THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
Nov 25 2024
S.C. SUPREME COURT

Appeal from the Charleston County
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2023-000930

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

v.

City of North Charleston, Respondent.

RESPONDENT'S COMBINED BRIEF
(Combined response to Petitioners' separate Briefs)[1]

David J. Parrish
Maynard Nexsen, PC
205 King Street, Suite 400
Charleston, SC 20401
843-720-1771
dpparish@maynardnexsen.com
Attorney for City of North Charleston

Kriston D. Neely
City of North Charleston
PO Box 190016
North Charleston, SC 29419
843-740-2553
kneely@northcharleston.org
Attorney for City of North Charleston

[1] See Introduction on page 1 of this Brief regarding submittal of this Combined Brief.

TABLE OF CONTENTS

Table of Authorities ii

Introduction 1

Statement of Issues on Appeal 1

Statement of the Case 1

Standard of Review 9

Arguments 9

I. The circuit court and court of appeals properly found Petitioners do not have statutory standing to challenge the annexation, because North Charleston could not annex, did not annex, and does not claim to have annexed any portion of the Trust's property 11

A. North Charleston did not acquire any property owned by the Trust 12

B. North Charleston did not annex any property owned by the Trust 13

C. The Forsberg Affidavit does not change the analysis or create a material issue of relevant fact 16

D. North Charleston has indicated on the record that it does not claim ownership or annexation of any portion of the Trust's property, which should render this matter moot 19

II. The circuit court and court of appeals properly found Petitioners lack standing under the public importance exception 20

Conclusion 23

TABLE OF AUTHORITIES

Cases

Byrd v. Irmo High Sch., 321 S.C. 426, 468 S.E.2d 861 (1996) 20

City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994) 9, 21

Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992) 12

Ex parte State ex rel. Wilson v. Town of Yemassee, 391 S.C. 565, 707 S.E.2d 402 (2011) 21, 22

F.C. Enterprises. Inc. v. Dibble, 335 S.C. 260, 516 S.E.2d 459 (Ct. App. 1999) 12

Griggs v. Griggs, 199 S.C. 295, 19 S.E.2d 477 (1942) 13

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 9

Nat'l Tr. for Historic Pres. in United States v. City of N. Charleston, 439 S.C. 222, 886 S.E.2d 487 (Ct. App. 2023), *cert. granted* (Sept. 16, 2024) 8, 17

St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 564 S.E.2d 647 (2002) 9, 10, 21, 22, 23

S.C. Pub. Int. Found. v. Wilson, 437 S.C. 334, 878 S.E.2d 891 (2022) 9

Vicary v. Town of Awendaw, 425 S.C. 350, 822 S.E.2d 600 (2018) 9, 10, 21, 22, 23

Statutes, Regulations, Court Rules

S.C. Code Ann. § 5-3-100 .... 7, 8, 23

Rule 220(c), SCACR 9

Other Authorities

28 Richard A. Lord, *Williston on Contracts*, § 70:171 (4th ed. 2020) 13

INTRODUCTION

Respondent City of North Charleston (North Charleston) submits this Brief in response to the separate Briefs submitted by Petitioners National Trust for Historic Preservation (the Trust) and the City of Charleston (the City) (collectively, Petitioners). The City's argument as to statutory standing regarding North Charleston's alleged annexation of an approximately four-inch strip of the Trust's property is the same as, and derivative to, the Trust's arguments on that issue. Moreover, the Trust and City present essentially the same arguments regarding public importance standing. In an effort to avoid redundant and overlapping response briefs, North Charleston is submitting this one combined brief in response to Petitioners' separate briefs. The focus of this brief is primarily on the arguments raised by the Trust, but applies equally to both briefs. Counsel believes this combined brief is consistent with the intent of Rule 242(b), SCACR (addressing consolidation of cases involving identical or closely related cases), but will submit a full separate response to the City's brief if the Court so desires.

STATEMENT OF ISSUES ON APPEAL

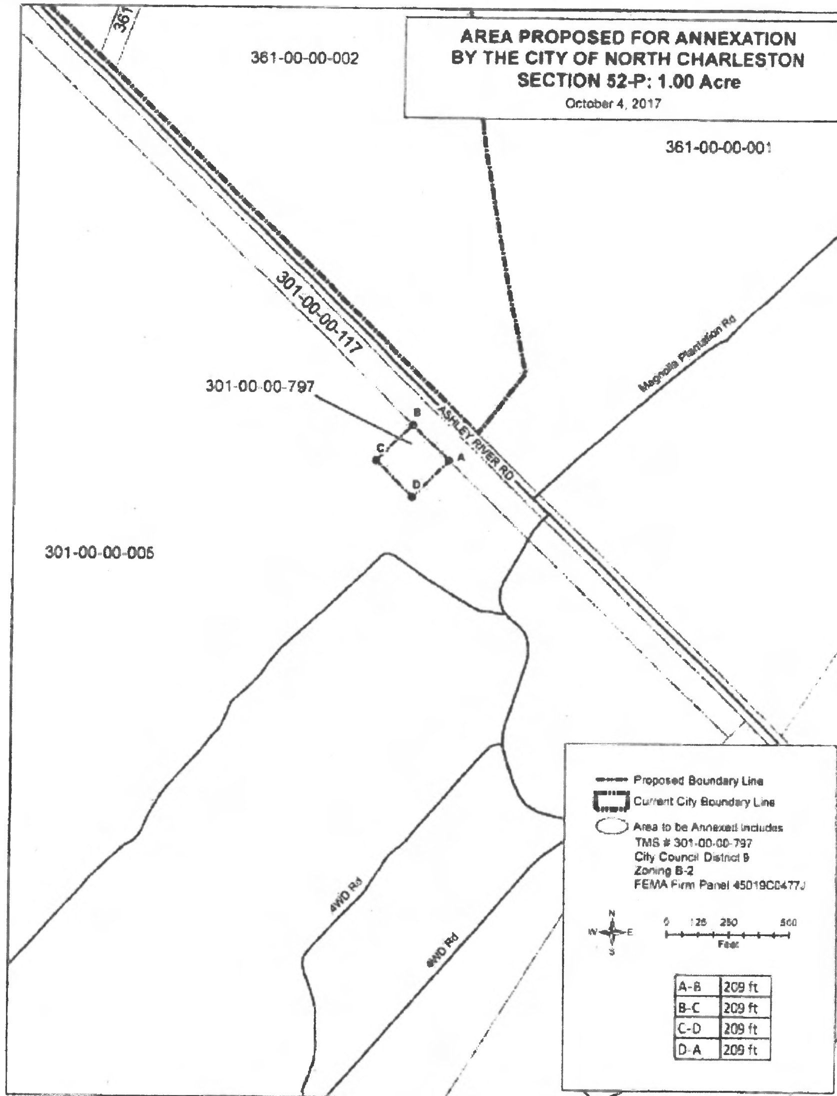
I. Did the circuit court and court of appeals properly find Petitioners did not have statutory standing to challenge the annexation because North Charleston did not own or annex, and did not claim to own or to have annexed, any portion of the Trust's property?

II. Did the circuit court and court of appeals properly find Petitioners did not have standing to challenge the annexation based on the public importance exception.

STATEMENT OF THE CASE

The issue before this Court is whether the circuit court and court of appeals properly found Petitioners lack standing to challenge North Charleston's annexation of its own property. The relevant facts of this matter are as follows:

Petitioners challenge North Charleston's annexation of the approximately one-acre square parcel designated as TMS #301-00-00-797 (the Acre) on the below GIS map (R. p. 285):



R. p. 295

The pertinent parcels shown on the above GIS map are as follows:

TMS #361-00-00-002 is an approximately 113-acre parcel located on the east side of Highway 61 a/k/a Ashley River Road. The tract is referred to as the Runneymede Parcel. North Charleston annexed that parcel in October 2017. No challenge to that annexation was filed.

TMS #301-00-00-117 is approximately 26.53 acres located on the south side of Highway 61 and is owned by the Trust. The tract is a long, narrow tract that is approximately 100 feet wide and extends approximately 11,556 feet in length alongside Highway 61. The City of Charleston annexed the Trust's property in 2005.

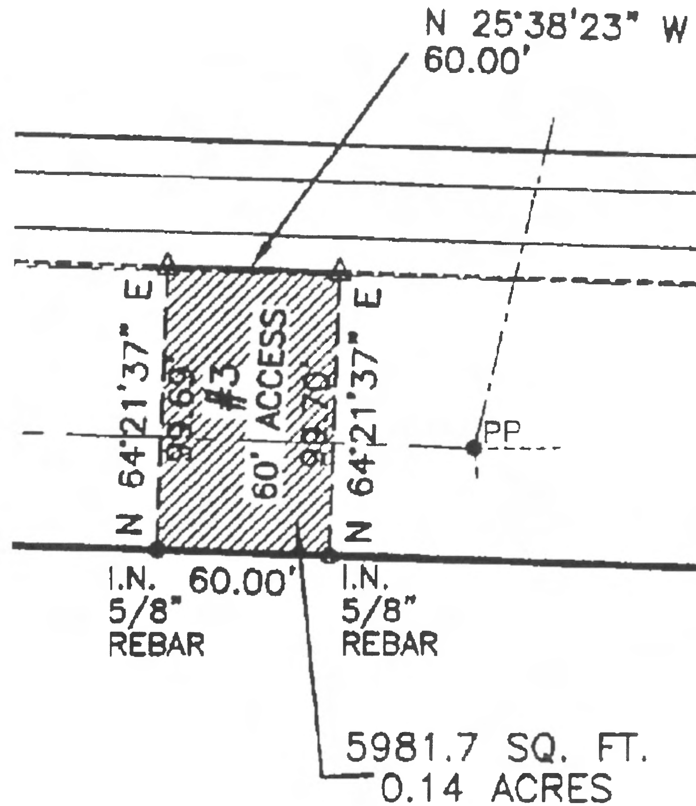
TMS #301-00-00-005 is owned by Whitfield Construction Company (Whitfield) and contains approximately 2,294 acres (the Whitfield Parcel).

TMS #301-00-00-797 (the **Acre**) is owned by North Charleston and was annexed into North Charleston in December 2017. That parcel is the subject of this appeal. The Acre and the Runnemede Parcel (which was annexed by North Charleston without challenge in 2017).

In 2009, Whitfield recorded a plat (the Easement Plat)[2] illustrating eighteen access easements across the Trust's property reflecting a means of access between the Whitfield Parcel and Highway 61. Whitfield's right to record those easements is not disputed. Whitfield Easement No. 3 (hereinafter Easement No. 3) shown on the Easement Plat is the one relevant to this case. The easements shown on the Easement Plat are difficult to read even when printed on extra-large paper, so the following is zoomed in and enlarged view of Easement No. 3 as it appears on the Easement Plat:

---

[2] The record in this case refers to plats as the "Easement PlatS". In actuality, Whitfield recorded one plat that contained five sheets, which were recorded in the Charleston Register of Deeds Office in Plat Book Page L09–Page 225, 226, 227, 228, and 229 (R. p. 264 – 268).



Even on the above enlarged view, it is difficult to discern that the cross-hatched area depicting easement "#3" lists "99.69'" and "99.70'" as being the length of Easement No. 3.

The Easement Plat merely reflects the locations and dimensions of Easement No. 3. It does not purport to establish or modify the boundary line between the Whitfield Parcel and the Trust's property. In fact, the first sheet of the Easement Plat (the sheet that reflects Easement No. 3) contains the following disclaimer:

> THIS PLAT IS TO SHOW THE LOCATIONS
> OF THE EXISTING ACCESS EASEMENTS ONLY
> THIS IS NOT A BOUNDARY SURVEY.

(R. p. 264; Plat Book L09-0225). The first sheet of the Easement Plat also contains the following note:

> PARCEL OWNED BY THE NATION TRUST FOR HISTORIC
> PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
> PARALLEL TO THE R/W OF SC HWY 61
> DEED BOOK 0-0121 PAGE 209 DATED FEBUARY 1980.

North Charleston's Acre (TMS #301-00-00-797) at issue in this appeal was originally part of the larger 2,294-acre Whitfield Parcel (TMS #301-00-00-005). In September 2017, Whitfield conveyed the Acre to North Charleston. Whitfield accomplished the conveyance by recording a plat that created the Acre (the Acre Plat; Recorded in Plat Book S17-0224; R. p. 268) by subdividing it from the 2,294-acre Whitfield Parcel, and then executing a quit claim deed conveying the Acre to North Charleston by reference to that Acre Plat.[3] The Charleston County GIS system subsequently assigned TMS #301000-00-797 to the newly subdivided Acre appearing on the Acre Plat.

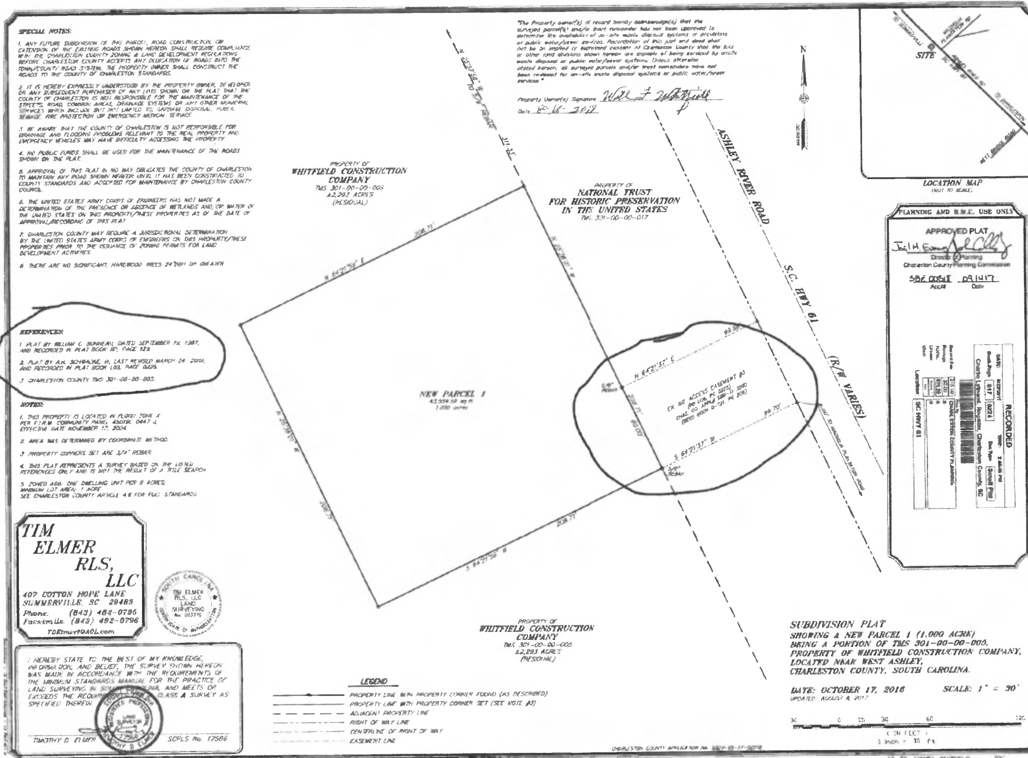
The Acre Plat that Whitfield recorded to create to and convey the Acre relied on and reflected the Easement Plat that Whitfield recorded in 2009. The copy of the Acre Plat as appears in the record in this case is difficult to read; therefore, a copy of the Acre Plat is pasted below on the next page of this Brief and a more legible copy of the Acre Plat is attached to this Brief.

[Continues on next page]

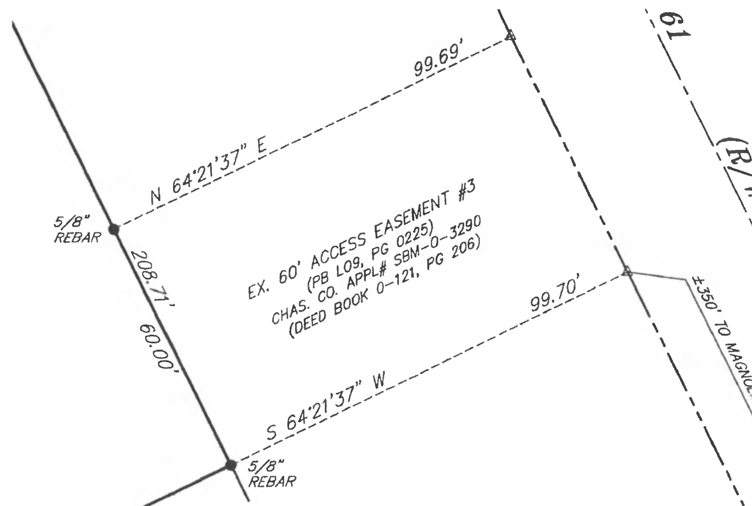
---

[3] Technically, Whitfield quit claim deeded the Acre to a related entity, Tim Whitfield Construction and Development, LLC (R. p. 270), which then quit claim deeded the Acre to North Charleston. (R. p. 274). Both quit claim deeds contain the same property description by reference to the Acre Plat.

This image below is a copy of the Acre Plat that Whitfield recorded to create the Acre (R. p. 268):[4]



The following image is a zoomed in and enlarged view of Easement No. 3 as appears in the hand-circled area on the above copy of the Acre Plat:



---

4 For clarity, the under-signed counsel added the two hand-drawn circles appearing on the above image of the Acre Plat for purposes of flagging those two areas for discussion in this Brief.

Moreover, "Reference No. 2" in the other hand-circled area on the above image of the Acre Plat references the 2009 Easement Plat that Whitfield recorded in Plat Book L09–Page 225.

In short, Easement No. 3 as shown on the 2017 Acre Plat merely duplicated Easement No. 3 as appears on the 2009 Easement Plat. As with the Easement Plat, the Acre Plat does not purport to establish or modify the boundary line between the Whitfield Parcel and the Trust's property. Whitfield's quit claim deed of the Acre to North Charleston described the conveyed property by reference to the Acre Plat.

After acquiring the Acre from Whitfield via the quit claim deed, North Charleston passed an ordinance (the Annexation Ordinance, R. p. 293) annexing the Acre pursuant to S.C. Code Ann. § 5-3-100, which provides an alternative method for annexation of property that "belongs entirely to the municipality seeking its annexation and is adjacent thereto." The Annexation Ordinance described the annexed property by reference to the GIS map reflecting the TMS number (#301-00-00-797) assigned to the Acre by the Charleston County GIS system. (R. p. 294-295). In other words, the Annexation Ordinance relied on the TMS number assigned by the Charleston County GIS system, which in turn relied on the 2017 Acre Plat recorded by Whitfield, which in further turn reflected Easement No. 3 as appeared on the 2009 Easement Plat.

After North Charleston annexed the Acre, Petitioners filed this lawsuit challenging North Charleston's annexation of the Acre. Petitioners claim the stated "99.67" and 99.70" lengths of Easement No. 3 as shown on the Acre Plat somehow act to create an approximately four-inch "overlap" of North Charleston's Acre onto a portion of the 100-foot (100') wide Trust property. Therefore—according to Petitioners—the Annexation Ordinance annexed a portion of the Trust's property consisting of the approximately four-inch overlap strip, a discrepancy of 1/1000th of an

acre. Petitioners are attempting to use that claimed "overlap" area as creating a property line "boundary dispute" (e.g., City's Brief p. 10) between North Charleston's Acre and the Trust's property as the basis to create standing for them to achieve their real ulterior goal: block North Charleston's ability to annex any portion of the Acre, which Petitioners characterize as being improper "leapfrog" annexation. (E.g., Trust's Brief p. 25; City's Brief p. 22). As a fallback position, Petitioners also claimed standing under the public importance exception.

The circuit court found Petitioners lacked statutory standing to challenge North Charleston's annexation of the Acre under section § 5-3-100 because Whitfield's quit claim deed of the Acre could not legally convey any portion of the Trust's property to North Charleston, and North Charleston did not claim to own or to have annexed any portion of the Trust's property. (R. pp. 5-8) The circuit court also found Petitioners lack standing to challenge the annexation under the public importance exception to the "outsider" rule barring statutory standing for challenges to annexation matters brought by non-affected property owners that do not own the annexed land. (R. pp. 8-9).

The court of appeals affirmed the circuit court's finding that Petitioners lacked statutory and public importance standing to challenge North Charleston's annexation of the Acre. Petitioners filed a petition for writ of certiorari asking this Court to review the decision of the court of appeals on the standing issue. Of note, the court of appeals did not review the portion of the circuit court's order addressing Petitioners' "leapfrog" challenges to the validity of the annexation. In footnote 3 to its opinion, the court of appeals stated that it was unnecessary for it to review that issue in light of its ruling on the standing issue. *Nat'l Tr. for Historic Pres. in United States v. City of N. Charleston*, 439 S.C. 222, 230 n.3, 886 S.E.2d 487, 491 n.3 (Ct. App. 2023), and Petitioners' Briefs to this Court address only the standing issue.

Accordingly, the sole issue before this Court is the threshold issue of whether Petitioners have standing to challenge North Charleston's annexation of the Acre. The validity of the annexation regarding Petitioners' "leapfrog" annexation claims are not before this Court.

STANDARD OF REVIEW

This matter is before this Court on Petitioners' appeal of the court of appeals' decision affirming the circuit court's order granting North Charleston's motion to dismiss Petitioners' complaint based on lacking of standing. "A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). "Whether subject matter jurisdiction exists is a question of law, which this [c]ourt is free to decide with no particular deference to the circuit court." *Id.* "The party seeking to establish standing has the burden of proving it." *Vicary v. Town of Awendaw*, 425 S.C. 350, 355, 822 S.E.2d 600, 602 (2018). "There is a presumption in favor of regularity in annexation proceedings." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994). Moreover, "The appellate court may affirm on any ruling, order, decision, or judgment on any ground(s) appearing in the Record on Appel." Rule 220(c), SCACR; *accord* I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420–21, 526 S.E.2d 716, 723 (2000).

ARGUMENTS

Standing is required in order to pursue an annexation challenge. *See, e.g., Vicary,* 425 S.C. at 355, 822 S.E.2d at 602. As both the circuit court and court of appeals correctly observed and applied, in annexation matters where all (100%) of the owners of annexed property have consented to the annexation, this Court's well-established precedent restricts—and rightfully so—the ability of "outsiders" or "strangers" who do not own the annexed property (also referred to as "non-statutory parties") to challenge the annexation. Accordingly, beginning with *St. Andrews Pub. Serv. Dist.* in 2002 and continuing through *Vicary* in 2018, this Court has consistently held that,

absent nefarious conduct by an annexing body, the "outsiders" or "strangers" who have legal standing to challenge a 100% full owner consent annexation is limited to two categories of challengers:

1. Challengers who can show "an infringement of their proprietary interests or statutory rights" as required to meet the statutory standing requirement (hereinafter "**statutory standing**" for ease of reference); and

2 The State of South Carolina, through its Attorney General, acting in the public interest in a quo warranto action.

See Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002); *Vicary* 425 S.C. at 359, 822 S.E.2d 604. Petitioners do not fall into either category, and the Attorney General did not file a challenge. There is no allegation of nefarious conduct by North Charleston in this matter.

Petitioners' separate Briefs to this Court are primarily focused on their attempt to create statutory standing by claiming an alleged property line "overlap" or "boundary dispute" based solely on the "99.67" and 99.70" length of Easement No. 3 appearing on the Acre Plat referenced in Whitfield's quit claim deed of the Acre to North Charleston. That issue was the key issue and focus of the proceedings in the circuit court and in the court of appeals. The circuit court and court of appeals both readily and properly dismissed that claim, finding that North Charleston only annexed, and could only have annexed, the approximately one-acre parcel (i.e., the Acre) that Whitfield carved out of its larger 2,294-acre tract and quit claim deeded to North Charleston. Petitioners' secondary claim of public importance standing is a last-ditch, hail mary, effort to circumvent this Court's well-reasoned precedent barring "stranger" standing in annexation matters for non-affected property owners that do not own the annexed land.

In their Briefs, Petitioners argue the same issues in a number of different ways. In this Brief, North Charleston is attempting to address the issues in a less complicated manner based on

the bigger picture of their claimed "four-inch" overlap or boundary issue that lies at the heart of this appeal, rather than attempting to provide a point-by-point counter to each of the numerous and often overlapping assertions contained in Petitioners' separate Briefs. To the extent this Brief does not specifically or directly respond to a particular assertion in Petitioners' Briefs, it is not intended to indicate acquiescence or agreement with the assertion.

I. The circuit court and court of appeals properly found Petitioners do not have statutory standing to challenge the annexation, because North Charleston could not annex, did not annex, and does not claim to have annexed any portion of the Trust's property.

Petitioners attempt to claim statutory standing based on their argument that North Charleston annexed part of the Trust's property. To create statutory standing, Petitioners argue the description of the property lines for one of the Acre's boundaries was off by approximately four inches on the Acre Plat that Whitfield recorded to carve the Acre from its property and convey it to North Charleston, thus causing North Charleston—according to Petitioners—to unknowingly claim ownership of and annex an approximately a four-inch strip, or 1/1000th of an acre, of the Trust's property. In other words, Petitioners are attempting to step into North Charleston's shoes and assert that North Charleston is claiming an ownership interest and annexation interest in a four-inch strip of the Trust's property despite the fact that North Charleston has indicated on the record in both the circuit court and in the court of appeals that it does not assert any such claim.

The Trust's claim of statutory standing is legally insufficient because, regardless of the claimed "four-inch" deviation on the Acre Plat, the circuit court and court of appeals properly found that North Charleston only sought to annex, and could only have annexed, the land that North Charleston owned. To make it perfectly clear, North Charleston does not claim to own or to have annexed any portion of the Trust's property, and North Charleston's position on that issue is a matter of record before the circuit court and before the court of appeals. Petitioners are the only

ones claiming that North Charleston annexed a portion of the Trust's property, contrary to North Charleston's unequivocal position on that issue.

Ironically, the Trust fiercely argues that North Charleston acquired or annexed a four-inch strip of the Trust's property. If the Trust's real concern was to avoid North Charleston owning or controlling any portion of its property, then the rulings of the circuit court and court of appeals on that issue, and North Charleston's agreement, should thrill the Trust and end this matter. Instead, we have a strange situation where the Trust desperately wants and needs a ruling that North Charleston acquired or annexed its land in order to give Petitioners standing to assert their real agenda in this case. This did not escape the circuit court's attention. (See ROA p.8; Order at p. 8) ("It appears disingenuous to the Court that the National Trust is not pursuing a claim to correct the error and clear the 'cloud' but is arguing that the 'cloud' gives it, and thus [the City], the legal standing to challenge the annexation. . . .").

A. North Charleston did not acquire any property owned by the Trust.

Whitfield recorded the Acre Plat to carve an acre out of its property so it could convey that acre to North Charleston. The Acre Plat merely established the location of the Acre carved out of the Whitfield Parcel. It did not establish or relocate the width or boundary of the Trust's property. As observed by the circuit court and court of appeals, no error on the Acre Plat or in the quit claim deed referencing that plat could have resulted in North Charleston obtaining ownership of land belonging to the Trust, because a grantor simply cannot bestow upon a grantee more than what the grantor owns to begin with.[5] Thus, no matter what the Whitfield's Acre Plat and quit claim

---

[5] *See F.C. Enterprises. Inc. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) ("The courts of South Carolina have traditionally followed the property rule that a purchaser cannot purchase more than his grantor owns."), citing *Cummings v. Varn*, 307 S.C. 37, 413 S.E.2d 829 (1992) (no deed can convey an interest which the grantor does not have in the land described

deed to North Charleston might say or reference, they did not and cannot, as a matter of law, give North Charleston title to any of the Trust's property. That is even more apparent here given that North Charleston received a quit claim deed, rather than a warranty deed, to the Acre.[6]

Accordingly, if the Trust is correct that its property line boundary is 100' from Highway 61 (a/k/a Ashley River Road) rather than 99.69' or 99.70' as shown on Easement No 3, the result would not be that North Charleston owns any portion of the Trust's parcel. Instead, as a matter of law, the Trust retains its full un-diminished acreage and property line. Any error only reduces the amount of land obtained by North Charleston from a perfect 1.0 acre to 0.999 of an acre. Accordingly, there is no credible way the Trust can legitimately claim that North Charleston owns or claims an interest in any portion the Trust's property.

B. North Charleston did not annex any property owned by the Trust.

The circuit court and court of appeals correctly determined that North Charleston did not annex a four-inch strip (or any other portion) of the Trust's property. This result was clear as a matter of law for several reasons.

First, as discussed above, the Whitfield quit claim deed conveying the Acre to North Charleston was legally incapable of conveying property owned by the Trust. That is important to determining what was annexed (the ultimate issue here) because North Charleston's annexation package described the land annexed as being co-extensive with the land that North Charleston acquired from Whitfield. The Annexation Ordinance expressly stated that the area being annexed

---

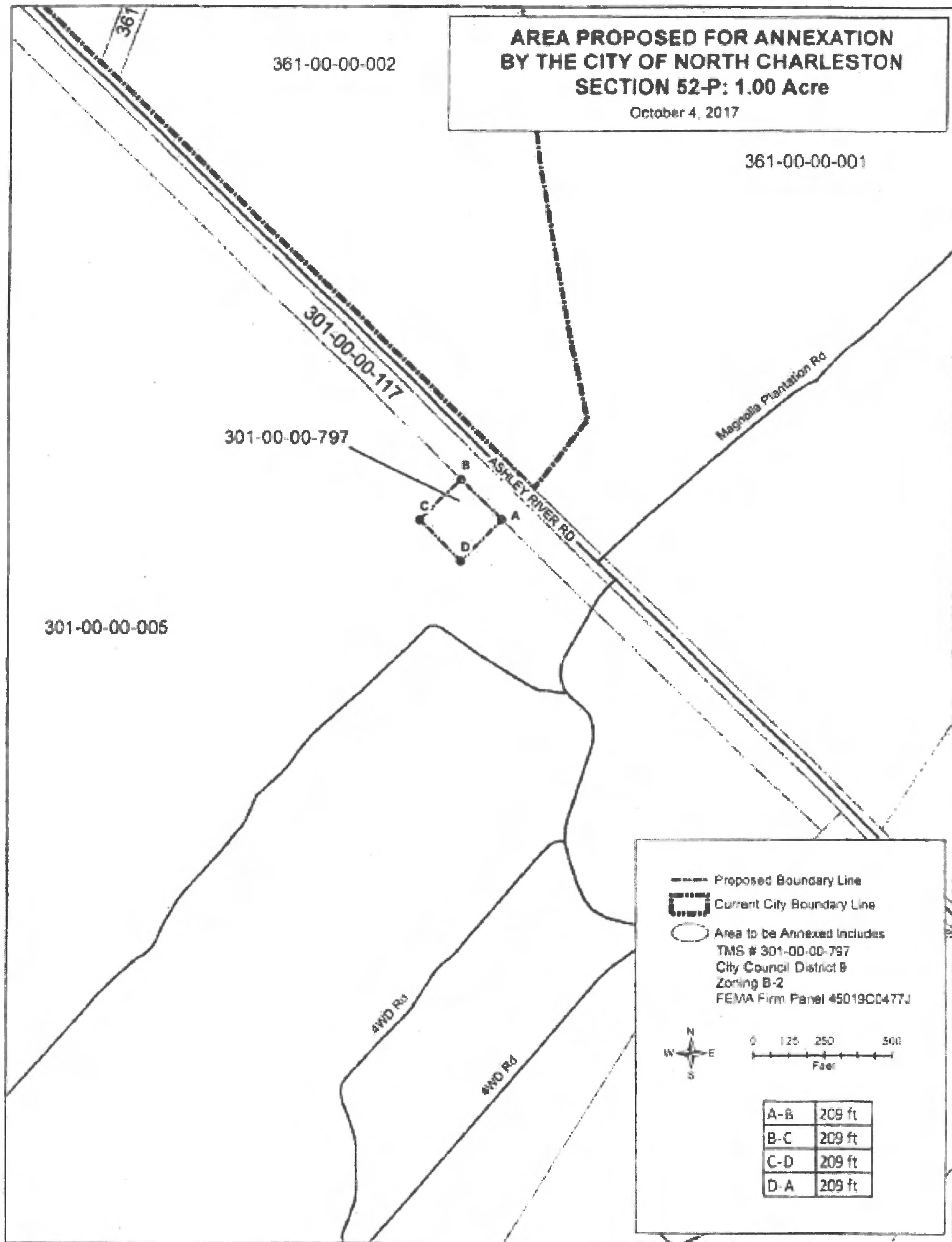
in the deed) and *Griggs v. Griggs*, 199 S.C. 295, 19 S.E.2d 477 (1942) (no deed can operate so as to convey a greater estate or interest than grantor has).

[6] As explained in *Williston on Contracts*, "A quit claim deed only conveys a grantor's interest and implies nothing more. Indeed, a buyer's acceptance of a quit claim deed generally implies that the seller is only conveying whatever title the seller may have — which may be to a greater or lesser extent than the seller believes, or none at all." *28* Richard A. Lord, *Williston on Contracts*, § 70:171 (4th ed. 2020).

was TMS #301-00-00-797. That is the TMS number assigned by the Charleston County GIS System to North Charleston's Acre and is totally distinct from TMS #301-00-00-117 assigned to the Trust's property. Additionally, the Ordinance specifically noted that North Charleston was annexing "approximately" 1.0 acre, thus specifically allowing for the fact that it may not be a "perfect" acre. North Charleston even went so far in its Annexation Ordinance to state that the property being annexed "belongs entirely to the City of North Charleston", thus further disavowing any claim that it was annexing any property owned by others.

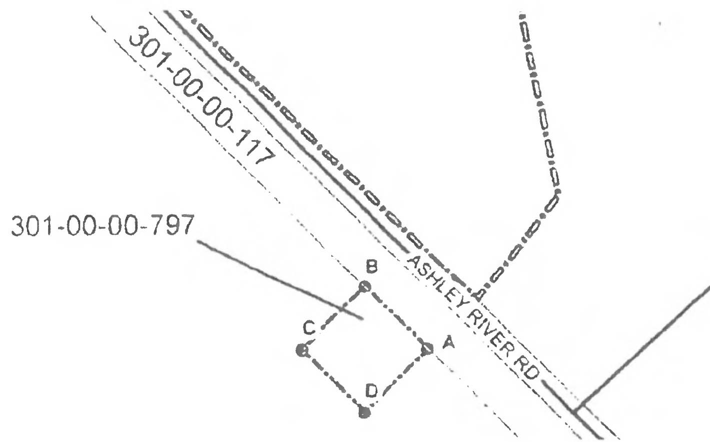
Second, the boundary description contained in the Annexation Ordinance shows that even if the four-inch strip error claimed by the Trust exists, it would not have shifted the annexation boundary over onto the Trust's property. The Annexation Ordinance contained a copy of the following map showing the area to be annexed that was prepared using the Charleston County GIS map system and the TMS number (#301-00-00-797) assigned to the Acre by the GIS system (R. p. 295):

[Continues on next page]



R. p. 295

The following is an easier to read, zoomed in and enlarged portion of TMS #301-00-00-797 as appears on the above GIS map:



The accompanying legal description was contained in the Annexation Ordinance (ROA p. 294):

> The property to be annexed, consisting of approximately 1.0 acres as shown on [the above GIS map] . . . , with the property being further described be reference to said map as follows:
>
> Beginning at Point A, on the easternmost corner of parcel designated TMS #301-00-00-797 which is also adjacent to the present city limits line; thence, in a generally northwesterly direction a distance of 209 feet along the northeasternmost property line of parcel designated TMS #301-00-00-797 to Point B which point is on the northernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally southwesterly direction a distance of 209 feet along the northwesternmost property line of parcel designated TMS #301-00-00-797 to Point C which point is on the westernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally southeasterly direction a distance of 209 feet along the southwesternmost property line of parcel designated TMS #301-00-00-797 to Point D which point is on the southernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally northeasterly direction a distance of 209 feet along the southeasternmost property line of parcel designated TMS #301-00-00-797 to Point A, the point of beginning with all distances being more or less.
>
> The area proposed annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG, Agricultural District.

Line "A" — "B" shown on the above GIS map included with the Annexation Ordinance is the property line that North Charleston's Acre shares in common with the Trust's property. Nowhere did North Charleston express a desire to cross over the Trust's property line to annex

any portion of the Trust's property. To the contrary, North Charleston's annexation package specifically said it was annexing property "wholly owned" by North Charleston. Because the point of beginning for all measurements for the Acre is the property line shared in common with the Trust's 100' wide strip (not Ashley River Road), and because the direction of measurement is *away* from the shared boundary with the Trust's 100' strip, any error in the location of Point A on the Acre would have the result of reducing either the acreage owned and annexed by the City or the acreage retained by the grantor (Whitfield). Further, the Annexation Ordinance described the property to be annexed as "consisting of *approximately* 1.0 acres." (R. p. 284) (emphasis added) There is no credible way to argue that North Charleston annexed land owned by the Trust. None of Petitioners' arguments change this result.

The Trust also argues the circuit court and court of appeals erred in looking "to what they believe was North Charleston's subjective intent when it annexed the acre" and quotes the following passage in the court of appeals' decision:

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

Nat'l Tr. for Historic Pres. in United States, 439 S.C. at 228, 886 S.E.2d 490. The Trust quotes that passage out of context because that passage follows the court of appeals' quotation of the circuit's court's order addressing how it was legally impossible for Whitfield to have conveyed, or North Charleston to own, any of the Trust's property. Moreover, the court of appeals went on to note: "Even if North Charleston believed it owned the contested four inches, it would be of no consequence." *Id.* The circuit court and court of appeals correctly assessed and applied the applicable law to the undisputed relevant facts of the case. North Charleston's subjective intent did not govern their decision.

C. The Forsberg Affidavit does not change the analysis or create a relevant issue of material fact.

Petitioners cite to their Forsberg Affidavit as binding legal authority for their claim that North Charleston annexed a four-inch strip of the Trust's property, regardless of whether North Charleston intended to do. (Trust's Brief p. 21). As noted above, the well-established law as applied by the circuit court and court of appeals dictates that the Whitfield quit claim deed conveying the Acre to North Charleston was legally incapable of conveying any property owned by the Trust, and North Charleston's Annexation Ordinance for the Acre, which annexed the property conveyed in Whitfield's quit claim deed, did not, and legally could not, have annexed any of the Trust's property.

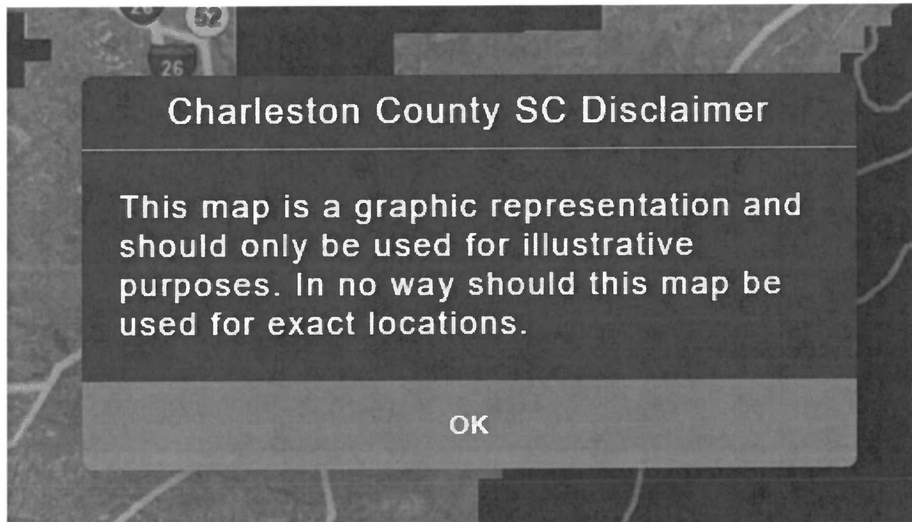
In an effort to avoid this inevitable legal result, Petitioners attempt to divorce the issue of ownership of the four-inch strip of the Trust's property from the annexation of those four-inches.[7] The Forsberg's Affidavit simply reflects Petitioners' legal argument (in the guise of an expert affidavit) by claiming the description (i.e., the TMS number) of the annexed acre as stated in the North Charleston's Annexation Ordinance included a portion of the Trust's property. Therefore—according to Petitioners and Forsberg—North Charleston annexed the four-inch strip, albeit unknowingly and unintentionally.

The problem with Petitioners and Forsberg's argument is that the North Charleston Annexation Ordinance for the Acre described the annexed property by reference to its TMS number (#301-00-00-797) as was assigned to the Acre by the Charleston County GIS system. (R. p. 294). A TMS map (Tax Map System map) is a graphical or visual representation of property lines created using *recorded* information for representation of each parcel of land, with each parcel identified by a unique TMS number. A TMS number is a number assigned in the GIS database

---

[7] *See, e.g.,* Trust's Brief p. 15 ("Whether the annexing party holds legal title to all the described land is not dispositive.").

that links property ownership and map information (primarily for purposes of property tax billings).[8] A TMS number cannot convey property and cannot establish or move property lines. In fact, every time a user attempts to access the on-line Charleston County GIS system,[9] the following disclaimer is the first thing that appears in color on the user's computer screen:



The user has to click the "OK" tab in order to proceed.

The North Charleston ordinance annexing the Acre references the TMS number for the Acre, and the GIS system links that TMS number to Whitfield's quit claim deed of the Acre to North Charleston. As discussed above, that quit claim deed legally did not and could not shift any of the Trust's property into the Acre that Whitfield conveyed to North Charleston. Accordingly, Petitioners' attempt to divorce ownership of the Acre from annexation of Acre quickly collapses on itself.

---

8 *See, e.g., https://lex-co.sc.gov/departments/assessor/tax-faqs/property-tax-definitionsMS (Tax Map System)* ("The 'TMS' number links ownership and map location information. This information is maintained by the County Assessor's Office. This includes 'tax maps' that show all the parcels of land in the county, each labeled with its own TMS number that links back to current ownership information for each parcel.")

9 https://giscсweb.charlestoncounty.org/public_search/

In short, the Forsberg Affidavit merely duplicates Petitioners' legal argument and does not introduce a relevant fact that changes the analysis. There is no relevant disputed fact, and there is nothing left for the trial court to address regarding Petitioners' standing claim.

D. North Charleston has indicated on the record that it does not claim ownership or annexation of any portion of the Trust's property, which should render this matter moot.

Perhaps most importantly of all, Petitioners continue to ignore (or intentionally avoid) the fact that North Charleston has unequivocally indicated that it does not claim to own, and does not claim to have annexed, any portion of Trust's property. North Charleston's position on that issue is a matter of record before the circuit court, before the court of appeals, and now here again before this Court. That should render Petitioners' claims regarding the alleged annexation of a four-inch strip the Trust's property moot.[10] The fact that they continue to press on and argue against their own interests (i.e., continue to claim North Charleston owns or annexed a portion of the Trust's property) readily demonstrates Petitioners' attempts to generate a one-way dispute in an effort to create standing for them to advance their real agenda.

In summary, North Charleston only annexed its own property and does not claim to own or to have annexed any portion of the Trust's property. Accordingly, Petitioners lack statutory standing because they do not have any proprietary or ownership interest in the annexed Acre.

---

[10] *See, e.g., Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) ("Before any action can be maintained, there must exist a justiciable controversy. . . . This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. . . . A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.") (internal citations and quotations omitted).

II. The circuit court and court of appeals properly found Petitioners lack standing under the public importance exception.

The circuit court and court of appeals properly applied this Court's decisions on public importance standing in annexation challenges, which the court of appeals succinctly summarized in its decision in this appeal.[11] To expand on the court of appeals' summary, since the 2002 decision in *St. Andrews Pub. Serv. Dist.*, absent nefarious conduct by an annexing body, this Court has consistently limited "outsider" annexation challenges to those brought by the State, acting in the public interest. *See Ex parte State ex rel. Wilson v. Town of Yemassee*, 391 S.C. 565, 573-74, 707 S.E.2d 402, 407 (2011); *Vicary*, 425 S.C. at 357-58, 822 S.E.2d at 604. The State, acting through the Attorney General, is in the best position to fairly assess any potential impact on the public interest and act if warranted, free from the bias associated with an outsider challenger's narrow, one-sided views and personal agenda.[12]

In *Vicary*, this Court recognized a public importance exception to the rule against outsider annexation challenges where the annexing body (the Town of Awendaw) had repeatedly engaged in a pattern of blatantly nefarious conduct by falsely using a letter from the United States Forest Service to claim consent to annexation of forest property in at least eight separate annexations over a number of years. This Court found "the unique facts present here" warranted an exception to the rule against outsider annexation challenges given the Town's repetitive conduct over a number of years and the Town administrator's testimony that the Town "fully intended to use [the letter] again in the future if necessary." *Vicary*, 425 S.C. at 359, 822 S.E.2d at 604.

---

[11] *See Nat'l Tr. for Historic Pres. in United States,* 439 S.C. at 229, 886 S.E.2d at 491 (summarizing South Carolina Supreme Court case law on the public importance exception to the rule against "outsider" or stranger standing in annexation challenges).

[12] Of course, the South Carolina Legislature is ultimately in the best position to address any concerns it may have with the application of its annexation statues.

Vicary did not open the door to public importance standing. The exception recognized in *Vicary* was very narrow and based on a unique situation of an annexing body's repeated blatant bad acts and pronouncement that it would continue to do so in the future. *Vicary* did not relax this Court's prior precedent that public importance standing should be rarely utilized in the context of annexation disputes. *See St. Andrews Pub. Serv. Dist.* 349 S.C. at 605, 564 S.E.2d at 648 (stating the better policy is to limit outsider annexation challenges to those brought by the State acting in the public interest). Moreover, *Vicary* reiterated that "a party's burden to demonstrate deceitful conduct in order to have standing is high in light of the presumption of validity bestowed upon annexations." *Id.* at 359, 822 S.E.2d at 603, citing *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("There is a presumption in favor of regularity in annexation proceedings."). *Vicary* also reiterated that the determination of whether a party has public importance standing must be determined "*without regard to the merits of the underlying claim.*" *Id.* at 358, 822 S.E.2d at 603 (emphasis added) (quoting *Town of Yemassee*, 391 S.C. at 573-74, 707 S.E.2d at 407).

Applying this Court's precedent to the present matter, in order for Petitioners to warrant public importance standing, they must satisfy a high burden of demonstrating nefarious conduct by North Charleston in annexing its own property, without regard to the merits of Petitioners' real underlying "leapfrog" annexation claims. The only potentially nefarious conduct present here arises from *Petitioners'* questionable fabrication of North Charleston's claimed taking or annexation of a four-inch strip of the Trust's property as a pretext to create standing to assert their real agenda. Granting Petitioners' request for public importance standing here would effectively reward bad their own behavior and only serve to reintroduce a "sliding scale" of standing for

stranger challenges to annexation matters based on how meritorious the claim may appear, which this Court specifically rejected in *St. Andrews Public Service Dist.* and reaffirmed in *Vicary*.[13]

No matter how noble Petitioners may pronounce their goals to be, that does not confer them with public importance standing. The Trust's status as an entity dedicated to historic preservation does not make it specially situated to challenge this annexation. As a special interest entity with a limited viewpoint and agenda, the Trust is not in a better position than the South Carolina Attorney General to assess the best interests of all citizens of South Carolina and undertake any challenge if needed.

Although disguised in a claimed taking or annexation of a four-inch strip of the Trust's property, at the heart of this case Petitioners want to challenge that North Charleston did not comply with the requirement of annexation statute section 5-3-100. While Petitioners offer varying concerns surrounding that issue in an attempt to justify their public importance standing, none of their positions are compelling. Despite Petitioners' claimed fears and claimed needs for "future guidance" on the issue, this case is not part of an impending tidal wave of cases sufficient to justifying extraordinary standing. Section 5-3-100 is an obscure and apparently rarely used statute. There is no runaway train of leapfrog annexations of increasing distance. The right to address concerns about misapplication of an annexation statute or improper municipal boundary changes is within the province of the State (represented by the Attorney General), not with the Petitioners. The Attorney General has standing to freely challenge each and every such annexation if action is

---

[13] *Vicary*, 425 S.C. at 358, 822 S.E.2d at 603 ("Adhering to our precedent, we must determine standing without regard to the merits of the underlying claim") (citing *St. Andrews Public Service Dist.*, 349 S.C. at 605, 564 S.E.2d at 648).

warranted or "future guidance" is needed. This case has been widely publicized, and the Attorney General has not deemed it to warrant attention.[14]

In summary, given the complete absence of nefarious conduct on the part of North Charleston here, this Court should adhere to its well-established precedent limiting public importance standing to the State of South Carolina Attorney General, who is in is the best position to fairly analyze and assess any potential impact on the public interest, free from Petitioners' narrow, one-sided views and personal agendas.

CONCLUSION

The circuit court and court of appeals correctly assessed and applied the applicable law to the undisputed relevant facts of the case and found Petitioners lacked standing to challenge North Charleston's annexation of its own property. Accordingly, the grant of standing sought by Petitioners should be denied and this Court should affirm the decision of the court of appeals and remand this case to the circuit court to dismiss the case. In accordance with Rules 208(b)(2) and 220(c), SCACR, North Charleston also requests that this Court affirm the decision of the court of appeals on any other grounds appearing in the record.

Respectfully submitted,

s/David J. Parrish
David J. Parrish
Maynard Nexsen, PC
205 King Street, Suite 400
Charleston, SC 20401
843-720-1771
dpparish@maynardnexsen.com
Attorney for City of North Charleston

s/Kriston D. Neely
Kriston D. Neely
City of North Charleston
PO Box 190016
North Charleston, SC 29419
843-740-2553
kneely@northcharleston.org
Attorney for City of North Charleston

November 25, 2024

---

[14] Regarding Petitioners' claims of "need for future guidance," the circuit court's order included "guidance" on the merits even while declining to confer standing to Petitioners. The circuit court's decision, which is the subject of this appeal, has been widely publicized and will no doubt be instructive to North Charleston and every other city in South Carolina going forward.

Attached is a copy of the Acre Plat
Recorded in Plat Book S17-0224
R. p. 268

SPECIAL NOTES:

1. ANY FUTURE SUBDIVISION OF THIS PARCEL, ROAD CONSTRUCTION, OR EXTENSION OF THE EXISTING ROADS SHOWN HEREON SHALL REQUIRE COMPLIANCE WITH THE CHARLESTON COUNTY ZONING & LAND DEVELOPMENT REGULATIONS. BEFORE CHARLESTON COUNTY ACCEPTS ANY DEDICATION OF ROADS INTO THE TOWN/COUNTY ROAD SYSTEM, THE PROPERTY OWNER SHALL CONSTRUCT THE ROADS TO THE COUNTY OF CHARLESTON STANDARDS.

2. IT IS HEREBY EXPRESSLY UNDERSTOOD BY THE PROPERTY OWNER, DEVELOPER OR ANY SUBSEQUENT PURCHASER OF ANY LOTS SHOWN ON THE PLAT THAT THE COUNTY OF CHARLESTON IS NOT RESPONSIBLE FOR THE MAINTENANCE OF THE STREETS, ROAD, COMMON AREAS, DRAINAGE SYSTEMS OR ANY OTHER MUNICIPAL SERVICES WHICH INCLUDE BUT NOT LIMITED TO, GARBAGE DISPOSAL, PUBLIC SEWAGE, FIRE PROTECTION OR EMERGENCY MEDICAL SERVICE.

3. BE AWARE THAT THE COUNTY OF CHARLESTON IS NOT RESPONSIBLE FOR DRAINAGE AND FLOODING PROBLEMS RELEVANT TO THE REAL PROPERTY AND EMERGENCY VEHICLES MAY HAVE DIFFICULTY ACCESSING THE PROPERTY.

4. NO PUBLIC FUNDS SHALL BE USED FOR THE MAINTENANCE OF THE ROADS SHOWN ON THE PLAT.

5. APPROVAL OF THIS PLAT IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO MAINTAIN ANY ROAD SHOWN HEREON UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS AND ACCEPTED FOR MAINTENANCE BY CHARLESTON COUNTY COUNCIL.

6. THE UNITED STATES ARMY CORPS OF ENGINEERS HAS NOT MADE A DETERMINATION OF THE PRESENCE OR ABSENCE OF WETLANDS AND/OR WATER OF THE UNITED STATES ON THIS PROPERTY/THESE PROPERTIES AS OF THE DATE OF APPROVAL/RECORDING OF THIS PLAT.

7. CHARLESTON COUNTY MAY REQUIRE A JURISDICTIONAL DETERMINATION BY THE UNITED STATES ARMY CORPS OF ENGINEERS ON THIS PROPERTY/THESE PROPERTIES PRIOR TO THE ISSUANCE OF ZONING PERMITS FOR LAND DEVELOPMENT ACTIVITIES.

8. THERE ARE NO SIGNIFICANT, HARDWOOD TREES 24"DBH OR GREATER

REFERENCES:

1. PLAT BY WILLIAM C. BONNEAU, DATED SEPTEMBER 19, 1987, AND RECORDED IN PLAT BOOK BP, PAGE 129.

2. PLAT BY A.H. SCHWACKE, III, LAST REVISED MARCH 24, 2009, AND RECORDED IN PLAT BOOK L09, PAGE 0225.

3. CHARLESTON COUNTY TMS 301-00-00-005.

NOTES:

1. THIS PROPERTY IS LOCATED IN FLOOD ZONE X PER F.I.R.M. COMMUNITY PANEL 45019C 0447 J, EFFECTIVE DATE NOVEMBER 17, 2004.

2. AREA WAS DETERMINED BY COORDINATE METHOD.

3. PROPERTY CORNERS SET ARE 3/4" REBAR.

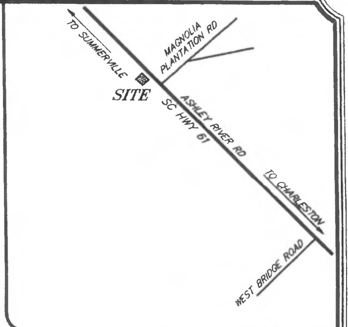
4. THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT OF A TITLE SEARCH.

5. ZONED AGB: ONE DWELLING UNIT PER 8 ACRES; MINIMUM LOT AREA: 1 ACRE SEE CHARLESTON COUNTY ARTICLE 4.6 FOR FULL STANDARDS

"The Property owner(s) of record hereby acknowledge(s) that the surveyed parcel(s) and/or tract remainder has not been approved to determine the availability of on-site waste disposal systems or provisions of public water/sewer services. Recordation of this plat and deed shall not be an implied or expressed consent of Charleston County that the lots or other land divisions shown hereon are capable of being serviced by onsite waste disposal or public water/sewer systems. Unless otherwise stated hereon, all surveyed parcels and/or tract remainders have not been reviewed for on-site waste disposal systems or public water/sewer services."

Property Owner(s) Signature *Will F Whitfield*

Date *8-18-2017*



LOCATION MAP
(NOT TO SCALE)

16-00 HWY 61-WHITFIELD

PROPERTY OF
WHITFIELD CONSTRUCTION COMPANY
TMS 301-00-00-005
±2,293 ACRES
(RESIDUAL)

PROPERTY OF
NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES
TMS 301-00-00-017

N 25°37'58" W TO 5/8" REBAR
311.33'

ASHLEY RIVER ROAD
S.C. HWY 61
(R/W VARIES)
±350' TO MAGNOLIA PLANTATION ROAD

208.71'
N 64°21'59" E
N 25°38'01" W
208.71'
N 25°38'01" W
208.71'
S 64°21'59" W
208.71'
60.00'

99.69'
N 64°21'37" E
5/8" REBAR
EX. 60' ACCESS EASEMENT #3
(PB L09, PG 0225)
CHAS. CO. APPL# SBM-0-3290
(DEED BOOK 0-121, PG 206)
99.70'
S 64°21'37" W
5/8" REBAR

NEW PARCEL 1
43,559.59 sq.ft.
1.000 acres

PLANNING AND R.M.C. USE ONLY

APPROVED PLAT
Joel H. Evans
Director of Planning
Charleston County Planning Commission
SBE 00518 — 091417
Appl# — Date

RECORDED
DATE: 9/22/2017 TIME: 2:44:45 PM
Book-Page S17 0224 DocType Small Plat
Charlie Lybrand, Register, Charleston County, SC

Record Fee	$10.00
Postage	$0.00
TOTAL	$10.00
Drawer	0
Clerk	0

Filed By: CHARLESTON COUNTY PLANNING
Location: SC HWY 61

TIM ELMER RLS, LLC
407 COTTON HOPE LANE
SUMMERVILLE, SC 29483
Phone: (843) 482-0795
Facsimile: (843) 482-0796
TDElmer1@AOL.com

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

TIMOTHY D. ELMER — SCPLS No. 17566

SOUTH CAROLINA REGISTERED PROFESSIONAL LAND SURVEYOR No. 17566 TIMOTHY D. ELMER

LEGEND

- PROPERTY LINE WITH PROPERTY CORNER FOUND (AS DESCRIBED)
- PROPERTY LINE WITH PROPERTY CORNER SET (SEE NOTE #3)
- ADJACENT PROPERTY LINE
- RIGHT OF WAY LINE
- CENTERLINE OF RIGHT OF WAY
- EASEMENT LINE

PROPERTY OF
WHITFIELD CONSTRUCTION COMPANY
TMS 301-00-00-005
±2,293 ACRES
(RESIDUAL)

SUBDIVISION PLAT
SHOWING A NEW PARCEL 1 (1.000 ACRE) BEING A PORTION OF TMS 301-00-00-005, PROPERTY OF WHITFIELD CONSTRUCTION COMPANY, LOCATED NEAR WEST ASHLEY, CHARLESTON COUNTY, SOUTH CAROLINA.

DATE: OCTOBER 17, 2016 — **SCALE: 1" = 30'**
UPDATED: AUGUST 8, 2017

30 0 15 30 60 120
(IN FEET)
1 inch = 30 ft.

CHARLESTON COUNTY APPLICATION No. SBDV-05-17-00518

16-00 HWY61-WHITFIELD — TDE

Image of theAcre Plat; Recorded in Plat Book S17-0224; R. p. 268