.").

In *City of Burlington v. Town of Elon College*, 314 S.E.2d 534 (N.C. 1984), the Supreme Court of North Carolina applied the prior jurisdiction doctrine under facts practically identical to those in the present case. The City of Burlington had taken the "first mandatory public procedural step" to annex certain real property by adopting a resolution of its intent under the North Carolina procedures for involuntary annexations. *Id.* at 537. The Town of Elon College then commenced several voluntary annexations of some of the same territory. *Id.* Elon College concluded its annexations before Burlington. *Id.* at 536.

Under the prior jurisdiction doctrine, the Supreme Court of North Carolina concluded that Burlington had jurisdiction to complete its involuntary annexation without interference from Elon College. *Id.* at 537. The Court explained: "[T]he prior jurisdiction rule is the majority rule and is applied 'universally' in 'conflicts between two municipalities attempting to assert jurisdiction over the same territory.'" *Id.* at 537, quoting *Comment, Municipal Corporations: Prior Jurisdiction Rule*, 7 W.F.L. Rev. 77, 79 (1970). The Court continued:

> [I]n cases where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. We believe adherence to the prior jurisdiction doctrine is not only consistent

> with the majority rule, but is in keeping with the spirit and intent of our annexation statutes.

Id. at 538.

"The prior jurisdiction rule applies where the proceedings are equivalent." 2 McQuillin, *Municipal Corporations* § 7.39 (3d ed. 2006). In *Burlington*, the Court rejected Elon College's argument that the prior jurisdiction doctrine should not apply because Burlington's involuntary annexation and Elon College's voluntary annexations were not "equivalent" proceedings:

> For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are 'equivalent proceedings,' and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the *involuntary* annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes.

Id. at 538 (emphasis in original).

Courts and commentators overwhelmingly endorse the prior jurisdiction doctrine in the context of annexation litigation. And not without good reason. "Perhaps the most significant attribute of the prior jurisdiction rule is that it enhances the predictability and order of annexation proceedings." *Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule*, 63 N.C.L. Rev. 1260, 1265 (Aug. 1985). "Because the prior jurisdiction rule looks to the time of commencement rather than to the time of completion of proceedings, it guarantees that the first annexation proceedings begun will not be undermined by subsequently initiated plans." *Id.* at 1265-66. "Thus, the rule ensures predictability and eliminates the incentive for a rush to the finish line." *Id.* at 1266.

The prior jurisdiction doctrine affords protection to a municipality taking the first public procedural step toward annexation. It ensures that municipal annexations result from thoughtful decisions, made by informed councils, after considering the impact of an annexation on the

municipality's comprehensive plan, existing facilities, and its residents. It promotes order in the workings of government. *See* 63 N.C.L. Rev. at 1267 ("Although none of the alternatives . . . is without drawbacks, the policy statements and the universal acceptance of the prior jurisdiction rule suggest widespread agreement that proceedings first begun are more likely to be well conceived than those subsequently begun.").

To eschew the rule will invite competing municipalities to "race to the finish line." *Cf. Lincolnshire*, 278 S.W.2d at 637 ("It is contended by the appellants that neither party has actually annexed the territory until all procedural steps toward that end have been taken, and, as a consequence, the municipality which gets there 'firstest with the mostest' should be the victor. But the true rule to apply appears to be to the contrary."). "A rule declaring as the winner the first municipality to *complete* its proceedings would only encourage North Carolina municipalities to rush annexation proceedings in order to thwart the success of other proceedings begun earlier." 63 N.C.L. Rev. at 1265 (emphasis in original).

Such a practice would discourage municipalities from investing the necessary time and resources to evaluate an annexation and would promote "jurisdiction shopping" by those seeking to obtain, and the government willing to give, maximum development rights. "Individuals are more likely to resist annexation because of personal grievances or fears about a neighboring municipality and to seek annexation by one municipality solely to prevent annexation by another . . . ." 63 N.C.L. Rev. at 1266. "In doing so individuals probably will not consider either the likely impact of annexation on an entire urban area or whether one municipality is better equipped than another to extend municipal service to an annexed area." 63 N.C.L. Rev. at 1266-67.

Such a practice would also create a disincentive for municipalities to plan for adequate public facilities, increased population densities, and intensification of uses. *See* 63 N.C.L. Rev. at 1265 ("Such a rule should ensure that annexation proceedings are predictable and orderly and that the better conceived plan, which furthers the interests of the greatest number of persons in an urban area, prevails.").

On the other hand, the prior jurisdiction doctrine is in keeping with the General Assembly's mandate for comprehensive planning in the field of local government planning and land development, as set out in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, codified in Chapter 29 of Title 6 of the South Carolina Code. *See, e.g.,* S.C. Code Ann. § 6-29-510 (instructing local planning commissions to "develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction," based on "surveys and studies," including "an inventory of exiting conditions," "a statement of needs and goals," and "implementation strategies").

As applied here, Charleston is entitled to assert protection under the prior jurisdiction doctrine because Charleston took the first mandatory public procedural step of accepting an annexation petition and calling for the statutorily required public hearing before North Charleston did anything. *Cf. Sherman v. Reavis*, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979) ("An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.").

Charleston is also entitled to the protection of the rule because Charleston gave first reading and held a public hearing on its annexation of the remainder of the Millbrook Parcel prior to North Charleston commencing any *valid* legal proceedings to annex the same territory. *See City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31." (emphasis in original)); *Bostick v. Beaufort*, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive defect" that may not be corrected through a subsequent ordinance). As discussed *infra,* the 2018 Ordinance, passed after Charleston had accepted a petition to annex the remainder of the Millbrook Parcel, held a public hearing on the annexation, and given first reading to its annexation ordinance, could not cure the defects of the 2017 Ordinance.

The circuit court did not address how and when the prior jurisdiction rule should apply, having erroneously concluded that the Supreme Court had refused to adopt the rule, as, most respectfully, this Court should have found. Charleston respectfully urges the adoption of the rule and its application to the facts of this case. At the very least, the circuit court's order should be reversed and the matter remanded, either with instructions to consider the novel issues associated with applying the prior jurisdiction rule or with instructions clarifying when and to what extent the rule applies. The instructions should also direct the circuit court to consider whether any facts need to be developed further before rendering a final judgment on the issue. *See McNeil v. S.C. Dep't of Corr.*, 404 S.C. 186, 196, 743 S.E.2d 843, 849 (Ct. App. 2013) ("The trial court failed to consider whether this case posed a novel issue and whether the facts should have been developed further.").

C. This Court erred in affirming the circuit court where the circuit court erred in denying standing to Charleston where Charleston asserted infringement of its proprietary interests and statutory rights.

Charleston alleges that the 2017 and 2018 Ordinances infringe on its "proprietary interests or statutory rights" because the 2017 Ordinance included lands already in Charleston and because the 2018 Ordinance could not cure the substantive defect contained in the 2017 Ordinance. (R. p. 45 ¶ 5, p. 46 ¶ 16, pp. 46–47 ¶ 19, p. 110 ¶¶ 5 & 10, p. 111 ¶ 11, p. 115 ¶¶ 44 & 46.)

The circuit court limited standing to the State of South Carolina to contest 100% annexations, ignoring well-recognized precedent that parties such as Charleston have standing to challenge annexations infringing upon their proprietary interests or statutory rights. It is also axiomatic that a municipality has standing to challenge the annexation of property already lying within such municipality's corporate limits, and Charleston asserted a number of statutory rights that are infringed by the 2017 and 2018 Ordinances. Most respectfully, this Court should have found that the circuit court's ruling that Charleston lacked standing to assert a violation of these rights was erroneous and should be reversed.

(1) This Court erred in affirming the circuit court where the circuit court misinterpreted the general standing framework in the context of annexation challenges.

The circuit court held Charleston lacked standing to contest the 2017 and 2018 Ordinances because, unlike the statute authorizing the 75% Annexation Method and listing who may challenge such an annexation, the statute authorizing the 100% Annexation Method does not accord standing to specific parties. The circuit court relied on *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991), in reaching this conclusion. (R. pp. 6–8.) The circuit court misconstrued *Quinn*.

The Supreme Court in *Quinn* held that none of the parties had standing to challenge the annexation as owners of property within the area annexed. *See Quinn*, 303 S.C. at 407, 401 S.E.2d at 166 ("It is undisputed that none of the Respondents own real property in the annexed portions of the Subdivision and, therefore, lack standing under § 5-3-150(3)."). However, nothing in *Quinn* suggests that any other basis for standing was offered, and appellate courts do not address questions which have never been raised. *Cf. Langley v. Boyter*, 284 S.C. 162, 181-82, 325 S.E.2d 550, 561 (Ct. App. 1984) ("The question here before us has never been answered because it has never been asked.").

The standing issue in *Quinn* turned, not on statutorily-accorded standing under the 100% Annexation Method, but on whether the challenged annexation was of such public importance so as to imbue standing to other interested parties—often designated as "non-statutory" parties or "strangers" to the annexation. *Quinn* acknowledged that, unless an ordinance was absolutely void, it was not subject to challenge by private individuals, *i.e.*, non-statutory parties, who were "strangers" to the annexation. *Id.* at 407, 401 S.E.2d at 166. As the challengers in *Quinn* contested the method of annexation, but did not contend the ordinance was unauthorized by law, the Supreme Court held that they did not establish standing:

> Similarly, we reject the contention that the matter is of such public importance as to confer standing. Generally, unless an annexation ordinance is "absolutely void", i.e., *not authorized by law,* private individuals may not challenge its validity. *See, Annot.* 13 A.L.R.2d 1279, 1292 (1950).
>
> Here, although Respondents challenge the *method* of annexation in seeking to have it declared void, they raise no claim that it was unauthorized by law. Accordingly, we find that Respondents lack standing to challenge the ordinance.

Id. at 407, 401 S.E.2d at 166-67 (emphasis in original).

Post-*Quinn* case law repeatedly confirms that standing to challenge a 100% Annexation is accorded to those who can allege the annexation infringes on their own "proprietary interests or statutory rights." *See County of Lexington v. Columbia*, 303 S.C. 300, 300, 400 S.E.2d 146, 147 (1991) ("Absent an issue of overriding public concern, a political subdivision must establish it is a real party in interest in order to maintain a suit . . . . It must allege an infringement of its own propriety interests or statutory rights to establish standing."); *State v. City of Columbia*, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992) ("In [*Quinn* and *Lexington*] we held that the challenging party must assert an infringement of its own proprietary interests or statutory rights in order to establish standing under statutory provisions governing challenges to the one hundred percent landowner petition method of annexation."); *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000) ("A party may ask the court to declare his or her statutory or proprietary rights affected by the annexation in a declaratory judgment action.").

It is clear under *Quinn* and subsequent case law that Charleston has standing to challenge any annexation infringing upon its proprietary interests or statutory rights. Most respectfully, this, Court should have reversed the circuit court's contrary conclusion.

(2) This Court erred in affirming the circuit court where the circuit court misread *St. Andrews* as limiting standing to challenge a 100% annexation to the state of South Carolina.

In *St. Andrews Pub. Serv. Dist. v. City Council*, 349 S.C. 602, 603, 564 S.E.2d 647, 647–48 (2002), the Supreme Court reviewed a decision by the Court of Appeals that held a public service district had standing to contest 100% annexations because the district had alleged that the annexations were unauthorized by law, and, thus, met the public importance exception articulated in *Quinn*. The Supreme Court reversed the decision of the Court of Appeals and overruled the public importance exception established by *Quinn*. *Id.* It did not, however,

displace or alter the law according standing to those who can demonstrate an annexation infringes on their proprietary interests or statutory rights.

Instead, *St. Andrews* laid out the requisites necessary to support standing to contest an annexation:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. *State by State Budget & Control Bd. v. City of Columbia*, 308 S.C. 487, 419 S.E.2d 229 (1992).
>
> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. *Tovey, supra*; *St. Andrews Public Serv. Dist. v. City of Charleston*, 294 S.C. 92, 362 S.E.2d 877 (1987). Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.

Id. at 604-05, 564 S.E.2d at 648.

> Despite the lack of statutory standing, the Court of Appeals found respondent had standing under our decision in *Quinn v. City of Columbia*, *supra*. In *Quinn*, we adopted a rule that permitted a "stranger" to the annexation to challenge that proceeding if the annexation ordinance was "'absolutely void', i.e. *not authorized by law* . . . ." Id. at 407, 401 S.E.2d at 166-167. Nine years later, we held that "The State, providing it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." *State ex rel. Condon v. City of Columbia,* 339 S.C. 8, 528 S.E.2d 408 (2000).
>
> We now overrule *Quinn*, and hold that the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit "outsider" annexation challenges to those brought by the State "acting in the public interest." Therefore, we reverse the Court of

> Appeals' holding that respondent has standing to challenge these annexations.

Id. at 605, 564 S.E.2d at 648 (emphasis in original).

St. Andrews specifically identifies parties with **statutory standing** to challenge annexations under section 5-3-150, *to wit*: "Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area." *Id.* at 605, 564 S.E.2d at 648. "In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights." *Id.* at 604, 564 S.E.2d at 648. *St. Andrews* stands for the proposition that, absent statutory standing, only the State may challenge a 100% annexation, when acting in the public interest.

The continued efficacy of this premise is established by post-*St. Andrews* case law. *See Ex parte State ex rel. Wilson*, 391 S.C. 565, 579, 707 S.E.2d 402, 410 (2011) ("We made clear in *St. Andrews Public Service District* that a party seeking to challenge a 100% petition annexation 'must assert an infringement of its own proprietary interests or statutory rights.'"); *Vicary v. Town of Awendaw*, 425 S.C. 350, 356, 822 S.E.2d 600, 603 (2018) ("In *St. Andrews*, the Court held non-statutory parties lacked standing to challenge a purportedly unauthorized annexation.").

The circuit court's conclusion that only the State may challenge a 100% Annexation contradicts *St. Andrews* and subsequent decisions, requiring reversal, as, most respectfully, this Court should have found.

(3) This Court erred in affirming the circuit court where the circuit court misinterpreted *Vicary* as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights.

Relying on *Vicary v. Town of Awendaw*, 425 S.C. 350, 822 S.E.2d 600 (2018), the circuit court held: "In *Vicary*, the court also noted the public importance exception to standing." (R. pp.

7–8.) "More importantly, the court failed to note an exception, which [Charleston] argues, that when a party alleges an infringement of a statutory and proprietary right [sic]." (R. p. 8.)

Vicary does not abrogate the general framework for standing to challenge 100% annexations set forth in *Quinn*, *St. Andrews*, and other cases, as the circuit court held. Instead, *Vicary* establishes that the public importance *exception* to the general standing requirements would apply, at the very least, when "nefarious conduct" is alleged. *See id.* at 358, 822 S.E.2d at 603-04 ("Although *St. Andrews* and *Town of Yemassee* set forth the general framework for resolving questions of standing pursuant to section 5-3-150, those cases are premised on a good faith attempt by the annexing body to comply with the statutory requirements."); *id.* at 360, 822 S.E.2d at 605 ("While this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute, the unique facts present here compel a contrary decision.").

Charleston does not seek, as the circuit court suggests, to establish a "sliding scale" approach to standing in challenges to 100% annexations. (R. p. 7.) Instead, Charleston simply seeks to protect its proprietary interests and statutory rights in and to land legally within its borders, consistent with precedent of this State.

(4) This Court erred in affirming the circuit court where the circuit court erred in finding Charleston lacked standing to challenge the 2017 and 2018 ordinances, both of which infringe upon Charleston's proprietary interests or statutory rights.

North Charleston twice attempted to annex the Millbrook Parcel utilizing the 100% Annexation Method. There is no question that, in *Millbrook I* and *Millbrook III*, Charleston alleges that the 2017 and 2018 Ordinances infringe upon Charleston's own statutory and proprietary rights over the Millbrook Parcel. (R. p. 46 ¶ 16, p. 110 ¶¶ 7–10, p. 111 ¶ 11, p. 115 ¶¶ 44 & 46.)

It is undisputed that the 2005 Ordinance annexed a portion of the Millbrook Parcel to Charleston. (R. p. 45 ¶ 5, p. 50 ¶ 5, p. 111 ¶ 14, pp. 119–120 ¶ 14, p. 141 ¶ 5.) Thus, since 2005, Charleston has had the statutory right to exclusive municipal jurisdiction over this property, as well as proprietary functions and interests of governmental dominion and control over this property, to include matters pertaining to taxation, land use, and the like. *See, e.g.,* S.C. Code Ann. § 5-7-30 (listing municipality's statutory rights with respect to property within its boundaries); S.C. Code Ann. § 5-21-110 (right to levy and collect taxes on personal and real property); S.C. Code Ann. § 5-7-80(1) (authority to abate nuisances); S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee); S.C. Const. Ann. Art. VIII, § 15 (outlining constitutional right of municipal consent); S.C. Code Ann. § 5-3-150(1) (statutory right to annex property under 75% Annexation Method); S.C. Code Ann. § 5-7-280 (prescribing procedure under which corporate limits may be reduced).

Charleston has statutory standing because the 2017 Ordinance infringes on these statutory and proprietary rights by attempting to annex land within Charleston's municipal limits since 2005. It defies logic to suggest that one municipality may not challenge the annexation by another of property already within such municipality's corporate limits. *See Glaze v. Grooms*, 324 S.C. 249, 255-56, 478 S.E.2d 841, 845 (1996) (holding Charleston, "which owns the territory Town seeks to use to establish contiguity, claims a sufficient infringement of its interests to confer standing."); *St. Andrews Pub. Serv. Dist. v. City Council*, 349 S.C. 602, 605 n.2, 564 S.E.2d 647, 648 (2002) (recognizing Charleston had standing under *Glaze* to challenge an attempted incorporation of property already within its borders). The circuit court erred in its

interpretation of the 2017 Ordinance, and erred in finding Charleston lacked standing to contest it.

Charleston also has statutory standing to contest the 2018 Ordinance, as its viability directly impacts Charleston's statutory and proprietary rights acquired in annexing the remainder of the Millbrook Parcel. As discussed, *supra*, the prior jurisdiction rule protects Charleston's annexation of the remainder of the Millbrook Parcel because, prior to North Charleston giving the 2018 Ordinance its first reading, Charleston had accepted a petition for the annexation of the remainder of the Millbrook Parcel, held the required public hearing, and given the ordinance first reading. (R. p. 17, p. 114 ¶ 40.) However, even if Charleston cannot avail itself of the protection of the prior jurisdiction rule, it nonetheless has standing to contest the 2018 Ordinance, as the validity of the 2018 Ordinance may have a direct bearing on the validity of the Charleston Ordinance.

The 2018 Ordinance attempted to amend the legal description of the property annexed by the 2017 Ordinance, to exclude land already in Charleston. (R. pp. 16–18.) It was the responsibility of North Charleston to ensure the sufficiency of the legal description of the property being annexed. If that description was fatally defective, it cannot be cured by way of a corrective ordinance. *See Bostick v. Beaufort*, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) ("We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property. Ordinance 0-07-89 bestowed authority to annex only the property listed and described in the petitions. Hence, no subsequent action by the City could validate a portion of the ordinance which was a nullity upon origination."); 2 McQuillin, *Municipal Corporations* § 7.5 (3d ed. 2006) ("The description of municipal boundaries or of municipal territory is invalid and ineffective where it is indefinite and uncertain"). Under Millbrook's reasoning, one municipality

may destroy another's statutory standing through the simple expedient of passing an amendatory or clarifying ordinance. It is self-evident that a party has standing to challenge any action intended to deprive it of its existing standing.

The description of the annexed area in the 2017 Ordinance was "flawed from its inception" because it included land within Charleston. Because the 2018 Ordinance attempted to cure that deficiency, and if upheld, will affect Charleston's statutory and proprietary rights, including its rights relating to the remainder of the Millbrook Parcel and its standing to challenge the 2017 Ordinance, Charleston has standing to have the 2018 Ordinance judicially vetted.

In affirming the circuit court, this Court overlooked and/or misapprehended the holding of *Bostick v. City of Beaufort*, 307 S.C. 347, 415 S.E.2d 389. The defect found to be incurable in *Bostick* was an omission from the property description and map of a part of the area annexed. Here, the defect was the inclusion, in what must be admitted as a meticulously drawn property description and map, of property already in another municipality. Respectfully, such is hardly a mere technical error. Annexation jurisprudence, by its very nature, is a property-centric exercise. Annexation establishes the boundaries of municipal jurisdiction, to the exclusion of any other municipality. Property descriptions and maps are thus crucial to the exercise. Thus, errors in depicting property annexed by an ordinance are substantive, whether the error be one of omission or inclusion, or inadvertent or intentional.

The circuit court erred in disregarding Charleston's allegations that the 2017 and 2018 Ordinances infringed upon Charleston's proprietary interests and statutory rights, as, most respectfully, this Court should have found.

D. This Court erred in affirming the circuit court where the circuit court erred in interpreting the 2017 ordinance to annex only property outside Charleston's municipal limits.

The circuit court held that the 2017 Ordinance "did not attempt . . . to annex property (the 100' strip) which was part of [Charleston]." (R. p. 10.) As a result, the circuit court concluded: "Without this, City's claim fails to state any valid claim for relief." (R. p. 10.) This holding and conclusion do not comport with the pleadings, the annexation ordinances attached to the Order, or the arguments of counsel.

As a preliminary matter, such a ruling would not impact Charleston's standing to assert that, under the prior jurisdiction doctrine, the 2017 Ordinance was invalid because Charleston took the first public step toward annexing the remainder of the Millbrook Parcel before North Charleston, as discussed, *supra*.

The ruling is also an inaccurate legal conclusion. "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mikell v. Cty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009). "When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Id.* "The determination of legislative intent is a matter of law." *Charleston Cty. Parks & Rec. Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). "An appellate court may decide questions of law with no particular deference to the trial court." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772–73 (2010).

The 2005 Ordinance annexed to Charleston the portion of the Millbrook Parcel lying within 100 feet of the right-of-way line for Highway 61, i.e. Ashley River Road. The 2017 Ordinance is attached as Exhibit 1 to the Order. The description of the area to be annexed clearly runs 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and

the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies immediately adjacent to Ashley River Road. (R. pp. 12–15.) These facts are uncontroverted and belie the holding of the circuit court that the 2017 Ordinance did "not attempt to annex" land in Charleston. (R. p. 10.)

The 2018 Ordinance, which is attached as Exhibit 2 to the Order and which attempted to fix the delict in the 2017 Ordinance, provides, in pertinent part: "[B]ased upon the then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road . . . ." (R. p. 17 (emphasis added).)

During the October 24, 2018 hearing before the circuit court, North Charleston explained:

> When The City of North Charleston in December annexed the Millbrook tract as everybody has mentioned, The City of Charleston's hundred foot strip was not shown on the county records and so when you go down and you check the county property records and get the TMS numbers to annex, we annexed TMS 006 which is the Millbrook TMS number and later the county came back, I think The City of Charleston notified the county that their records were wrong and the county assigned a different TMS number to that hundred foot strip on the front. It was like 006-1. And so at that point we came back at The City of North Charleston and passed an ordinance that said we meant what we said when we were taking 006 and there's the newly identified 006-1 and we never said that we took it and we don't claim to have taken it.

(R. pp. 219:21–220:13 (emphasis added).)

North Charleston's protests to the contrary notwithstanding, legislation must be construed in light of the conditions obtaining at the time the legislation was passed, not based on after-acquired knowledge. *See Durant v. Bennett*, 54 F.2d 634, 639 (D.S.C. 1931) ("As has been pointed out by the Supreme Court in many cases, a statute must be construed . . . in the light of the condition obtaining at the time the statute was passed."); *see also State ex rel. Attorney Gen.*

v. Kizer, 164 S.C. 383, 397, 162 S.E. 444, 449 (1932) (adopting *Durant* as the opinion of the Supreme Court of South Carolina); *Soc'y of Divine Word v. Cty. of Cook*, 247 N.E.2d 21, 25 (Ill. App. Ct. 1969) ("[W]e believe the intention should properly be determined with regard to general conditions at the time of enactment.").

The record demonstrates that, when the 2017 Ordinance was enacted, North Charleston believed, rightly or wrongly, inadvertently or otherwise, that the entire Millbrook Parcel lay within unincorporated Charleston County. As a result, North Charleston intended to, and in fact did, annex to the right-of-way line of Highway 61. (R. pp. 12–18.) The record demonstrates that, when the 2017 Ordinance was enacted, it included land annexed by Charleston in 2005. If such were not the case, the enactment of the 2018 Ordinance would be tantamount to an exercise in futility. Legislative bodies are not presumed to engage in futile acts. *Cf. Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 145, 750 S.E.2d 65, 72 (2013) ("Because the legislature is presumed to be aware of prior legislation and does not perform futile acts, we find the 2008 amendment represents a conscious decision by the legislature to preclude partnerships from earning and passing through certain tax credits.").

The circumstance of the 2017 Ordinance reciting that "[t]he area proposed for annexation includes the parcel designated TMS # 361-00-00-006" is not dispositive of the issue of whether other property was also annexed. (R. p. 13.) That becomes especially clear when considering the annexed area does, in fact, include other property, that being the waters and river bottom of the Ashely River. (R. pp. 12–15.)

The circumstance of the 2017 Ordinance reciting all distances being more or less does not affect the placement of points described in the Ordinance, but would only affect, perhaps, the exact distances between those points. *See Kirven v. Bartell*, 266 S.C. 385, 389, 223 S.E.2d 597,

599 (1976) (explaining that the words "more or less," when used in connection with distance, intend to "cover some slight or unimportant inaccuracy" and enable an adjustment of distances "to the imperative demands of fixed monuments and boundaries"). But it is undeniable that the 2017 Ordinance establishes points at the northern right-of-way line of Ashley River Road and describes the southwestern line of the area annexed as "along the northernmost right-of-way of Ashley River Road." (R. pp. 12–13.)

In affirming the circuit court, this Court overlooked and/or misapprehended the proven fact that the 2017 Ordinance included land already in Charleston, instead finding the 2017 Ordinance did not intend to annex what is now described Parcel 006-1. The Court deemed its inclusion in the 2017 Ordinance as being inadvertent, due to faulty County records. The consequence of these findings, however, is that Charleston is precluded from pursuing its statutory right to annex the remainder of the Millbrook Parcel, an undertaking Charleston had indeed commenced before North Charleston had even introduced the 2017 Ordinance. The consequence of the Court's ruling is to withhold from Charleston statutory rights to annex because North Charleston and the property owner made a mistake, a mistake in which Charleston had no hand and of which it had no knowledge at the time it instituted its annexation proceedings of the remainder of the Millbrook Parcel. That North Charleston relied on faulty records should not serve as a barrier to Charleston pursuing its statutory rights to annex, especially when Charleston commenced its annexation effort of the remainder of the Millbrook parcel before North Charleston made its mistake. Moreover, the 2017 and 2018 Ordinances, being pursuant to the 100% method, beg the question of what property was described in the annexation petitions, a matter not in the record and one ripe for discovery. And in this regard it must be noted that, while the 2017 and 2018 Ordinances describe the area annexed as including Parcel 006, the area

annexed includes other properties, those being the waters, marshes and river bottoms of the Ashley River.

Whether intentionally or not, the area annexed by the 2017 Ordinance includes the territory annexed by Charleston in 2005. This circumstance gives Charleston standing to contest its validity, as, most respectfully, this Court should have found. *See Glaze v. Grooms*, 324 S.C. 249, 235, 478 S.E.2d 841, 845 (1996) (finding the City of Charleston had standing to contest incorporation of the Town of James Island because areas of the Town included lands already in Charleston); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (upholding North Charleston's challenge to Summerville's invalid attempt to annex territory which North Charleston also annexed). As discussed, *supra*, this circumstance also casts a cloud on whether, and when, North Charleston commenced a valid attempt to annex the Millbrook Parcel, for purposes of the prior jurisdiction rule.

E. This Court erred in affirming the circuit court where the circuit court erred in construing Charleston's allegations in a light most favorable to Millbrook.

The circuit court, in interpreting the allegations in Charleston's complaints, concluded: "Examining the complaints, it is clear that the 100' strip of land was identified by the court records, prior to and on December 21, 2017, as TMS 361-00-00-006-1." (R. p. 8.) "This is the land City had annexed in 2005." (R. pp. 8–9.) "To succeed under any of City's causes of action, this court must interpret the 2017 Ordinance that it was annexing TMS 361-00-00-006-1." (R. p. 9.)

Neither this ruling nor the conclusion drawn therefrom comports with the allegations or the law requiring construction in a light most favorable to Charleston. *See McCormick v. England*, 328 S.C. 627, 633, 494 S.E.2d 431, 433-34 (Ct. App. 1997) (in ruling on a motion to

dismiss, "[t]he question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief.").

Initially, Charleston can prevail under the prior jurisdiction doctrine regarding of what North Charleston intended to annex under the 2017 Ordinance because Charleston took the first public procedural step to annex the balance of the Millbrook Parcel before North Charleston did anything relating to the 2017 Ordinance.

The circuit court misconstrued Charleston's allegations, as emphasized in Charleston's motion to reconsider. (R. pp. 190–192.) Specifically, the circuit court construed the complaints as alleging that TMS No. 361-00-00-006-1 had been established before North Charleston's purported annexation of the Millbrook Parcel, such that the 2017 Ordinance's reference to TMS No. 361-00-00-006 could only be interpreted to include property outside Charleston's municipal limits. This construction is not correct.

The allegations in *Millbrook I*, read in a light most favorable to Charleston, establish that, at the time North Charleston passed the 2017 Ordinance, North Charleston's City Council purported to annex property, **currently** designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1." (R. pp. 44–45 ¶ 4 (emphasis added).) This allegation clearly indicates that TMS 361-00-00-006-1 had been created by the time the complaint in *Millbrook I* was filed. It does not suggest that TMS 361-00-00-006-1 had been created at the time the 2017 Ordinance was given first reading or adopted, as the circuit court concludes.

In *Millbrook III*, challenging the 2018 Ordinance, Charleston alleges:

> This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging Ordinance No. 2018-017 (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on March 22, 2018, purporting to amend and supplement Ordinance No. 2017-083, adopted by the City of North Charleston on December 28, 2017, whereby the City

> of North Charleston purported to annex, upon petition of Millbrook that certain tract of land **previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel")**."

(R. pp. 109–110 ¶ 4 (emphasis added).)

While Charleston alleged in the *Millbrook III* complaint (¶ 21), relied upon by the circuit court, that "[p]rior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston," Charleston never alleged that this portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 21, 2017. (R. p. 112 ¶ 21.) The same may be said for Paragraph 22 of the *Millbrook III* Complaint, also relied upon by the circuit court, which contains no allegations that a portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 28, 2017. (R. p. 112 ¶ 22.)

Although a portion of the Millbrook Parcel was annexed to Charleston in 2005, and although the County's records reflect this annexation, it is unclear when a separate TMS number was created for the portion annexed by Charleston in 2005. The allegations in Charleston's complaint, construed in a light most favorable to Charleston, establish that Charleston pled: (1) the County's records reflected that a portion of the Millbrook parcel had been annexed into Charleston in 2005, and (2) TMS No. 361-00-00-006-1 was shown at the time Charleston filed its complaints. This construction is buttressed by the recitations in the 2018 Ordinance that the new TMS number was created after North Charleston adopted the 2017 Ordinance on December 28, 2017, and by North Charleston's explanation at the hearing on Millbrook's motions to dismiss. (R. pp. 219:24–220:13, p. 308.)

In affirming the circuit court, this Court overlooked and/or misapprehended the posture of the cases, that being motions to dismiss pursuant Rule 12(b)(6), SCRCP, the sole ground of which was Charleston's supposed lack of standing. The inquiry on such motions is, of course, limited to the allegations of the pleadings, the question being "whether, in the light most favorable to the plaintiff, with every doubt being resolved in his behalf, the complaint states any valid claim for relief." *Plyer*, 373 S.C. at 645, 647 S.E.2d at 192.

The Court overlooked and/or misapprehended the fact that, as to the 2017 Ordinance, Charleston pleaded and the 2017 Ordinance itself on its face proved, the property sought to be annexed extended to the northernmost right-of-way line of SC Highway 61 and that, in doing so, plainly included property that had been in Charleston since 2005. The pleadings thus plainly demonstrated Charleston's statutory rights and governmental interests in a portion of the area sought to be annexed, the cornerstone for standing to contest an annexation accomplished under the 100% petition method of annexation. The Court overlooked and/or misapprehended this circumstance and instead rendered a decision on the merits of the question of whether the apparent defect of the 2017 Ordinance could be cured, an issue not argued to, or ruled on by, the circuit court. The only matter before the court was whether the pleadings, viewed in a light most favorable to Charleston, supported its standing.

The circuit court misconstrued Charleston's complaints and misapplied its standard of review. This error colored its ruling both on whether Charleston had standing to challenge the 2017 and 2018 Ordinances as violating Charleston's statutory rights *and* the acts which Charleston had undertaken to annex the remainder of the Millbrook Parcel prior to North Charleston's commencing any valid annexation proceeding of its own, implicating the pending jurisdiction doctrine, as, most respectfully, this Court should have found.

CONCLUSION

Charleston has standing because, prior to North Charleston taking any action on the 2017 Ordinance or the 2018 Ordinance, Charleston commenced valid legal proceedings to annex the same property. This Court should have so found and reversed the circuit court and remand the matter accordingly. In the alternative, this Court should have reversed the circuit court and remanded the matter either for a consideration of the circumstances under which the prior jurisdiction rule applies or with instructions as to when the prior jurisdiction rule applies.

Additionally, or in the alternative, Charleston has statutory standing to challenge the 2017 and 2018 Ordinances because these ordinances infringe on Charleston's proprietary interests or statutory rights, and this Court should have found that the circuit court misinterpreted *Quinn* and its progeny, which limits only "outsider" standing to the State of South Carolina.

Like the circuit court, this Court also misinterpreted the 2017 Ordinance and the pleadings in ruling that the 2017 Ordinance annexed only portions of Millbrook's property lying outside Charleston's municipal boundaries. These errors not only impact Charleston's standing under *St. Andrews* to challenge the 2017 and 2018 Ordinances, but also affect the application of the prior jurisdiction doctrine.

Under any or all of these scenarios, the motions to dismiss should have been denied, and the circuit court's order should therefore have been reversed.

For the foregoing reasons, along with any other or further reason(s) set forth in its appellate briefs already on file, the entirety of which it hereby adopts and incorporates herein by reference and reiterates/reasserts in support hereof, Charleston asks this Honorable Court to grant the instant petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court.

Respectfully submitted,

By: s/Russell G. Hines

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843)-724-3730

Attorneys for the City of Charleston

Charleston, South Carolina

March 20, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Hon. Eugene Griffith

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appeal No. 2019-000903

The City of Charleston,	Appellant
v.	
City of North Charleston and Millbrook Plantation, LLC,	Respondents.
AND	
Millbrook Plantation, LLC	Plaintiff,
v.	
City of Charleston	Defendant
AND	
City of Charleston	Plaintiff
v.	
City of North Charleston and Millbrook Plantation, LLC,	Defendants.

City of North Charleston's Reply to Petition for Rehearing

Derk Van Raalte, Kris Neely,
Brady Hair
Legal Dept., 2500 City Hall Lane
North Charleston, SC 29406
843-740-2550
dvanraalte@northcharleston.org
kneely@northcharleston.org
brady@bradyhair.com

Attorneys for the Respondent
City of North Charleston

Other Counsel of Record:

Francis Cantwell
2220 Folly Road
Charleston, SC 29412
Fcantwell054@gmail.com

Wilbur Johnson, Esquire
Russell Hines, Esquire
Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402

Julia Parker Copeland, Esquire
City of Charleston Legal Dept.
50 Broad Street
Charleston, SC 29401

Attorneys for the City of Charleston

Bruce Miller
Bruce Miller, PA
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412

Attorney for Millbrook Plantation

City of North Charleston's Reply to Petition for Rehearing[1]

Just as in responding to the City of Charleston's Petition in the companion case 2019-000728, this Court need not go further than the South Carolina Rules of Appellate Procedure to demonstrate why this Petition must be denied:

> "A petition for rehearing … shall state with particularity the points supposed to have been overlooked or misapprehended by the court." SCAR 221(a)

Charleston has simply recycled its arguments from the original appeal. Charleston here doesn't hone in on any particular point this Court got wrong. It just relitigates the very same points it raised in the original appeal. There is no avoiding that this is precisely what is happening here – the arguments raised in this Petition for Rehearing are basically a cut-and-paste, carbon-copy of the Table of Contents from Charleston's Final Briefs on Appeal. This is not an appropriate use of a SCAR 221 Petition for Rehearing.

[1] The City of North Charleston herein argues why the Petition for Rehearing should not be granted. A Petition for Rehearing is a procedural vehicle and North Charleston's arguments here respond on that basis. Regarding the underlying merits, the City of North Charleston would incorporate by reference as if set forth fully herein both this Court's prior opinion and North Charleston's prior appellate briefs and oral arguments.

Compare:

Charleston's Petition for Rehearing Ground I(A)[2]

"This Court erred in affirming the circuit court where the circuit court erred in concluding that the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine." Petition for Rehearing, p. 7

With:

Final Brief of the Appellant City of Charleston Argument I[3]

"The circuit court erred in concluding that the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine." Charleston Final Brief, pg. i.[4]

And

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument I

"North Charleston erroneously conflates the Supreme Court's declination to reach the issue of the adoption of the prior pending proceedings rule with a refusal to adopt the rule." Charleston Reply Brief, p. i.

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[2] This Court's opinion cuts the legs out from under Charleston's argument on the merits. Charleston in its Petition seeks to draw the distinction between "declining to adopt" and "declining to reach the issue of whether to adopt", preferring the latter. See Petition at 7. Yet, this Court actually used language analogous to Charleston's preference to decide this case. "However, our supreme court has previously declined to address whether these common law doctrines apply in South Carolina. *See City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ('We *decline to reach the issue* of whether the 'prior pending proceedings' rule *should be adopted by this Court.*" (emphases added)). As such, the circuit court did not err in holding that Charleston lacks current or existing precedent supporting this alternative argument for standing.'" 2019-00903, Part II.

[3] City of Charleston Final Brief headings retyped herein using standard capitalization for ease of reading, but appears in all CAPS in the original.

[4] Comparison is invited between Pages 6-7 of the City of Charleston's Final Brief of Appellant and Pages 7-8 of the Petition for Reconsideration. To North Charleston's eyes these are cut-and-paste paragraphs. This is not appropriate when the task under Rule 221 is to with particularity identify points that have been overlooked.

Charleston's Petition for Rehearing Ground I(B)

"This Court erred in affirming the circuit court where the circuit court erred in dismissing Charleston's claims because Charleston had standing to assert that the prior jurisdiction doctrine applies." Petition for Rehearing, p. 9

With:

Final Brief of the Appellant City of Charleston Argument II

"The circuit court erred in dismissing Charleston's claims because Charleston had standing to assert that the prior jurisdiction doctrine applies." Charleston Final Brief, p. i.

And

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

"Charleston has standing to challenge North Charleston's attempted annexations, which infringe upon Charleston's proprietary interests and statutory rights." Reply Brief, p. 11, and p. 13 ("Charleston's standing is further buttressed by the prior pending proceedings rule.")

Charleston's Petition for Rehearing Ground I(C)

"This Court erred in affirming the circuit court where the circuit court erred in denying standing to Charleston where Charleston asserted infringement of its proprietary interest and statutory rights." Petition for Rehearing, p. 15.

With:

Final Brief of the Appellant City of Charleston Argument III

"The circuit court committed an error of law in denying standing to Charleston based on an asserted infringement of Charleston's proprietary interests and statutory rights." Charleston Final Brief, P.i.

AND

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

"Charleston has standing to challenge North Charleston's attempted annexations, which infringe upon Charleston's proprietary interests and statutory rights." Reply Brief, p. 11

Charleston's Petition for Rehearing Ground I(C)(1)

"This Court erred in affirming the circuit court where the circuit court misinterpreted the general standing framework in the context of annexation challenges." P. 15

With:

Final Brief of the Appellant City of Charleston Argument III(A)

"The circuit court misinterpreted the general standing framework in the context of annexation challenges" Charleston's Final Brief, p. i.

Charleston's Petition for Rehearing Ground I(C)(2)

"This Court erred in affirming the circuit court where the circuit court misread *St. Andrews* as limiting standing to challenge 100% annexation to the state of South Carolina." P. 17

With:

Final Brief of the Appellant City of Charleston Argument III(B)

"The circuit court also misread St. Andrews as limiting standing to challenge a 100% annexation to the State of South Carolina." Final Brief, p. i.

Charleston's Petition for Rehearing Ground I(C)(3)

"This Court erred in affirming the circuit court where the circuit court *Vicary* as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights." P. 19

With:

Final Brief of the Appellant City of Charleston Argument III(C)

"The circuit court likewise misinterpreted Vicary as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights" Charleston's Final Brief, p. i.

AND

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

"Charleston has standing to challenge North Charleston's attempted annexations, which infringe upon Charleston's proprietary interests or statutory rights." Reply Brief, p. 11

Charleston's Petition for Rehearing Ground I(C)(4)

"This court erred in affirming the circuit court where the circuit court erred in finding Charleston lacked standing to challenge the 2017 and 2018 ordinances, both of which infringe upon Charleston's proprietary interests or statutory rights." P. 20

With:

Final Brief of the Appellant City of Charleston Argument III(D)

"The circuit court erred by finding Charleston lacked standing to challenge the 2017 and 2018 ordinances, both of which infringe upon Charleston's proprietary interests or statutory rights." Final Brief, p. i.

AND

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

"Charleston has standing to challenge North Charleston's attempted annexations, which infringe upon Charleston's proprietary interests or statutory rights." Reply Brief, p. 11

Charleston's Petition for Rehearing Ground I(D)

"This Court erred in affirming the circuit court where the circuit court erred in interpreting the 2017 ordinance to annex only property outside Charleston's municipal limits." P. 24

With:

Final Brief of the Appellant City of Charleston Argument IV

"The circuit court erred in interpreting the 2017 ordinance to annex only property outside Charleston's municipal limits." Final Brief, p. i.

Charleston's Petition for Rehearing Ground I(E)

"This Court erred in affirming the circuit court where the circuit court erred in construing Charleston's allegations in a light most favorable to Millbrook."[5] P. 28

With:

Final Brief of the Appellant City of Charleston Argument (V)

"The circuit court erred in construing Charleston's allegations in a light most favorable to Millbrook." Final Brief, p. i.

A Petition for Rehearing does not allow Charleston to re-argue the appeal as attempted here. Our own Supreme Court was crystal clear about this in Kennedy v. SC Retirement System, 564 S.E.2d 322, 349 S.C. 531, 532 (SC 2001):

> "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)). Appellants had the opportunity to present their arguments and evidence when this case was originally heard by the trial court."

And this rule is not changing. See Herron v. Century BMW, 719 S.E.2d 640, 643, 395 S.C. 461, 466 (SC 2011)(Citing Kennedy for the proposition "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked, nor

[5] Note that Charleston's argument also runs directly counter to the words of this Court's opinion. This court specifically cited the "light most favorable to the plaintiff"! See City of Charleston v. North Charleston, Op. 5966 filed February 1, 2023 "Standard of Review."

is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.")

So the most basic response to Charleston's Petition for Rehearing grounds is this – Charleston did an admirable job raising its same arguments previously during the appeal, so much so that the arguments it seeks to raise now for Rehearing were considered by this Court before the Opinion issued. They are not ground for rehearing. To the extent that the arguments supporting Petitioner's arguments may have changed somewhat in this most recent brief, that too is not allowed. See Kennedy, 564 S.E.2d 322, 349 S.C. 531, 532 ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended...." and "The argument was not considered because it was never presented to this Court.")

Conclusion

North Charleston's position in response here is precisely the same as in its response to the City of Charleston's sister case Petition for Rehearing. Decisions of this Court have meaning. They are not simply "jump balls" for litigants to perpetually bat back and forth through the air with no finality. While Rule 221(a) serves an important role to allow for focused correction of points overlooked it does not allow for endless soup-to-nuts relitigation of a case already decided. Petitioner's request must be denied.

This 28 day of March, 2023

Derk Van Raalte
Kris Neely
Brady Hair
City of North Charleston Legal
2500 City Hall Lane
North Charleston, SC 29406
843-740-2550
kneely@northcharleston.org
dvanraalte@northcharleston.org
brady@bradyhair.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

RECEIVED
Mar 31 2023
SC Court of Appeals

City of Charleston, ... Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC, ... Respondents.

AND

Millbrook Plantation, LLC,..... Plaintiff,

v.

City of Charleston, ... Defendant.

AND

City of Charleston, ... Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, ... Defendants.

RESPONDENT MILLBROOK PLANTATION, LLC's REPLY TO CITY OF CHARLESTON'S PETITION FOR REHEARING

Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR RESPONDENT MILLBROOK PLANTATION, LLC

Other Counsel of Record

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com

Frances I. Cantwell, Esq. (SC Bar No. 1121)
Julia P. Copeland, Esq. (SC Bar No. 77199)
50 Broad Street
Charleston, SC 29401
Fcantwell054@gmail.com
copelandj@charleston-sc.gov

ATTORNEYS FOR THE CITY OF CHARLESTON

J. Brady Hair, Esq. (SC Bar No. 9040)
Derk Van Raalte IV, Esq. (SC Bar No. 9286)
Legal Department
2500 City Hall Lane
N. Charleston, SC 29406
T: (843) 572-8700
brady@bradyhair.com
dvanraalte@northcharleston.org

ATTORNEYS FOR THE CITY OF NORTH CHARLESTON

Millbrook Plantation, LLC's Reply to Petition for Rehearing

Respondent Millbrook Plantation, LLC ("Millbrook") adopts fully the arguments of Respondent City of North Charleston outlined in its Reply dated March 28, 2023.

Respectfully submitted:

s/Bruce E. Miller
Bruce E. Miller, Esq. (SC Bar No. 3980)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

ATTORNEY FOR RESPONDENT MILLBROOK PLANTATION, LLC

March 31, 2023

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Apr 04 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case Nos. 2019-CP-10-00846, -02131, and -02539
Appellate Case No. 2019-000903

City of Charleston,

Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC,

Respondents.

and

Millbrook Plantation, LLC

Plaintiff,

v.

City of Charleston,

Defendant.

and

City of Charleston,

Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC

Defendants.

APPELLANT'S REPLY TO THE RETURNS TO ITS PETITION FOR REHEARING

**Counsel identified on the following page*

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843) 724-3730

Attorneys for the City of Charleston

Pursuant to Rules 221(a) and 240(f), SCACR, in further support of its pending petition for rehearing of this matter (the "Petition"), Appellant, the City of Charleston ("Charleston"), submits this reply to the returns to the Petition filed by Respondents, the City of North Charleston ("North Charleston") and Millbrook Plantation, LLC ("Millbrook")[1] (collectively, "Respondents").

Pointing to the language in Rule 221(a) that "[a] petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court," the gist of the return is Respondents' contention that the Petition should be denied for noncompliance with Rule 221(a), because it "doesn't hone in on any particular point this Court got wrong" and "simply recycle[s] [Charleston's] arguments from the original appeal." (North Charleston Return p. 3.) Respectfully, this contention is unavailing, as it is based on a misapprehension of both Rule 221(a) and the Petition itself.

The same rules of construction used to interpret statutes apply to the interpretation of court rules. *Huck v. Oakland Wings, LLC*, 422 S.C. 430, 435, 813 S.E.2d 288, 290 (Ct. App. 2018). Thus, court rules must be given a reasonable and practical construction and read in a sense that harmonizes with their subject matter and accords with their general purpose. *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 621–22, 611 S.E.2d 297, 301–02 (Ct. App. 2005). Additionally, with particular respect to procedural rules, they "should not be written or interpreted to create a trap for the unwary lawyer or party . . . ." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004).

Respondents' criticism of the Petition is misplaced. Besides their reliance on an unduly narrow view of Rule 221(a), they overlook the interplay between Rule 221(a) and Rule 242,

[1] Millbrook's return simply adopts the arguments of North Charleston's return. (*See* Millbrook Return.)

SCACR (addressing certiorari to the Court of Appeals), which, in subsection (d)(2), expressly limits the questions that may be presented in a petition for a writ of certiorari to "[o]nly those questions raised in the Court of Appeals and in the petition for rehearing . . . ." Indeed, in its order limiting extensions of time in cases seeking certiorari to review a decision of the Court of Appeals, the Supreme Court specifically cites Rule 242(d)(2) in support of its reasoning for why less time should be needed to prepare a cert petition, because of the necessary overlap between the content of the cert petition and what was already argued to the Court of Appeals. (S.C. Sup. Ct. Order No. 2014-07-16-01 (filed July 16, 2014) ("Under Rule 242(d)(2), SCACR, '[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.' Therefore, in most cases, the preparation of the petition and return will involve no more than taking the arguments already made in the briefs before the Court of Appeals, putting in the additional case history information, and updating and checking the citations.").)

"In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended *their argument*." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Rule 221(a)) (emphasis added). Far from being improper under the South Carolina Appellate Court Rules, the so-called "recycl[ing]" of Charleston's appellate arguments in the Petition is indeed necessary, both for it to attempt to demonstrate to this Court that it has overlooked and/or misapprehended them and for it to preserve them for potential Supreme Court review.

Moreover, the Petition does in fact identify the points that Charleston respectfully contends the Court overlooked and/or misapprehended. (*See, e.g.,* Petition for Rehearing p. 8 ([Re: Argument I.A.] "In affirming the circuit court, this Court overlooked and/or

misapprehended the reason that our Supreme Court determined not to reach the issue of the efficacy of the prior pending proceedings doctrine in *Irmo*."); *id.* at p. 14 ([Re: Argument I.B.] "The circuit court did not address how and when the prior jurisdiction rule should apply, having erroneously concluded that the Supreme Court had refused to adopt the rule, as, most respectfully, this Court should have found."); *id.* at p. 17 ([Re: Argument I.C.(1)] "It is clear under *Quinn* and subsequent case law that Charleston has standing to challenge any annexation infringing upon its proprietary interests or statutory rights. Most respectfully, this . . . Court should have reversed the circuit court's contrary conclusion."); *id.* at p. 19 ([Re: Argument I.C.(2)] "The circuit court's conclusion that only the State may challenge a 100% Annexation contradicts *St. Andrews* and subsequent decisions, requiring reversal, as, most respectfully, this Court should have found."); *id.* at p. 20 ([Re: Argument I.C.(3)] "*Vicary* does not abrogate the general framework for standing to challenge 100% annexations set forth in *Quinn*, *St. Andrews*, and other cases, as the circuit court found. Instead, *Vicary* establishes that the public importance *exception* to the general standing requirements would apply, at the very least, when 'nefarious conduct' is alleged.") (emphasis in original); *id.* at p. 23 ([Re: Argument I.C.(4)] "In affirming the circuit court, this Court overlooked and/or misapprehended the holding of *Bostick v. City of Beaufort* . . . ."); *id.* at p. 27 ([Re: Argument I.D.] "In affirming the circuit court, this Court overlooked and/or misapprehended the proven fact that the 2017 Ordinance included land already in Charleston, instead finding the 2017 Ordinance did not intend to annex what is now described [as] Parcel 006-1."); *id.* at p. 31 ([Re: Argument I.E.] "In affirming the circuit court, this Court overlooked and/or misapprehended the posture of the cases . . . .").

Lastly, Respondents are mistaken in suggesting that their position is supported by case law instructing that "[t]he purpose of a petition for rehearing is not to present points which

lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." (North Charleston Return pp. 9–10 (quoting *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 and *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011)).) This is simply an expression of the fundamental principle that appeals are not re-trials and an appealing party cannot raise a point for the first time on appeal, much less for the first time in a petition for rehearing. The principle is of no help to Respondents here, where, as indeed Respondents themselves go to great length to show, it is in no way violated by the Petition.

So, again, for the foregoing reasons, along with those already set forth in the Petition, Charleston asks this Honorable Court to grant the Petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

By: s/Russell G. Hines

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843) 724-3730

Attorneys for the City of Charleston

Charleston, South Carolina

April 4, 2023

The South Carolina Court of Appeals

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston, Defendant.

AND

City of Charleston, Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

Appellate Case No. 2019-000903

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

K Bruce Williams C.J.

Paul D. Thomas J.

James E. Lockemy A.J.

Columbia, South Carolina

cc:
Frances Isaac Cantwell, Esquire
J. Brady Hair, Esquire
Derk Van Raalte, IV, Esquire
Bruce E. Miller, Esquire
Julia Parker Copeland, Esquire
Wilbur E. Johnson, Esquire
Russell Grainger Hines, Esquire

FILED
Apr 14 2023