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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

Appellant 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.

APPENDIX

VOLUME I OF II
APP-001 – APP 491

G. Trenholm Walker (SC Bar No. 5777)
WALKER GRESSETTE & LINTON, LLC
66 Hasell Street
Charleston, SC 29401
(843) 727-2200

*Attorneys for Petitioner National Trust for
Historic Preservation in the United States*

Other Counsel of Record:

Frances I. Cantwell (SC Bar No. 01121)
2220 Folly Road
Charleston, SC 29412

Julia Parker Copeland (SC Bar No. 77199)
CITY OF CHARLESTON LEGAL DEPARTMENT
50 Broad Street
Charleston, SC 29401

Russell Hines (SC Bar No. 72100)
Wilbur Johnson (SC Bar No. 3062)
CLEMENT RIVERS LAW FIRM
25 Calhoun Street, Suite 400
Charleston, SC 29402

Attorneys for Petitioner City Of Charleston

J. Brady Hair (SC Bar No. 9040)
Kriston D. Neely (SC Bar No. 72855)
CITY OF N. CHARLESTON LEGAL DEPARTMENT
2500 City Hall Lane
North Charleston, SC 29406

Attorneys for Respondent City of North 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

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

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SC Court of Appeals

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

Respondents/Appellants,

v.

City of North Charleston,

Appellant/Respondent.

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 Respondent/Appellant City of Charleston

G. Trenholm Walker (S.C. Bar. No. 5777)
Walker Gressette Freeman & Linton, LLC
Post Office Box 22167
Charleston, SC 29413
Telephone: (843) 727-2200
E-mail: walker@wgflaw.com

Anne E. Nelson
William J. Cook

National Trust for Historic Preservation
2600 Virginia Avenue, NW; Suite 1100
Washington, DC 20037
Telephone: (202) 588-6142
E-mail: anelson@savingplaces.org

Attorneys for Respondent/Appellant National Trust
for Historic Preservation in the United States

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 Appellant/Respondent City of North
Charleston

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-851
NATIONAL TRUST FOR HISTORIC	)	
PRESERVATION IN THE UNITED STATES	)	
AND THE CITY OF CHARLESTON,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON,	)	
	)	
Defendant.	)	

ORDER

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

FILED

This matter came before the Court for hearing on December 10, 2018, on the cross motions filed by the parties. National Trust for Historic Preservation in the United States (National Trust) and the City of Charleston ("Charleston") brought this action to set aside the City of North Charleston's ("North Charleston") recent annexation of a one acre parcel (the "Acre") under S.C. Code Ann. § 5-3-100. North Charleston filed a Motion to Dismiss the Complaints of the Plaintiffs, National Trust, and Charleston, pursuant to Rules 12 and 56, SCRCP, on the basis that the Plaintiffs do not have standing to object to the annexation. All parties appeared at the hearing and were very ably represented by their respective counsel teams. This Court has considered the pleadings, affidavits, exhibits, memoranda, and arguments of counsel. The Court allowed each of the parties to submit proposed orders. This Court has combined the issues presented in an effort to streamline the rulings of the court.

As will be set forth hereinafter, this Court finds that neither Charleston nor National Trust have standing to challenge the annexation of North Charleston. In the event that this Court is found to be in error regarding its ruling of lack of standing of the Plaintiffs,


R. p. 001

this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.

FINDING OF FACTS

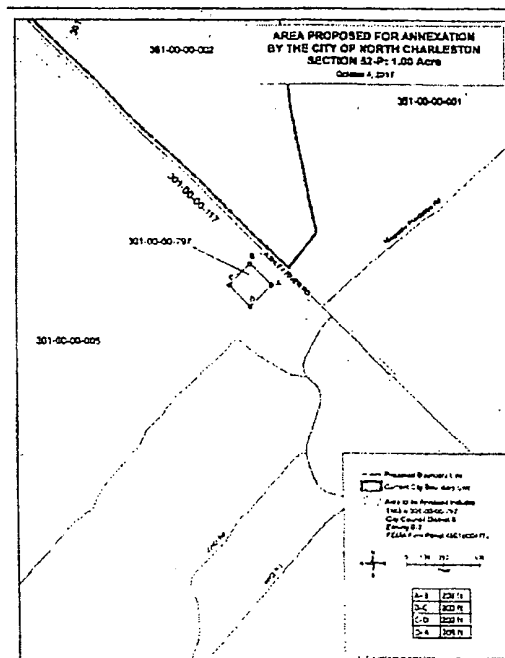
A summary of finding of facts and chronology of the ownership of the respective parcels involved in this case is as follows:

1. In 1967, Georgia-Pacific Investment Corporation ("GPIC") obtained title to approximately 12,293 acres of real property in Charleston County, South Carolina.
2. In 1980, GPIC conveyed 26.53 acres, more or less, of this property (the "National Trust Property") to the Nature Conservancy (the "Conservancy"), which the Conservancy immediately conveyed to the National Trust. The National Trust Property, designated in the deeds and tax assessor records as TMS No. 301-00-00-017, lies along the southern right-of-way line of Highway 61, being 100 feet in width and approximately 11,556 feet in length.
3. The National Trust Deed does not refer to a plat for the property description but instead describes the property conveyed with specificity in the deed itself.
4. In 1989, GPIC conveyed 2,294.17 acres shown on Plat BP/129 to Whitfield Construction Company ("Whitfield"). Charleston County assigned TMS No. 301-00-00-005 to the property conveyed by GPIC to Whitfield.
5. In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston's municipal limits, including the National Trust Property, TMS No. 301-00-00-017.

2 *SCA*

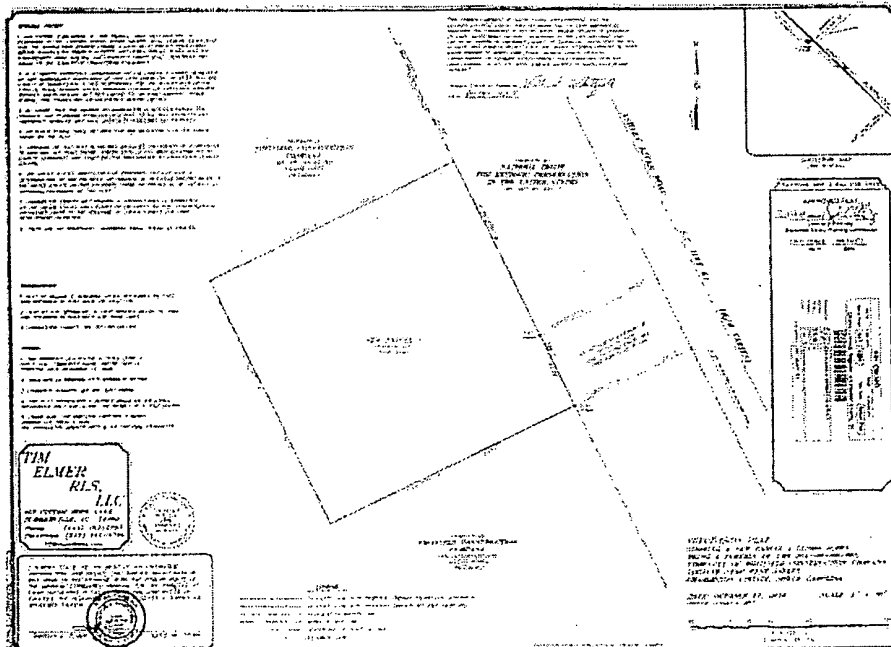
R. p. 002

6. In 2009, Whitfield recorded Plats L09/0225 through L09/0229 (the "Easement Plats"), describing 18 purported access easements over the National Trust Property. The Easements Plats show the width of the National Trust Property as variable, but also contain a disclaimer that the plats are not boundary surveys; see S.C. Code Regs. 49-430. C(14) (defining "boundary survey"). The rights to place these access easements across the Strip were reserved by GPIC in its deed and conveyance of the Strip to the Conservancy.
7. North Charleston annexed the 113 acre Runneymede Plantation parcel (TMS 361-00-00-002) in October of 2017. No challenge to this annexation was lodged by anyone.
8. Runneymede and the Acre are separated by Highway 61 and the 100' wide strip, TMS 301-00-00-017 (hereinafter, the "100' strip.")



Self

9. In 2017, The Whitfield Company executed a quit claim deed to deliver to the City of North Charleston title to the Acre.
10. The quit claim deed to the Acre specifically noted that the Acre was created from property owned by Whitfield (not the Trust) and that it was a "p/o TMS 301-00-00-005." The quit claim deed made no reference to any of the land deeded to North Charleston having originated from the Trust's parcel (TMS 301-00-00-117.)
11. The survey and plat associated with the 2017 transfer of the Acre relied upon the previously recorded 2009 survey and plat. Since the 2009 plat had width variations of a few inches here and there, so too did the 2017 plat of the Acre.



12. The City Council of North Charleston annexed the Acre by Ordinance 2017-080. ("The Annexation Ordinance.")

13. There is no evidence that Plaintiffs were aware of the Easement Plats at the time they were recorded in 2009.
14. North Charleston did not seek the consent of the National Trust for the annexation of the Acre into North Charleston. National Trust did not sign a consent to the annexation of the Acre.
15. National Trust has not brought an action to remove or clear the cloud of title or an action for trespass against North Charleston for the discrepancy in the location of the property line between the Acre and its Strip.
16. North Charleston in its pleadings alleged that it did not claim ownership of any of the strip owned by National Trust.
17. The South Carolina Attorney General is not a party to this action.

LAW AND ANALYSIS

AS TO THE STANDING ISSUE OF CHARLESTON AND NATIONAL TRUST

Standing is required in order to pursue an annexation challenge. Vicary v. Town of Awendaw, 425 S.C. 35, 822 S.E. 2d 600 (2018). Absent deceitful conduct¹, there are generally only two groups with standing to challenge a 100% annexation: (1) property owners of annexed land and (2) the Attorney General of South Carolina.² National Trust and Charleston fall into neither category.

¹ The 4" property line deviation complained of by the Plaintiffs was not created by North Charleston. In fact, it appears to have its origins in a plat nearly a decade prior to North Charleston's acquisition of the land. Thus, the 4" deviation does not create any "credible allegation that the annexing body engaged in deceitful conduct." See Vicary, 425 S.C. at 358.

² See Vicary, 425 S.C. at 359 (leaving intact the general standing framework of St. Andrews and Town of Yemassee except when deal with a deceitful annexing body.)

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Proprietary Standing and Statutory Rights

National Trust's attempt to claim "property owner" standing is legally insufficient because North Charleston claims to neither have annexed nor own any portion of the Trust's land. In this regard, Charleston's standing claim is essentially derivative based on its annexation / governance rights to the Trust's 100' strip. Both claim standing based on the same alleged four inch (4") error. If the National Trust does not have standing, neither does Charleston.³ As a matter of law, no error in the legal description or plat for the Acre could have resulted in North Charleston obtaining ownership of any land claimed by the Plaintiffs. A grantor simply cannot bestow upon a grantee more than what the grantor owns to begin with.⁴ North Charleston's deed to the Acre came from Whitfield who carved the Acre from his own parcel, TMS 301-00-00-005. No matter what the property description or plat to the Acre might say, it is legally impossible for Whitfield to have conveyed North Charleston title to any of the Trust's land. Since North Charleston acquired its ownership to the Acre through a Quit Claim rather than a Warranty deed,⁵ assuming National Trust is correct that its boundary is exactly 100' from Ashley River Road rather than the 99.7' shown on the Acre plat, the result would not be that North Charleston owns any of National Trust's 100' strip property. As a matter of law, National Trust would retain its full undiminished acreage. The claimed 4" error could only reduce

³ For purposes of discussing in this Order standing based on the 4" strip claim, the analysis is intended to apply to both the Trust and Charleston even if only the Trust is mentioned unless specifically stated to the contrary.

⁴ See F.C. Enterprises, Inc. v. Dibble, 335, SC 260, 266 (SC App. 1999); Cummins 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 in the deed); 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); Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940).

⁵ 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." *Williston on Contracts*, Section 70:171, 4th Edition.

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R. p. 006

the amount of land obtained by North Charleston from a perfect acre to 99.999% of an acre.

North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797. That annexation reference to Parcel 797 takes the Court back to the question of what land is actually a part of that parcel. As discussed above, the very nature of a quit claim deed means it is impossible that the deed delivered to North Charleston by Whitfield could have in any way conveyed any of the Trust's land (TMS 301-00-00-117.) A TMS number and map do not supersede a deed. Thus, the reference in the Annexation Ordinance to "TMS 301-00-00-797" is subservient to the deed as well. Ex Parte Wilson sets forth the principles governing standing applicable to challengers of annexation under a statute that requires the consent of 100% of the owners. 391 S.C. 565, 707 S.E.2d 402 (2011). There, in a challenge to an annexation by the Town of Yemasee pursuant to the 100% method of annexation, the South Carolina Supreme Court held that a person who did not own property within the land annexed did not have standing to mount a challenge to the annexation. Under the facts herein neither of the Plaintiffs have the requisite ownership to challenge the annexation.

This Court finds no question of fact that North Charleston only attempted to annex its property (the Acre) as the ordinance language described the common boundary. This Court finds that North Charleston's Ordinance for annexation was for the property that it owned and not any portion of the Strip or any of the municipal area of Charleston. See S.C. Code Ann. § 5-3-150(3). The Court specifically stated that a property owner has standing to challenge an annexation if there is an infringement of its own proprietary interests or statutory rights. *Id.* at 572, 707 S.E.2d at 406 (citing S.C. Code Ann. § 5-3-

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150(3)). See also St. Andrews Public Service District, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002). It appears disingenuous to the Court that 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 also Charleston, the legal standing to challenge the annexation of North Charleston. This Court finds that the question of fact of ownership of the four inches (or the location of the common boundary) is not a question of fact that this Court is tasked to resolve since the issue was not requested as relief in the pleadings. If and when the issue of the boundary line is presented to a court, it will be resolved by a finding and order declaring the location of the common boundary between the two parcels and the alleged infringement issues would be resolved as well.

For the above facts set forth above, this Court finds as a matter of law that neither the National Trust nor Charleston has the requisite Proprietary Standing and Statutory Right to bring this challenge to this annexation.

Public Interest Standing

The Plaintiffs also asserted public interest standing in this case. Except in rare circumstances, this is not a recognized basis for private litigant standing in an annexation matter. The National Trust, in particular, spoke of its good deeds and general mission to protect its view of the public interest by furthering property preservation. Charleston similarly couched itself as a steward of public well-being, and further asserted that it had a public interest in not having property it controls (TMS 301-00-00-117) straddled by property controlled by North Charleston. Both parties also sought to advocate on behalf of citizens statewide in terms of the implications that a ruling in this case might have on other cases across the state down the road. Ultimately, none of these interests sound so



urgent or repetitious that the South Carolina Attorney General could not adequately represent the public's best interest.⁶ The South Carolina Attorney General did not file a challenge here to advocate general public interest concerns or state concerns. The Plaintiffs must respect the State's decision in this regard.

The recent discussion in Vicary of public importance standing demonstrates just how narrowly our Supreme Court applied the concept. The Vicary court specifically noted that "this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute", before specifically stating that "the unique facts present here [in Vicary] compel a contrary decision." The unique facts present in Vicary involved deceitful annexation acts that allowed the challenged Vicary annexation to proceed under the narrow 100% annexation standing rules such that the deceit could avoid judicial review. Moreover, the record in Vicary, showed that the Town had repeatedly engaged in the behavior. Nothing could be further from the case here. As mentioned previously, the 4" plat error raised by the Plaintiffs here appears to originate in a plat created nearly a decade before the North Charleston took ownership of the property, was in the public record, and was unknown to the North Charleston and even the most recent surveyors at the time the North Charleston took ownership. For the foregoing reasons, this Court finds that National Trust nor Charleston have standing under Public Interest analysis.

VALIDITY OF ANNEXATION

In the event that this Court is incorrect in its analysis under the facts and law that the Plaintiffs do not have standing under either argument and an appellate court finds that

⁶ See *See St. Andrews*, 349 S.C. at 604-05, 564 S.E.2d at 648 (Generally providing the State of South Carolina is the party positioned to represent the best interest of the general public.)



either Charleston or the National Trust has standing, this Court analyzes whether North Charleston's annexation is valid under the facts presented under our current statutory and common law.

S.C. Code Ann. § 5-3-100 authorizes a municipality to annex property that "belongs entirely to the municipality seeking its annexation" if such property is "adjacent" to the municipality. North Charleston relied solely on this statute as the basis for its annexation of the Acre. "Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016). Interpretation of a statute may be determined by the Court as a matter of law. See Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13) ("[T]he interpretation of a statute is a question of law."); 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.").

North Charleston annexed the Acre utilizing section 5-3-100 of the South Carolina Code, which provides, in relevant part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality . . . Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.



This statute was originally enacted in 1955, and there have been no substantive changes to it since that time. See 1955 (49) 1970; S.C. Code Ann. § 47-18.1 (1962). The General Assembly has never attempted to statutorily define the term "adjacent" in this statute.

North Charleston concedes that neither statutory contiguity (defined in section 5-3-205 of the South Carolina Code) nor common law contiguity exist in this case. Instead, North Charleston contends that this statute, applicable only when the annexed territory belongs entirely to the annexing municipality, requires only "adjacency," which North Charleston distinguishes from "contiguity." According to North Charleston, the Acre is "adjacent" to its municipal boundaries because it is "near" or "in close proximity" to such borders. To accept this argument would require that the Court disregard the common law of this State pertaining to municipal annexations, which requires contiguity, or touching, between the annexing municipality and the annexed property, except in limited circumstances not at issue in the present case. For reasons hereafter set forth, the Court declines to construe the statute as urged by North Charleston.

Shortly after the enactment of the original version of section 5-3-100 in 1955, the Supreme Court of South Carolina, in Tovey v. City of Charleston, 237 S.C. 475, 483, 117 S.E.2d 872, 876 (1961), held that contiguity is required for a municipal annexation, even in the absence of a statutory requirement:

The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to 'adjacent territory' necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect . . . Such is ordinarily essential to make the city a collective body having unity and compactness.

(Internal citations omitted).

In Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996), the Supreme Court reaffirmed the common law requirement of contiguity, extending it to incorporations, as well as annexations:

Contrary to appellant's assertion, territory sought to be incorporated must be contiguous. McQuillijn, Municipal Corporations, § 3.15(f). See also 1983 Op. Att'y Gen. 83-63 (contiguity requirement applies to incorporations as well as annexations). Further, we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). We find the circuit court correctly held contiguity is required for incorporation.

Under the common law, an exception to physical touching between the annexing municipality and the annexed area has been condoned only when separated by certain features or types of land, such as roads, waterways and marshes: "To achieve contiguity, actual physical touching of the properties is not required." St. Andrews Pub. Serv. Dist., 339 S.C. at 324, 529 S.E.2d at 66. "The Supreme Court has rejected an argument that the annexed parcels must have the additional qualifications of unity, substantial physical touching, or a common boundary." Id. "However, the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous." Id. Here, there is no dispute about the geographical relationship between the corporate limits of North Charleston and the Acre. All parties acknowledge the Acre does not touch or share a common border with North Charleston. All parties acknowledge the Acre is separated from North Charleston by land in Charleston, that being Highway 61 and the privately owned National Trust Property. Thus, under either



case precedent or § 5-3-305, the Acre is not contiguous to North Charleston, rendering the Ordinance void. North Charleston's interpretation of the term "adjacent" would open the door to "leap frog" annexations, which this Court holds are not allowed under any construction of § 5-3-100 because adjacency is destroyed when there is intervening property. Even under a protracted stretch of the facts suggested by North Charleston: that the Acre is adjacent to the Runneymede tract by virtue of North Charleston having a right-of-way across the Strip to access the Acre from Highway 61 (the right-of-way is adjacent to the Highway which is across from the annexed Runneymede Tract), this Court finds that this expansion of the definition of adjacent is too large.

This Court finds that the annexation under the facts present herein is not valid under that law of South Carolina. As a matter of law, adjacency under § 5-3-100 of the South Carolina Code is destroyed when privately-owned property lying within another municipality's corporate limits intervenes between the area to be annexed and the existing limits of the annexing municipality. This is true under the common law requirement for contiguity, the statutory definition of "contiguous," or the commonly-applied definition of the term "adjacent" in the context of municipal annexations.

NOW THEREFORE, based upon the finding of facts and the analysis of the law as set forth herein, it is Ordered that:

1. The National Trust does not have Standing to challenge the annexation of the Acre.
2. Charleston does not have Standing to challenge the annexation of the Acre.
3. In the event that this Court's findings of facts and analysis of the law is incorrect and that either, National Trust or Charleston have do have Standing, then this



Court finds that the annexation of the Acre by North Charleston is not allowed under the law because the Acre is not adjacent to the municipal limits of North Charleston. The Ordinance for annexation of the Acre is invalid under S. C. Code Ann. § 5-3-100 (1976 as amended).

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Circuit Judge

March 1, 2019
Newberry, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

Plaintiffs,

v.

CITY OF NORTH CHARLESTON,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-851

ORDER

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

This matter came before the Court for hearing on December 10, 2018, on the cross motions filed by the parties. National Trust for Historic Preservation in the United States (National Trust) and the City of Charleston ("Charleston") brought this action to set aside the City of North Charleston's ("North Charleston") recent annexation of a one acre parcel (the "Acre") under S.C. Code Ann. § 5-3-100. North Charleston filed a Motion to Dismiss the Complaints of the Plaintiffs, National Trust, and Charleston, pursuant to Rules 12 and 56, SCRPC, on the basis that the Plaintiffs do not have standing to object to the annexation. All parties appeared at the hearing and were very ably represented by their respective counsel teams. This Court has considered the pleadings, affidavits, exhibits, memoranda, and arguments of counsel. The Court allowed each of the parties to submit proposed orders. This Court has combined the issues presented in an effort to streamline the rulings of the court.

As will be set forth hereinafter, this Court finds that neither Charleston nor National Trust have standing to challenge the annexation of North Charleston. In the event that this Court is found to be in error regarding its ruling of lack of standing of the Plaintiffs,


R. p. 015

this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.

FINDING OF FACTS

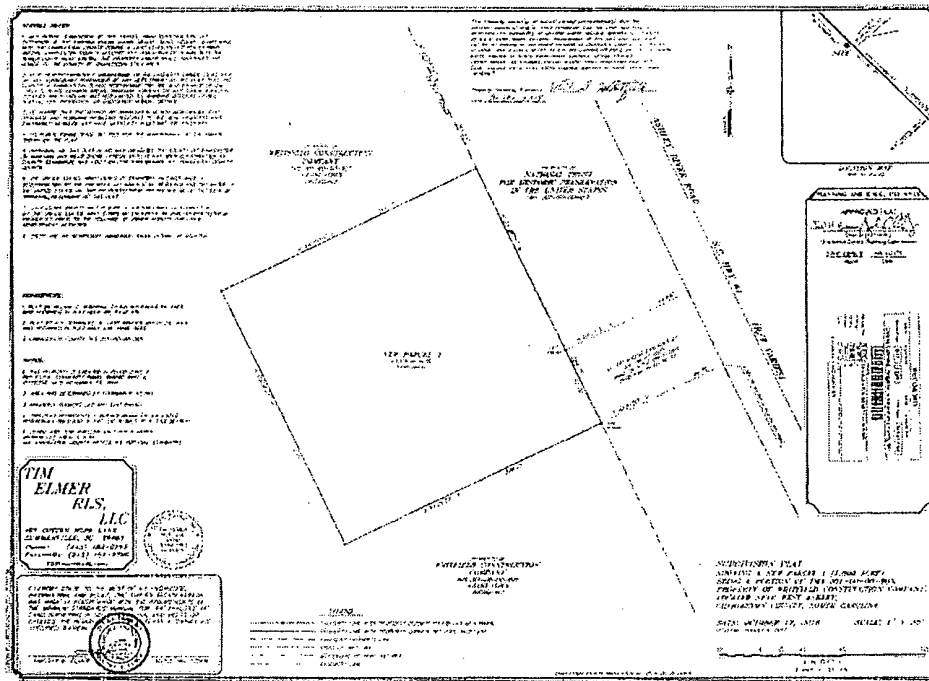
A summary of finding of facts and chronology of the ownership of the respective parcels involved in this case is as follows:

1. In 1967, Georgia-Pacific Investment Corporation ("GPIC") obtained title to approximately 12,293 acres of real property in Charleston County, South Carolina.
2. In 1980, GPIC conveyed 26.53 acres, more or less, of this property (the "National Trust Property") to the Nature Conservancy (the "Conservancy"), which the Conservancy immediately conveyed to the National Trust. The National Trust Property, designated in the deeds and tax assessor records as TMS No. 301-00-00-017, lies along the southern right-of-way line of Highway 61, being 100 feet in width and approximately 11,556 feet in length.
3. The National Trust Deed does not refer to a plat for the property description but instead describes the property conveyed with specificity in the deed itself.
4. In 1989, GPIC conveyed 2,294.17 acres shown on Plat BP/129 to Whitfield Construction Company ("Whitfield"). Charleston County assigned TMS No. 301-00-00-005 to the property conveyed by GPIC to Whitfield.
5. In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston's municipal limits, including the National Trust Property, TMS No. 301-00-00-017.

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R. p. 016

6. In 2009, Whitfield recorded Plats L09/0225 through L09/0229 (the “Easement Plats”), describing 18 purported access easements over the National Trust Property. The Easements Plats show the width of the National Trust Property as variable, but also contain a disclaimer that the plats are not boundary surveys; see S.C. Code Regs. 49-430. C(14) (defining “boundary survey”). The rights to place these access easements across the Strip were reserved by GPIC in its deed and conveyance of the Strip to the Conservancy.
7. North Charleston annexed the 113 acre Runnymede Plantation parcel (TMS 361-00-00-002) in October of 2017. No challenge to this annexation was lodged by anyone.
8. Runnymede and the Acre are separated by Highway 61 and the 100’ wide strip, TMS 301-00-00-017 (hereinafter, the “100’ strip.”)

9. In 2017, The Whitfield Company executed a quit claim deed to deliver to the City of North Charleston title to the Acre.
10. The quit claim deed to the Acre specifically noted that the Acre was created from property owned by Whitfield (not the Trust) and that it was a "p/o TMS 301-00-00-005." The quit claim deed made no reference to any of the land deeded to North Charleston having originated from the Trust's parcel (TMS 301-00-00-117.)
11. The survey and plat associated with the 2017 transfer of the Acre relied upon the previously recorded 2009 survey and plat. Since the 2009 plat had width variations of a few inches here and there, so too did the 2017 plat of the Acre.



12. The City Council of North Charleston annexed the Acre by Ordinance 2017-080. ("The Annexation Ordinance.")

13. There is no evidence that Plaintiffs were aware of the Easement Plats at the time they were recorded in 2009.
14. North Charleston did not seek the consent of the National Trust for the annexation of the Acre into North Charleston. National Trust did not sign a consent to the annexation of the Acre.
15. National Trust has not brought an action to remove or clear the cloud of title or an action for trespass against North Charleston for the discrepancy in the location of the property line between the Acre and its Strip.
16. North Charleston in its pleadings alleged that it did not claim ownership of any of the strip owned by National Trust.
17. The South Carolina Attorney General is not a party to this action.

LAW AND ANALYSIS

AS TO THE STANDING ISSUE OF CHARLESTON AND NATIONAL TRUST

Standing is required in order to pursue an annexation challenge. Vicary v. Town of Awendaw, 425 S.C. 35, 822 S.E. 2d 600 (2018). Absent deceitful conduct¹, there are generally only two groups with standing to challenge a 100% annexation: (1) property owners of annexed land and (2) the Attorney General of South Carolina.² National Trust and Charleston fall into neither category.

¹ The 4" property line deviation complained of by the Plaintiffs was not created by North Charleston. In fact, it appears to have its origins in a plat nearly a decade prior to North Charleston's acquisition of the land. Thus, the 4" deviation does not create any "credible allegation that the annexing body engaged in deceitful conduct." See Vicary, 425 S.C. at 358.

² See Vicary, 425 S.C. at 359 (leaving intact the general standing framework of St. Andrews and Town of Yemassee except when deal with a deceitful annexing body.)

Proprietary Standing and Statutory Rights

National Trust's attempt to claim "property owner" standing is legally insufficient because North Charleston claims to neither have annexed nor own any portion of the Trust's land. In this regard, Charleston's standing claim is essentially derivative based on its annexation / governance rights to the Trust's 100' strip. Both claim standing based on the same alleged four inch (4") error. If the National Trust does not have standing, neither does Charleston.³ As a matter of law, no error in the legal description or plat for the Acre could have resulted in North Charleston obtaining ownership of any land claimed by the Plaintiffs. A grantor simply cannot bestow upon a grantee more than what the grantor owns to begin with.⁴ North Charleston's deed to the Acre came from Whitfield who carved the Acre from his own parcel, TMS 301-00-00-005. No matter what the property description or plat to the Acre might say, it is legally impossible for Whitfield to have conveyed North Charleston title to any of the Trust's land. Since North Charleston acquired its ownership to the Acre through a Quit Claim rather than a Warranty deed,⁵ assuming National Trust is correct that its boundary is exactly 100' from Ashley River Road rather than the 99.7' shown on the Acre plat, the result would not be that North Charleston owns any of National Trust's 100' strip property. As a matter of law, National Trust would retain its full undiminished acreage. The claimed 4" error could only reduce

³ For purposes of discussing in this Order standing based on the 4" strip claim, the analysis is intended to apply to both the Trust and Charleston even if only the Trust is mentioned unless specifically stated to the contrary.

⁴ See F.C. Enterprises, Inc. v. Dibble, 335, SC 260, 266 (SC App. 1999); Cummins 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 in the deed); 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); Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940).

⁵ 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." *Williston on Contracts*, Section 70:171, 4th Edition.

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the amount of land obtained by North Charleston from a perfect acre to 99.999% of an acre.

North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797. That annexation reference to Parcel 797 takes the Court back to the question of what land is actually a part of that parcel. As discussed above, the very nature of a quit claim deed means it is impossible that the deed delivered to North Charleston by Whitfield could have in any way conveyed any of the Trust's land (TMS 301-00-00-117.) A TMS number and map do not supersede a deed. Thus, the reference in the Annexation Ordinance to "TMS 301-00-00-797" is subservient to the deed as well. Ex Parte Wilson sets forth the principles governing standing applicable to challengers of annexation under a statute that requires the consent of 100% of the owners. 391 S.C. 565, 707 S.E.2d 402 (2011). There, in a challenge to an annexation by the Town of Yemasee pursuant to the 100% method of annexation, the South Carolina Supreme Court held that a person who did not own property within the land annexed did not have standing to mount a challenge to the annexation. Under the facts herein neither of the Plaintiffs have the requisite ownership to challenge the annexation.

This Court finds no question of fact that North Charleston only attempted to annex its property (the Acre) as the ordinance language described the common boundary. This Court finds that North Charleston's Ordinance for annexation was for the property that it owned and not any portion of the Strip or any of the municipal area of Charleston. See S.C. Code Ann. § 5-3-150(3). The Court specifically stated that a property owner has standing to challenge an annexation if there is an infringement of its own proprietary interests or statutory rights. *Id.* at 572, 707 S.E.2d at 406 (citing S.C. Code Ann. § 5-3-

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R. p. 024

150(3)). See also St. Andrews Public Service District, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002). It appears disingenuous to the Court that 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 also Charleston, the legal standing to challenge the annexation of North Charleston. This Court finds that the question of fact of ownership of the four inches (or the location of the common boundary) is not a question of fact that this Court is tasked to resolve since the issue was not requested as relief in the pleadings. If and when the issue of the boundary line is presented to a court, it will be resolved by a finding and order declaring the location of the common boundary between the two parcels and the alleged infringement issues would be resolved as well.

For the above facts set forth above, this Court finds as a matter of law that neither the National Trust nor Charleston has the requisite Proprietary Standing and Statutory Right to bring this challenge to this annexation.

Public Interest Standing

The Plaintiffs also asserted public interest standing in this case. Except in rare circumstances, this is not a recognized basis for private litigant standing in an annexation matter. The National Trust, in particular, spoke of its good deeds and general mission to protect its view of the public interest by furthering property preservation. Charleston similarly couched itself as a steward of public well-being, and further asserted that it had a public interest in not having property it controls (TMS 301-00-00-117) straddled by property controlled by North Charleston. Both parties also sought to advocate on behalf of citizens statewide in terms of the implications that a ruling in this case might have on other cases across the state down the road. Ultimately, none of these interests sound so

urgent or repetitious that the South Carolina Attorney General could not adequately represent the public's best interest.⁶ The South Carolina Attorney General did not file a challenge here to advocate general public interest concerns or state concerns. The Plaintiffs must respect the State's decision in this regard.

The recent discussion in Vicary of public importance standing demonstrates just how narrowly our Supreme Court applied the concept. The Vicary court specifically noted that "this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute", before specifically stating that "the unique facts present here [in Vicary] compel a contrary decision." The unique facts present in Vicary involved deceitful annexation acts that allowed the challenged Vicary annexation to proceed under the narrow 100% annexation standing rules such that the deceit could avoid judicial review. Moreover, the record in Vicary, showed that the Town had repeatedly engaged in the behavior. Nothing could be further from the case here. As mentioned previously, the 4" plat error raised by the Plaintiffs here appears to originate in a plat created nearly a decade before the North Charleston took ownership of the property, was in the public record, and was unknown to the North Charleston and even the most recent surveyors at the time the North Charleston took ownership. For the foregoing reasons, this Court finds that National Trust nor Charleston have standing under Public Interest analysis.

VALIDITY OF ANNEXATION

In the event that this Court is incorrect in its analysis under the facts and law that the Plaintiffs do not have standing under either argument and an appellate court finds that

⁶ See *St. Andrews*, 349 S.C. at 604-05, 564 S.E.2d at 648 (Generally providing the State of South Carolina is the party positioned to represent the best interest of the general public.)

either Charleston or the National Trust has standing, this Court analyzes whether North Charleston's annexation is valid under the facts presented under our current statutory and common law.

S.C. Code Ann. § 5-3-100 authorizes a municipality to annex property that "belongs entirely to the municipality seeking its annexation" if such property is "adjacent" to the municipality. North Charleston relied solely on this statute as the basis for its annexation of the Acre. "Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016). Interpretation of a statute may be determined by the Court as a matter of law. See Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13) ("[T]he interpretation of a statute is a question of law."); 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.").

North Charleston annexed the Acre utilizing section 5-3-100 of the South Carolina Code, which provides, in relevant part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality . . . Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.



This statute was originally enacted in 1955, and there have been no substantive changes to it since that time. See 1955 (49) 1970; S.C. Code Ann. § 47-18.1 (1962). The General Assembly has never attempted to statutorily define the term "adjacent" in this statute.

North Charleston concedes that neither statutory contiguity (defined in section 5-3-205 of the South Carolina Code) nor common law contiguity exist in this case. Instead, North Charleston contends that this statute, applicable only when the annexed territory belongs entirely to the annexing municipality, requires only "adjacency," which North Charleston distinguishes from "contiguity." According to North Charleston, the Acre is "adjacent" to its municipal boundaries because it is "near" or "in close proximity" to such borders. To accept this argument would require that the Court disregard the common law of this State pertaining to municipal annexations, which requires contiguity, or touching, between the annexing municipality and the annexed property, except in limited circumstances not at issue in the present case. For reasons hereafter set forth, the Court declines to construe the statute as urged by North Charleston.

Shortly after the enactment of the original version of section 5-3-100 in 1955, the Supreme Court of South Carolina, in Tovey v. City of Charleston, 237 S.C. 475, 483, 117 S.E.2d 872, 876 (1961), held that contiguity is required for a municipal annexation, even in the absence of a statutory requirement:

The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to 'adjacent territory' necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect Such is ordinarily essential to make the city a collective body having unity and compactness.

(Internal citations omitted).

In Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996), the Supreme Court reaffirmed the common law requirement of contiguity, extending it to incorporations, as well as annexations:

Contrary to appellant's assertion, territory sought to be incorporated must be contiguous. McQuill[i]n, Municipal Corporations, § 3.15(f). See also 1983 Op. Att'y Gen. 83-63 (contiguity requirement applies to incorporations as well as annexations). Further, we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). We find the circuit court correctly held contiguity is required for incorporation.

Under the common law, an exception to physical touching between the annexing municipality and the annexed area has been condoned only when separated by certain features or types of land, such as roads, waterways and marshes: "To achieve contiguity, actual physical touching of the properties is not required." St. Andrews Pub. Serv. Dist., 339 S.C. at 324, 529 S.E.2d at 66. "The Supreme Court has rejected an argument that the annexed parcels must have the additional qualifications of unity, substantial physical touching, or a common boundary." Id. "However, the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous." Id. Here, there is no dispute about the geographical relationship between the corporate limits of North Charleston and the Acre. All parties acknowledge the Acre does not touch or share a common border with North Charleston. All parties acknowledge the Acre is separated from North Charleston by land in Charleston, that being Highway 61 and the privately owned National Trust Property. Thus, under either

case precedent or § 5-3-305, the Acre is not contiguous to North Charleston, rendering the Ordinance void. North Charleston's interpretation of the term "adjacent" would open the door to "leap frog" annexations, which this Court holds are not allowed under any construction of § 5-3-100 because adjacency is destroyed when there is intervening property. Even under a protracted stretch of the facts suggested by North Charleston: that the Acre is adjacent to the Runneymede tract by virtue of North Charleston having a right-of-way across the Strip to access the Acre from Highway 61 (the right-of-way is adjacent to the Highway which is across from the annexed Runneymede Tract), this Court finds that this expansion of the definition of adjacent is too large.

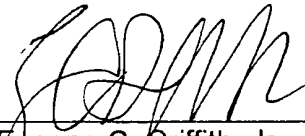
This Court finds that the annexation under the facts present herein is not valid under that law of South Carolina. As a matter of law, adjacency under § 5-3-100 of the South Carolina Code is destroyed when privately-owned property lying within another municipality's corporate limits intervenes between the area to be annexed and the existing limits of the annexing municipality. This is true under the common law requirement for contiguity, the statutory definition of "contiguous," or the commonly-applied definition of the term "adjacent" in the context of municipal annexations.

NOW THEREFORE, based upon the finding of facts and the analysis of the law as set forth herein, it is Ordered that:

1. The National Trust does not have Standing to challenge the annexation of the Acre.
2. Charleston does not have Standing to challenge the annexation of the Acre.
3. In the event that this Court's findings of facts and analysis of the law is incorrect and that either, National Trust or Charleston have do have Standing, then this

Court finds that the annexation of the Acre by North Charleston is not allowed under the law because the Acre is not adjacent to the municipal limits of North Charleston. The Ordinance for annexation of the Acre is invalid under S. C. Code Ann. § 5-3-100 (1976 as amended).

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Circuit Judge

March 1, 2019
Newberry, South Carolina

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R. p. 028

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-851

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

IT IS SO ORDERED.


Eugene C. Griffith, Jr., Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

Plaintiffs-Challengers,

v.

CITY OF NORTH CHARLESTON,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10- 851

**NOTICE OF CHALLENGE
OF
ANNEXATION**

FILED
2018 FEB 16 AM 11:04
JULIE J. HARRIS, CLERK
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the National Trust for Historic Preservation in the United States and the City of Charleston hereby give notice under section 5-3-270 of the South Carolina Code of their intent to contest the purported annexation by the City of North Charleston of a one (1) acre tract (TMS 301-00-00-797) (previously a portion of TMS 301-00-00-005) in a meeting by the City Council of North Charleston on December 21, 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.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

By: G. Trenholm Walker

G. Trenholm Walker (S.C. Bar #5777)

P.O. Box 22167

Charleston, SC 29413

Tel: 843-727-2200

Email: walker@wgflaw.com

and

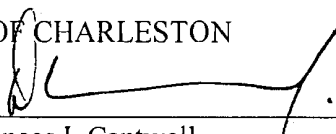


By: _____
William J. Cook (S.C. Bar #12183)
National Trust for Historic Preservation
2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037
Tel: 843-801-3366
Email: wcook@savingplaces.org

ATTORNEYS FOR PLAINTIFF-CHALLENGER
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES

AND

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-CHALLENGER
CITY OF CHARLESTON

February 15, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

PLAINTIFFS,

v.

CITY OF NORTH CHARLESTON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A No.: 2018-CP-10- 851

SUMMONS

FILED
2018 MAR 20 PM 4:13
JULIE J. ARMSTRONG
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 plaintiffs 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.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

By: *A. Trenholm Walker*

G. Trenholm Walker (S.C. Bar #5777)

P.O. Box 22167

Charleston, SC 29413

Tel: 843-727-2200

Email: walker@wgflaw.com

and

By: *William J. Cook*

William J. Cook (S.C. Bar #12183)

National Trust for Historic Preservation

2600 Virginia Ave., NW; Suite 1100

R. p. 032

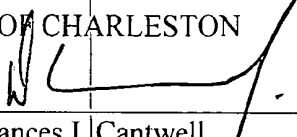
APP-032

Washington, DC 20037
Tel: 843-801-3366
Email: wcook@savingplaces.org

ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES

AND

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 20, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

PLAINTIFFS,

v.

CITY OF NORTH CHARLESTON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-10-851

COMPLAINT

FILED
2018 MAR 20 PM 4:13
JULIE J. HARRIS
CLERK OF COURT

Plaintiffs National Trust for Historic Preservation in the United States and the City of Charleston (collectively, "Plaintiffs"), complaining against Defendant, City of North Charleston ("North Charleston" or "Defendant"), allege and state as follows:

PARTIES

1. Plaintiff National Trust for Historic Preservation of the United States ("National Trust") is a private, charitable, and educational non-profit corporation formed under the Act of Congress on October 26, 1949, and existing in good standing under the laws of the District of Columbia and authorized to do business in South Carolina. The National Trust was chartered by the Congress in 1949 to protect and defend America's historic resources, to further the historic preservation policy of the United States, and to facilitate public participation in the preservation of our nation's heritage. See 54 U.S.C. § 312102. The powers of the National Trust include the power to bring suit in its corporate name. Id. § 312105(c). In addition, the National Trust owns property within the area subject to this lawsuit and described in detail below.

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

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

JURISDICTION AND VENUE

4. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging an annexation (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on December 21, 2017, purporting to annex that certain one (1) acre of real property designated as TMS 301-00-00-797 (the "Acre"), a portion of which is owned by North Charleston, as further described in the Contested Ordinance.

5. The National Trust, which has an office within the City and owns Drayton Hall (a National Historic Landmark located at 3380 Ashley River Road, Charleston, SC 29414), has standing to bring this action because it owns in fee simple absolute a portion of the Acre that was purportedly annexed, and the National Trust did not consent to the annexation. Furthermore, the National Trust and its members will suffer injury-in-fact from the purported annexation. The National Trust has more than one million members and supporters around the country, including members in the Charleston area, many of whom regularly visit Drayton Hall and the Ashley River Historic District, which the National Trust placed on its 1995 list of America's 11 Most Endangered Historic Places, in response to threats of intensive development. Drayton Hall has an average of approximately 50,000 visitors each year.

6. Additionally, the National Trust has standing because of the public importance of the issues presented by this challenge to the Contested Ordinance that violates the statutes governing annexation and the South Carolina and United States Constitution as well as undermines the Ashley River Historic District that is listed in the National Register of Historic Places as described in more detail below.

7. The City has standing to bring this action because the portion of the Acre owned by the National Trust in fee simple absolute has previously been annexed into the City of Charleston, and for the other reasons set forth herein.

8. The purported annexation violates statutory and proprietary rights of the National Trust, as will more fully be set forth hereafter.

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

10. The Acre is located in Charleston County, South Carolina.

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

FACTS

12. On December 14, 2017, the City Council of North Charleston passed a Resolution announcing intent to annex the Acre into North Charleston.

13. On December 14, 2017, the City Council of North Charleston also gave first reading to the Contested Ordinance.

14. On December 21, 2017, the City Council of North Charleston gave final reading and ratified the Contested Ordinance, purporting to annex the Acre into North Charleston.

15. The National Trust owns land in fee simple absolute, bearing Charleston County Tax Map No. 301-00-00-17 (the "National Trust Parcel") that is within the City of Charleston and lies between the City of North Charleston and the Acre.

16. The Nature Conservancy conveyed the National Trust Parcel to the National Trust by deed dated January 28, 1980, recorded in the RMC Office for Charleston County in Book O121 at Page 209 (the "National Trust Deed").

17. The National Trust Deed conveyed a parcel of 25.53 acres, more or less, more particularly described as “[t]hose certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of 11,556 feet in length....”

18. Both the Acre and the National Trust Parcel are within the Ashley River Historic District of 23,828.26 acres, that has been listed on the National Register of Historic Places since 1994.

19. The Ashley River Historic District is largely undeveloped and includes historic and archaeological resources that date to the earliest settlement of the Charleston in the late 1600s. The area’s properties’ listing in the National Register of Historic Places attests to the public importance of the preservation and protection of the lands within the District.

20. Upon information and belief, the Defendant’s purported annexation of the Acre through the Ordinance is part of its larger scheme to increase its tax base and tax revenues through the annexation of land of approximately 2,200 acres known as the Whitfield Tract for suburban and urban development in the middle of the Ashley River Historic District that will forever destroy the Ashley River Historic District’s continuity, injure its historic and archaeological significance, and significantly diminish its relatively harmonious scenic natural and historic vistas.

21. The National Trust and its members will suffer concrete and particularized injury that is actual or imminent from the purported annexation and the relief requested in this proceeding will provide redress for that injury.

22. Lying and intervening between the corporate limits of North Charleston and the Acre are (a) the right-of-way for S.C. Highway 61; and (b) the National Trust Parcel.

23. Since 2005, the National Trust Parcel has been within the corporate limits of the City of Charleston.

24. North Charleston purportedly adopted the Contested Ordinance under the auspices of section 5-3-100 of the South Carolina Code, which provides, in pertinent part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

(Emphasis added).

25. The Acre is not adjacent to or contiguous with the corporate limits of North Charleston. Instead, the 208.71' northeastern boundary of the Acre is entirely adjacent to and contiguous with the southwestern boundary of the National Trust Parcel for the full span of its length and, thereby, entirely adjacent to and contiguous with the boundary of the City of Charleston. The Acre is further separated from the limits of North Charleston by the right-of-way of Highway 61 that is between the National Trust Parcel and North Charleston's corporate limits.

26. Tim Whitfield Construction and Development LLC conveyed title to the Acre to North Charleston by deed dated September 12, 2017, recorded in the RMC Office for Charleston County in Book 0673 at Page 028, on October 16, 2017 (the "Acre Deed").

27. The Acre Deed describes the land conveyed as that property described in the plat for the Acre approved by Charleston County on September 9, 2017, recorded in Plat Book S17 at Page 0224 in the RMC Office for Charleston County on September 22, 2017 (the "Acre Plat").

28. The Acre Plat shows the northeastern boundary of the Acre that abuts the National Trust Parcel in two separate locations as 99.7' and 99.69' from the right-of-way line of Highway

61, thereby including a total of approximately 62 square feet of the National Trust Parcel for its 208.71' length.

29. The National Trust did not sign the petition for annexation of the Acre nor does it desire that any portion of the National Trust Parcel be annexed into North Charleston.

30. One hundred percent of the owners of the property purporting to be annexed did not sign the petition for annexation.

31. The Acre does not belong entirely to the City of North Charleston.

32. The Contested Ordinance violates statutory and proprietary rights of the National Trust in that the Acre includes land owned in fee simple absolute by the National Trust. Additionally, the purported annexation of the Acre violates the important public statutes and policies that require that the parcel being annexed be adjacent to and contiguous with the annexing municipality and that do not authorize a municipality to annex property by jumping property in another municipality. The annexation is further against the public interest and will inflict individualized injury on the National Trust and its members by damaging the Ashley River Historic District, contrary to the principles and precepts of the National Trust, as well as its property rights in the National Trust Parcel, the Acre, and Drayton Hall.

33. The Contested Ordinance violates the statutory and proprietary rights of the City in that it purportedly annexes land owned by the National Trust within the City and over which the City has sole jurisdiction and dominion.

34. The Contested Ordinance violates the statutory and proprietary rights of the City in that it ignores or "leap frogs" over land previously annexed into the City.

35. The question of whether the annexation satisfies the requirements of law is of considerable public importance and will arise again in similar contexts but continuously avoid

review if not answered in this case. It is a matter of paramount public importance. This and other similar purported annexations are greatly expanding the boundaries of municipalities into remote rural areas, including those like the one in this case deemed to be nationally historically significant, through an illegal interpretation of the applicable statutes by pretending there is contiguity or adjacency when there is none.

36. Plaintiffs filed their notice of intent to contest the purported annexation of the Acre with the Clerk of Court for Charleston County and 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)

37. Plaintiffs reallege their previous allegations as if fully set forth herein.

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

a. Section 5-3-100 of the South Carolina Code requires that the Acre “belong entirely to” the City of North Charleston before the Acre may be annexed into the City of North Charleston utilizing such method, and the Acre does not belong entirely to the City of North Charleston because the National Trust holds title in fee simple absolute to a portion of the Acre.

b. The City of North Charleston did not obtain the consent of the National Trust to the annexation, and the National Trust holds title in fee simple absolute to a portion of the Acre.

c. The portion of the Acre owned by the National Trust was previously annexed into the City of Charleston in 2005.

d. The Acre is not and, at the time of the purported annexation, was not, contiguous to the corporate limits of the City of North Charleston.

e. The Acre is not and, at the time of the purported annexation, was not, adjacent to or contiguous with the corporate limits of the City of North Charleston.

f. The Contested Ordinance violates the long-standing public policies and laws of this State prohibiting “leap-frog” annexations, including prohibiting municipalities from annexing property on the opposite side of land in a different municipality.

FOR A SECOND CAUSE OF ACTION (DECLARATORY JUDGMENT)

39. Plaintiffs reallege their previous allegations as if fully set forth herein.

40. Pursuant to section 15-53-10 to -140 of the South Carolina Code (the “Uniform Declaratory Judgments Act”), Plaintiffs are 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 Paragraphs 38.a through 38.f of this Complaint.

FOR A THIRD CAUSE OF ACTION

(VIOLATION OF DUE PROCESS)

41. Plaintiff National Trust realleges its previous allegations as if fully set forth herein.

42. Plaintiff National Trust has a statutory and constitutional right not to have its property interests diminished in an arbitrary and capricious manner through the purported annexation of its land and adjoining lands that are historically significant in violation of law for

the purpose of destroying the relatively rural and historical character of those lands that are all part of the Ashley River Historic District, including the National Trust Parcel and Drayton Hall.

43. North Charleston acted arbitrarily and capriciously in proceeding with the Contested Ordinance in violation of the National Trust's rights to substantive due process.

44. Plaintiff National Trust is entitled to a declaratory judgment that the purported annexation supposedly accomplished by the Contested Ordinance is invalid, void, and of no effect for violating its rights to substantive due process.

FOR A FOURTH CAUSE OF ACTION

(TEMPORARY INJUNCTION/PERMANENT INJUNCTION)

45. Plaintiffs reallege their previous allegations as if fully set forth herein.

46. Plaintiffs are entitled to an Order of this Court preliminarily and permanently enjoining North Charleston from exercising any governmental authority over the Acre.

WHEREFORE, having set forth their Complaint, Plaintiffs pray 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 Defendant from exercising any governmental authority over the property subject to the Contested Ordinance, awarding Plaintiffs their attorneys' fees as well as the costs and disbursements of this matter and such other and further relief as the Court may deem appropriate.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

By: 

G. Trenholm Walker (S.C. Bar #5777)
P.O. Box 22167
Charleston, SC 29413
Tel: 843-727-2200
Email: walker@wgflaw.com

and

By:



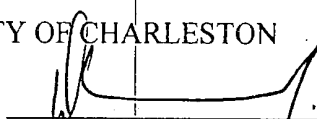
William J. Cook (S.C. Bar #12183)
National Trust for Historic Preservation
2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037
Tel: 843-801-3366
Email: wcook@savingplaces.org

ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES

AND

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 20, 2018
Charleston, South Carolina

AN ORDINANCE

ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-P IN CHARLESTON COUNTY (TMS #301-00-00-797) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9, ZONED AG, AGRICULTURAL, AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED OCTOBER 4, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P"

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

THE MUNICIPAL OWNED AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, ADJACENT TO THE CITY OF NORTH CHARLESTON SHALL BE ANNEXED PURSUANT TO SECTION 5-3-100 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED AND AUTHORIZED VIA RESOLUTION OF THE CITY COUNCIL OF NORTH CHARLESTON;

SAID RESOLUTION HAS BEEN ADOPTED BY CITY COUNCIL, FOR THE ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED OCTOBER 4, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P."

THE PROPERTY TO BE ANNEXED BELONGS ENTIRELY TO THE CITY OF NORTH CHARLESTON;

THE PROPERTY TO BE ANNEXED IS ADJACENT TO THE CITY LIMIT LINES;

THE CITY BELIEVES THAT THE PROPERTY PROPOSED FOR ANNEXATION MAY ASSIST ITS ABILITY TO PROVIDE GOVERNMENT SERVICES TO PROPERTIES IN THE VICINITY THAT ARE ALREADY WITHIN ITS CORPORATE LIMITS AND THAT SUCH FUNCTIONALITY MAY BE ENHANCED BY MAKING THE PROPERTY SUBJECT TO THE CITY OF NORTH CHARLESTON'S REGULATORY JURISDICTION;

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 area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797.

The property to be annexed, consisting of approximately 1.0 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated October 4, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P", 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, 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 for annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG, Agricultural District.

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

Ordained in City Council this ____ day of _____,
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:

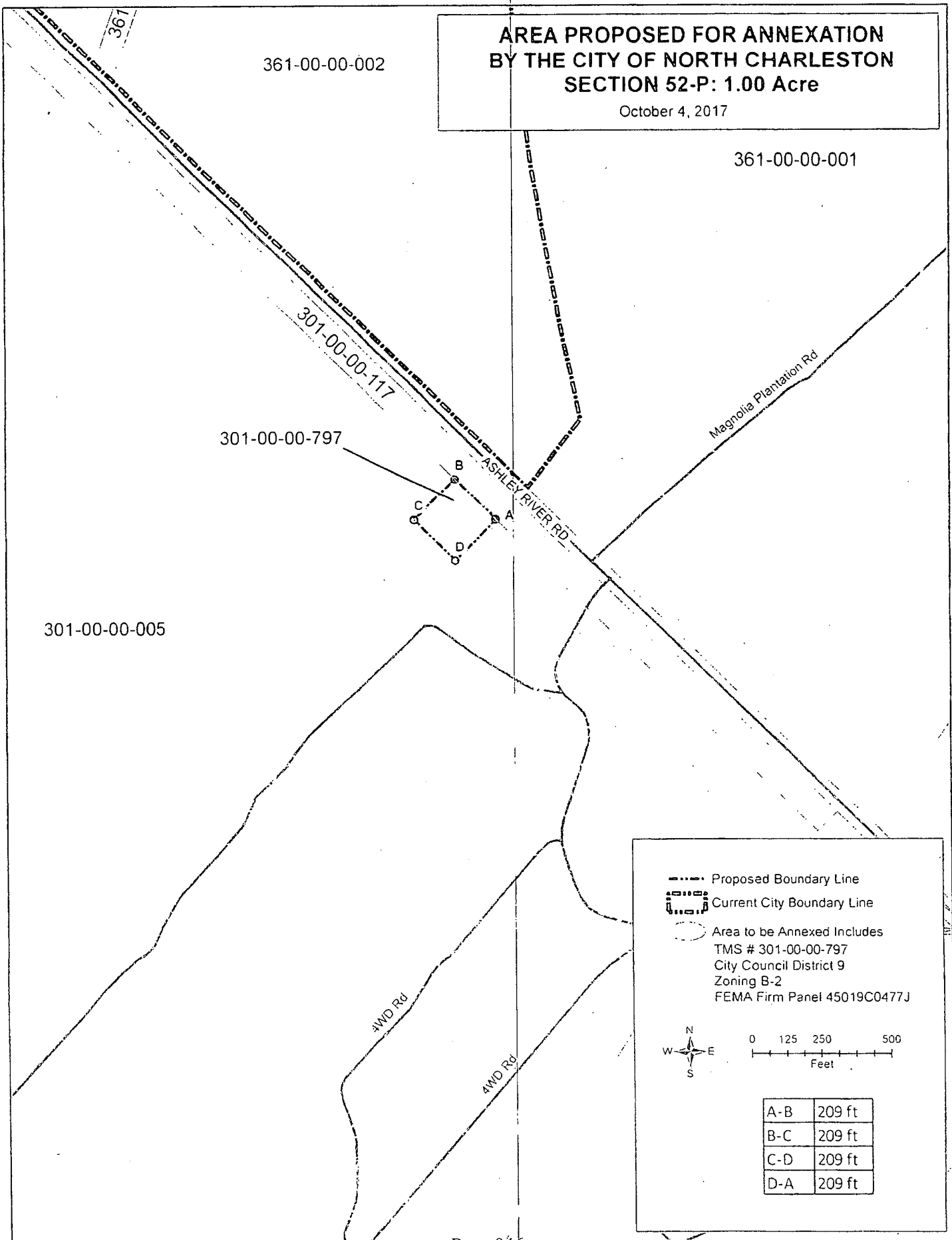
ATTEST:

LEGAL COUNSEL

ELLEN CLARK, MUNICIPAL CLERK

**AREA PROPOSED FOR ANNEXATION
BY THE CITY OF NORTH CHARLESTON
SECTION 52-P: 1.00 Acre**

October 4, 2017



--- Proposed Boundary Line
--- Current City Boundary Line
Area to be Annexed Includes
TMS # 301-00-00-797
City Council District 9
Zoning B-2
FEMA Firm Panel 45019C0477J



0 125 250 500
Feet

A-B	209 ft
B-C	209 ft
C-D	209 ft
D-A	209 ft

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
	)	
National Trust for Historic	)	Case No. 2018-CP-10-851
Preservation in the United States	)	
And the City of Charleston,	)	
	)	Answer, Affirmative Defenses,
Plaintiffs,	)	and Counterclaims by the
	)	City of North Charleston
v	)	
	)	(1 Acre)
City of North Charleston	)	
	)	
Defendant.	)	

FILED
2018 APR 17 PM 1:25
CLERK OF COURT

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, except that North Charleston denies that the National Trust owns any property annexed in this dispute.
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 301-00-00-797 ("the Acre") pursuant to SC Code Ann. 5-3-270 and admits that the Plaintiffs met the

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.

deadlines described therein, but denies that Section 5-3-270 or any other law authorizes the Plaintiffs' challenge in this instance, denies that North Charleston owns less than the entirety of the land described generally as "the Acre", and denies that North Charleston's annexation of The Acre was purported rather than legally binding.

5. Regarding the allegations of Paragraph 5, North Charleston denies all allegations except for those contained in the last two sentences limited to National Trust and Drayton Hall's membership / attendance numbers. North Charleston specifically denies the allegations that the Historic Trust owns any portion of the Acre annexed by North Charleston or that the Historic Trust and its members will suffer injury.
6. The allegations of Paragraph 6 are denied.
7. The allegations of Paragraph 7 are denied.
8. The allegations of Paragraph 8 are denied.
9. The allegations of Paragraph 9 are denied.
10. Regarding Paragraph 10, North Charleston admits that the Acre is within Charleston County, South Carolina.
11. Regarding Paragraph 11, 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 11 must be denied as pled.

12. Regarding Paragraph 12, North Charleston admits it passed the described annexation resolution.
13. Regarding Paragraph 13, North Charleston admits it gave first reading to what Plaintiffs' have termed the Contested Ordinance.
14. Regarding Paragraph 14, North Charleston admits it gave final reading to, and ratified, what the Plaintiffs describe as the Contested Ordinance.
15. Regarding Paragraph 15, North Charleston admits that The National Trust owns TMS 301-00-00-017 (hereinafter, "The Shoestring"), that this parcel is within the jurisdictional limits of the City of Charleston, and that the parcel lies between North Charleston's prior city limit line and the Acre (North Charleston's current city limits includes the Acre and various other contiguous property.) North Charleston does not admit to the Plaintiffs' claimed property boundaries.
16. Regarding Paragraph 16, the official property records of Charleston County speak for themselves and reference is craved thereto. Generally speaking, North Charleston does not contest the fact that The Nature Conservancy was the predecessor in interest to The National Trust regarding The Shoestring.
17. Regarding the Plaintiffs' allegations within Paragraph 17, the City denies the same and instead directs reference to the official property records of Charleston County (including plats associated with the parcels) which speak for themselves. Generally speaking, North Charleston does not contest the fact that The Shoestring may generally be described as a roughly 100' x 11,556' area that parallels Highway 61. North Charleston denies that the legal

boundary width of The Shoestring is a perfect 100' in all locations along its length or in those areas adjacent to the Acre.

18. North Charleston is without sufficient information to form a belief as to the accuracy of Paragraph 18 at present and, accordingly, it is denied pending proof thereof.
19. North Charleston admits that portion of Paragraph 19 that alleges the area in the vicinity of The Acre is largely undeveloped and denies the remaining allegations of the Paragraph and demands strict proof thereof.
20. Regarding the allegations of Paragraph 20, North Charleston admits only that the Acre later established North Charleston contiguity with other property annexed. All other allegations within Paragraph 20 are denied.
21. The allegations of Paragraph 21 are denied.
22. The allegations of Paragraph 22 are admitted, subject to the clarification that the "corporate limits of North Charleston" referenced therein is the North Charleston City limit line prior to annexation of the Acre. North Charleston City limits have since lawfully changed.
23. The allegation of Paragraph 23 is admitted.
24. Regarding Paragraph 24, North Charleston generally admits that the Acre was annexed pursuant to S.C. Code Ann 5-3-100 (the Statute speaks for itself) and denies any suggestion that the annexation was "purported" as opposed to "actual."
25. Regarding the allegations of Paragraph 25, North Charleston admits that the Acre shares a common boundary with the Shoestring and that the Shoestring

and Highway 61 Right of Way lie between the Acre and the North Charleston City Limit Line that existed prior to completion of the Acre annexation. All other allegations are denied. North Charleston specifically denies any claim that the Acre is not "adjacent" to the pre-existing North Charleston boundary for purposes of S.C. Code Ann. 5-3-100.

26. The allegations of Paragraph 26 are generally admitted, but North Charleston notes that the official property records speak for themselves regarding the deed to North Charleston for the Acre.

27. The allegations of Paragraph 27 are generally admitted, but North Charleston notes that the official property records speak for themselves regarding the deed to North Charleston for the Acre.

28. Regarding the allegations of Paragraph 28, North Charleston admits that the shared property line between the Acre and the Shoestring consists of a 208.71' line that on one end is 99.7' from the shared Acre / Shoestring property line to the Highway 61 ROW property line² and on the other end is 99.69' from the shared Acre / Shoestring property line to the Highway 61 ROW property line. The City denies that its title to the Acre, or its annexation of the Acre, includes any portion (62 square feet or otherwise) of the Shoestring parcel.

29. Regarding the allegations of Paragraph 29, North Charleston admits that the Trust did sign an annexation petition and does not desire to annex into North Charleston, but affirmatively states that North Charleston has not annexed any

² This phrasing is intended to reference the National Trust shoestring parcel line dividing the Highway 61 right of way from the shoestring parcel.

property owned by the Trust, thus making the Trusts desires and signatures irrelevant.

30. Regarding Paragraph 30, North Charleston denies that it lacked signatures from 100% of the property owners for annexation of the Acre.

31. Regarding Paragraph 31, North Charleston denies any suggestion that it is not the sole owner of the Acre.

32. The allegations of Paragraph 32 are denied.

33. The allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 are denied and North Charleston would further specifically deny any suggestion that this paragraph might confer standing.

36. The allegations of Paragraph 36 are admitted to the extent they express the Plaintiffs' intent to challenge North Charleston's annexation.

37. Regarding Paragraph 37, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.

38. The allegations of Paragraph 38 are denied.

39. Regarding Paragraph 39, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.

40. The allegations of Paragraph 40 are denied.

41. Regarding Paragraph 41, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.
42. The allegations of Paragraph 42 are denied.
43. The allegations of Paragraph 43 are denied.
44. The allegations of Paragraph 44 are denied.
45. Regarding Paragraph 45, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.
46. The allegations of Paragraph 46 are denied.

Defenses

Lack of Standing

47. 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))

48. 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

49. 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

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

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

52. The National Trust for Historic Preservation of the United States (National Trust) is a private, charitable, and educational non-profit existing in good

standing under the laws of the District of Columbia and authorized to do business in South Carolina.

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

54. The City of North Charleston has standing to be heard regarding these Counterclaims as the Plaintiffs' actions and allegations have infringed on its ownership and governmental rights.

55. 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.

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

57. The City of North Charleston owns property conveyed by Tim Whitfield Construction and Development, LLC to it and more fully described in deed recorded in the Charleston County RMC Office in Book 0673, at Page 028 and more fully shown on plat recorded in Book S17, Page 0224, said deed and plat are incorporated hereto by reference.

58. The property of National Trust was conveyed to it by the Nature Conservancy and more fully described in deed recorded in the Charleston County RMC

Office in Book 0121, Page 209 and more fully shown on plats recorded in Book L09, at Page 0225-0229, said deed and plats are incorporated hereto by reference.

59. Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston property encroaches into or upon the property of National Trust.

60. North Charleston owns its property free and clear of the claims of any third parties, including the Plaintiffs.

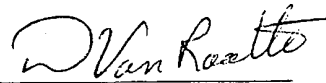
61. The Plaintiffs, in their Complaint, makes unconscionable claims and pretensions against North Charleston's title, claiming that boundaries to North Charleston's property were other than those established by survey or deed and encroaches onto National Trust's property.

62. The claims of the Plaintiffs are without any right and the Plaintiffs have no right, title, estate, liens or interest in the property of North Charleston.

63. North Charleston seeks a determination of its fee simple title in this action and further, that the Plaintiffs are forever barred from claiming any right title, or interest in North Charleston's property.

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 Plaintiffs' requested relief be denied; and
- b) That this Honorable Court inquire into the facts alleged and declare that North Charleston is the sole owner of "The Acre" free and clear of any and all claims of the Plaintiffs; and
- c) That this Honorable Court declare and confirm that North Charleston's property does not encroach onto or upon property of National Trust; and
- d) That this Honorable Court declare and confirm that the City of North Charleston's annexation of The Acre is lawful and binding; and
- e) 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; and
- f) the City of North Charleston be awarded costs and attorney's fees from The City of Charleston in accordance with South Carolina statute; and
- g) 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

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

PLAINTIFFS,

v.

CITY OF NORTH CHARLESTON,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-0851

FILED
2018 MAY 17 PM 4:03
JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF CITY OF
CHARLESTON'S REPLY TO
COUNTERCLAIMS
(JURY TRIAL DEMANDED)

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 complaint (the "Complaint") filed jointly by Plaintiff National Trust for Historic Preservation in the United States (the "National Trust") and the City (collectively, "Plaintiffs").

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 50 of the Counterclaims.

4. The City admits the allegations in Paragraph 51 of the Counterclaims.

5. The City admits the allegations in Paragraph 52 of the Counterclaims.

6. The City admits the allegations in Paragraph 53 of the Counterclaims.

7. The allegations in Paragraph 54 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 the allegations.

8. With respect to the allegations in Paragraph 55 of the Counterclaims, the City lacks sufficient information or belief to admit or deny such allegations because the "Disputed Annexation" is not defined in the Counterclaims. In the Complaint, Plaintiffs challenge the attempt by North Charleston to annex a one-acre parcel (the "Acre") purportedly owned by North Charleston. The City annexed a portion of the Acre into the City of Charleston in 2005, and the City denies that North Charleston timely filed a notice of its intent to challenge the 2005 annexation or that North Charleston ever filed a notice of its intent to challenge the 2005 annexation. The City has not attempted or purported to annex the remaining portion of the Acre, and, as such, the City denies that North Charleston has not filed a notice of its intent to challenge any such annexation.

9. With respect to Paragraph 56 of the Counterclaims, the City reiterates and incorporates the allegations of the Complaint and of Paragraphs 1 through 8 of this reply to the Counterclaims.

10. With respect to the allegations in Paragraph 57 of the Counterclaims, the City denies that North Charleston owns the entire Acre, as set forth more fully in the Complaint. The referenced deed and plat speak for themselves, but the City denies that the referenced deed or plat conveyed any right, title, or interest to North Charleston over the portion of the Acre owned by the National Trust.

11. With respect to the allegations in Paragraph 58 of the Counterclaims, the City admits that The Nature Conservancy conveyed the property described in Deed Book 0121 at Page 209 (not Deed Book 0121 at Page 209), dated January 28, 1980 and recorded February 1, 1980, in

the RMC Office (now the Register of Deeds Office) for Charleston County, South Carolina (“Deed O121/209”) to the National Trust by the terms of Deed O121/209, which speaks for itself and provides the best evidence of its content. The City denies that such property is more fully shown on the plats recorded in Plat Book L09 at Pages 0225 through 0229 in the RMC Office (now the Register of Deeds Office) for Charleston County, South Carolina, which also speak for themselves and provide the best evidence of their contents.

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

13. The City denies the allegations in Paragraph 60 of the Counterclaims.

14. The City denies the allegations in Paragraph 61 of the Counterclaims, except that, as set forth more fully in the Complaint, the City admits that the City asserts that the boundaries to the Acre are other than those established by the referenced plat, recorded in Plat Book S17 at Page 0224 in the RMC Office (now the Register of Deeds Office) for Charleston County, South Carolina and/or the deed recorded in Deed Book 0673 at Page 028 in the RMC Office (now the Register of Deeds Office) for Charleston County, South Carolina. The City further admits, as alleged in the Complaint, that the City asserts that the Acre includes property owned by the National Trust.

15. The City denies the allegations in Paragraph 62 of the Counterclaims.

16. With respect to the allegations in Paragraph 63 of the Counterclaims, the City admits that North Charleston seeks a determination of its fee simple title in this action, but denies that Plaintiffs should be forever barred from claiming any right, title or interest in the Acre.

17. The City denies that North Charleston is entitled to the relief requested in its prayer for relief on Page 11 of the Counterclaims.

FOR A SECOND DEFENSE

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

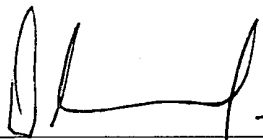
RESERVATION

19. 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.

JURY TRIAL DEMAND

20. To the extent the Counterclaims assert actions at law, the City demands a jury trial as to such issues.

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-10-851
	)	
NATIONAL TRUST FOR HISTORIC	)	
PRESERVATION IN THE UNITED STATES	)	
AND THE CITY OF CHARLESTON,	)	
	)	NATIONAL TRUST FOR HISTORIC
PLAINTIFFS,	)	PRESERVATION IN THE UNITED
	)	STATES' REPLY TO
v.	)	COUNTERCLAIMS OF CITY OF
	)	NORTH CHARLESTON
CITY OF NORTH CHARLESTON,	)	
	)	
	)	(Jury Trial Demanded)
<u>DEFENDANT.</u>	)	

The National Trust for Historic Preservation in the United States ("National Trust") replies to the Counterclaims filed against it by the City of North Charleston as follows:

1. National Trust admits the allegations set forth in Paragraphs 50 through 53.
2. The allegations of Paragraph 54 call for a legal conclusion to which no response is possible or required. To the extent that a response is required, denied. Except as expressly admitted, denied.
3. National Trust lacks sufficient information and knowledge to admit or deny the allegations contained in Paragraph 55 and demands strict proof thereof.
4. No response is required for the allegations of Paragraph 56. To the extent that a response is required, denied. Except as expressly admitted, denied.
5. National Trust lacks sufficient information and knowledge to admit or deny the allegations contained in Paragraph 57 and demands strict proof thereof. The referenced deed speaks for itself and is the best evidence of its contents. Except as expressly admitted, denied.
6. National Trust denies the allegations set forth in Paragraph 58. By way of further response, National Trust incorporates the property described in Deed Book O121 at page 209, dated January 28, 1980, and recorded February 1, 1980, in the Register of Deeds Office for Charleston County, South Carolina, which deed speaks for itself and is the best evidence of its contents. Except as expressly admitted, denied.
7. National Trust denies the allegations set forth in Paragraphs 59 through 63.

EXCEPT WHERE EXPRESSLY ADMITTED, NATIONAL TRUST DENIES EACH

AND EVERY ALLEGATION IN THE COUNTERCLAIMS, INCLUDING THE PRAYER FOR RELIEF. NATIONAL TRUST EXPRESSLY RESERVES THE RIGHT TO INTERPOSE ADDITIONAL RESPONSES, ANSWERS, DEFENSES, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND CROSS CLAIMS TO THE MAXIMUM EXTENT PERMITTED BY THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

FOR A FIRST DEFENSE
(Failure to State a Claim)

The Counterclaim fails to state facts sufficient to constitute a cause of action against National Trust.

FOR A SECOND DEFENSE
(Improper Annexation)

National Trust pleads that the City of North Charleston did not properly follow annexation procedures in violation of Title 5 Chapter 3 of the South Carolina Code of Laws.

FOR A THIRD DEFENSE
(Equitable Defenses)

National Trust pleads all equitable defenses, including, but not limited to, unclean hands, estoppel, and waiver, in limitation or bar of the City of North Charleston's claims and damages to the maximum extent permitted by applicable law.

FOR A FOURTH DEFENSE
(Strategic Lawsuit Against Public Participation)

National Trust is entirely immune to the counterclaims of Defendant as private parties have a fundamental right to petition the government and seek redress through the legal system for official actions favorable to their interests.

FOR A FIFTH DEFENSE
(Reservation and Non-Waiver)

National Trust reserves the right to assert and does not waive any additional and further defenses as may be revealed by additional information during the course of discovery and investigation and is consistent with the South Carolina Rules of Civil Procedure.

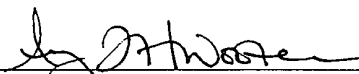
WHEREFORE, having set forth its Reply to Defendant's Counterclaims, National Trust respectfully prays the Court for the following:

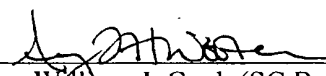
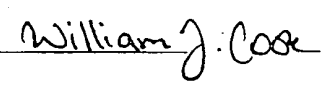
1. For a trial by jury on issues so triable;

2. That Defendant's Counterclaims be dismissed entirely with prejudice;
3. That all costs of this action, including attorney's fees incurred by National Trust and all expenses in connection with this matter be taxed against the Defendant;
4. For an Order enjoining Defendant from exercising any governmental authority over the property subject to the Contested Ordinance as set forth in the Complaint;
5. That the Defendant have and recover nothing from National Trust; and
6. For all other relief as the Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted, May 17, 2018.

By: 
Amy H. Wooten (SC Bar # 100128)
BROWN LAW LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601
T: 919.719.0854
Email: amy@brownlawllp.com

By:  upo 
William J. Cook (SC Bar # 12183)
NATIONAL TRUST FOR HISTORIC PRESERVATION
2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037
T: 202.588.6283
Email: wcook@savingplaces.org

G. Trenholm Walker (SC Bar # 5777)
WALKER, GRESSETTE, FREEMAN, & LINTON, LLC
Post Office Box 22167
Charleston, South Carolina 29413
T: 843-727-2200
Email: walker@wgflaw.com

ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

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

) Case No. 2018-CP-10-851
)

) Plaintiffs,
)

) City of North Charleston's Notice of Motion
) and Motion for Partial Summary Judgment
) (Adjacent / Contiguous)
)

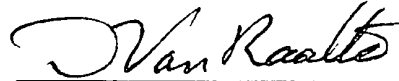
v

) City of North Charleston
)

) (I Acre Case)
)

) Defendant.
)

Comes now, the Defendant City of North Charleston, pursuant to South Carolina Rule of Civil Procedure 56, to respectfully move this Honorable Court for an Order determining that (1) annexations pursuant to S.C. Code Sec. 5-3-100 do not require contiguity and (2) that parcel 361-00-00-799 was adjacent to pre-existing North Charleston City Limit lines.



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 4th day of October, 2018
North Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
National Trust for Historic	)	
Preservation in the United States	)	Case No. 2018-CP-10-851
And the City of Charleston,	)	
	)	City of North Charleston's Notice of Motion
	)	and Motion to Dismiss (Lack of Standing)
Plaintiffs,	)	
	)	
v	)	
	)	
City of North Charleston	)	
	)	(1 Acre Case)
<u>Defendant.</u>	)	

2018 OCT -9 PM 2:11
 JULE J. HARRIS
 CLERK OF COURT
 BY *[Signature]*

Comes now, the Defendant City of North Charleston, pursuant to South Carolina Rules of Civil Procedure 12 and 56, to respectfully move this Honorable Court for an Order dismissing with prejudice the Plaintiffs' objection to the City of North Charleston's annexation activity as a result of the fact that the Plaintiffs lack standing to lodge an annexation challenge under the laws applicable in the State of South Carolina.

[Signature: J. Brady Hair]
 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 4th day of October, 2018
 North Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

Plaintiffs,

v.

CITY OF NORTH CHARLESTON,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-851

**PLAINTIFFS'
NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

FILED
2018-11-09 PM 4:12
CLERK OF COURT
NINTH JUDICIAL CIRCUIT
CHARLESTON, SOUTH CAROLINA

YOU WILL PLEASE TAKE NOTICE THAT the undersigned as attorneys for The National Trust for Historic Preservation in the United States ("National Trust") and The City of Charleston will move before the Honorable Eugene C. Griffith, Circuit Judge, ten (10) days after the service of this Notice of Motion and Motion or as soon thereafter as counsel may be heard, pursuant to Rule 56, SCRPC, for an order granting Plaintiffs summary judgment on the basis that there are no genuine issues of material fact and the Plaintiffs are entitled to judgment as a matter of law on the following grounds:

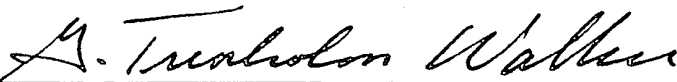
- (1) Section 5-3-100 of the South Carolina Code permits a municipality to annex property that "belongs entirely to the municipality seeking its annexation" if such property is "adjacent" to the municipality.
- (2) Pursuant to section 5-3-100, on December 21, 2017, the City of North Charleston ("North Charleston") adopted Ordinance No. 2017-080 (the "Ordinance"), a copy of which is attached hereto and incorporated herein by reference as Exhibit A, purporting to annex certain real property described therein, consisting of one (1) acre designated as Charleston County TMS No. 301-00-00-797 (the "Acre").

- (3) At the time of this purported annexation, the Acre did not “belong entirely to” North Charleston because the National Trust owns fee simple title to a portion of the Acre.
- (4) As set forth in the Plaintiffs’ Complaint, a copy of which is attached hereto and incorporated herein by reference as Exhibit B, the National Trust owns land in fee simple absolute, bearing Charleston County Tax Map No. 301-00-00-017 (the “National Trust Parcel”) that is within the City of Charleston and lies between the City of North Charleston and the Acre. Ex. B, ¶ 15.
- (5) As set forth in North Charleston’s Answer, a copy of which is attached hereto and incorporated herein by reference as Exhibit C: “North Charleston admits that The National Trust owns TMS 301-00-00-017 . . . , that this parcel is within the jurisdictional limits of the City of Charleston, and that the parcel lies between North Charleston’s prior city limit line and the Acre” Ex. C, ¶ 15.
- (6) At the time of the purported annexation, the right-of-way for Highway 61 and the National Trust Parcel intervened between the corporate limits of North Charleston and the Acre. Ex. B, ¶ 22; Ex. C, ¶ 22.
- (7) “Since 2005, the National Trust Parcel has been within the corporate limits of the City of Charleston.” Ex. B, ¶ 23; Ex. C, ¶ 23).
- (8) The law prohibits the annexation of land by one municipality that is separated from the annexing municipality by land within another municipality.
- (9) At the time of the purported annexation, the Acre was separated from the then-existing corporate limits of North Charleston by the National Trust Parcel, which was annexed to the City of Charleston in 2005.

- (10) The law prohibits the annexation of land by a municipality when the land proposed to be annexed is not contiguous to other land within the corporate limits of the municipality at the time of the annexation.
- (11) At the time of the purported annexation, the Acre was not contiguous to the then-existing corporate limits of North Charleston because the Acre is separated from North Charleston by the right-of-way for Highway 61 and the National Trust Parcel.
- (12) North Charleston did not comply with the requirements of section 5-3-100 of the South Carolina Code in attempting to annex the Acre because the Acre did not “entirely belong” to North Charleston at the time (or since).
- (13) North Charleston did not comply with the requirements for annexation of the Acre under the “100% Annexation Method” set forth in section 5-3-150(3) of the South Carolina Code because not all persons owning property in the area sought to be annexed, i.e. the Acre, signed an annexation petition requesting annexation.

This motion is based on the pleadings, the discovery to date, the affidavit(s) and exhibits associated with the City of North Charleston’s motion for summary judgment, any affidavits that may be submitted in support, and the applicable law.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

By: 

G. Trenholm Walker (S.C. Bar #5777)
P.O. Box 22167
Charleston, SC 29413
Tel: 843-727-2200
Email: walker@wgflaw.com

William J. Cook (S.C. Bar #12183)
National Trust for Historic Preservation
2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037

Tel: 843-801-3366
Email: wcook@savingplaces.org

Amy H. Wooten (SC Bar #100128)
BROWN LAW, LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601
Tel: 919-719-0854
Email: amy@brownlawllp.com

**ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES**

By: *Daniel S. McQueeney, Jr.*
Frances I. Cantwell
S.C. Bar No. 0001121
Of 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**

November 9, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

PLAINTIFFS,

v.

CITY OF NORTH CHARLESTON,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-0851

Plaintiff City of Charleston's
Memorandum in Opposition to
Defendant City of North Charleston's
Motion to Dismiss

2018 DEC 10 PM 3:42
CLERK OF COURT

In this annexation dispute, Plaintiffs National Trust for Historic Preservation in the United States and the City of Charleston (collectively, "Plaintiffs") challenge the validity of Ordinance No. 2017-080 (the "Contested Ordinance"), adopted by the City Council of North Charleston on December 21, 2017. (**Plts.' Record ("R.") pp. 130-32**).¹ The Contested Ordinance purports to annex a one (1) acre parcel (the "Acre"), designated as TMS No. 301-00-00-797, into the municipal limits of Defendant City of North Charleston ("Defendant" or "North Charleston"). (**R. p. 130-32**).

Plaintiff City of Charleston ("Charleston") hereby opposes North Charleston's motion on the several bases outlined herein. More specifically, a small portion of the Acre includes the National Trust Property, which Charleston annexed in 2005. (**R. p. 29, ¶¶ 8-9**). It is well-recognized that a municipality has standing, conferred by statute, to challenge an attempt by

¹ This memorandum is supported by the Plaintiffs' complaint; Defendant's Answer; the Affidavit of Daniel C. Forsberg and exhibits thereto; Plaintiffs' Complaint in Case No. 2018-CP-10-0848; Defendant's Answer in Case No. 2018-CP-10-0848; and the affidavit of Adam McConnell, with the attachments thereto. These supporting documents are collectively attached hereto and consecutively numbered from PLTS' RECORD P. 1 to PLTS' RECORD P. 171 for ease of reference.

another municipality to annex territory already within the former's own municipal limits. For this reason and the other reasons stated herein, North Charleston's motion to dismiss should be denied.

STATEMENT OF FACTS

The properties in question descend from a common grantor and were once part of the same large timber tract along the western side of South Carolina Highway 61, known as Ashley River Road. **(R. pp. 26-70)**. In 1967, Georgia-Pacific Corporation ("GPC") conveyed 12,293 acres to this common grantor, Georgia-Pacific Investment Company ("GPIC"), by Deed E89/131, recorded in the Charleston County RMC Office, now known as the Charleston County Register of Deeds Office (the "ROD Office"). **(R. pp. 31-35)**.

On January 2, 1980, GPIC conveyed a portion of this property, abutting the southern right-of-way line of Highway 61, to The Nature Conservancy (the "Conservancy") by Deed O121/206, said portion of the property (the "National Trust Property") being described as follows:

[T]hat certain tract or parcel of land, in fee, situate, lying and being along the southern right of way line of Highway 61, County of Charleston, State of South Carolina, containing Twenty Six and Fifty Three Hundredths (26.53) acres, more or less, and more particularly described as follows:

Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the property owned by Grantor along the southern right-of-way line of Highway 61 TMS No. 301-00-00-017

(**R. pp. 26-27, ¶¶ 4.a-4.c; pp. 31-35; p. 37; pp. 39-41; pp. 136-39**). On January 28, 1980, the Conservancy conveyed this 26.53-acre parcel to Plaintiff National Trust for Historic Preservation in the United States (the “National Trust”), using identical language to describe such property. (**R. pp. 133-35**). In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston’s municipal limits, including the National Trust Property. (**R. p. 5, ¶ 23; p. 17, ¶ 23; p. 75, ¶ 21; p. 93, ¶ 21**).

In the meantime, in 1989, GPIC conveyed its remaining property, consisting of 2,294.17 acres shown on Plat BP/129 to Whitfield Construction Company (“Whitfield”). (**R. p. 46; pp. 48-52; pp. 74-74, ¶¶ 18-20; p. 93, ¶¶ 18-20**). In 2009, Whitfield recorded Plats L09/0225 through L09/0229 with the ROD Office, describing 18 access easements over the National Trust Property, purportedly belonging to Whitfield. (**R. p. 27, ¶ 4.g; p. 28, ¶6; pp. 54-58; p. 75, ¶ 22; pp. 93-94, ¶ 22**). These plats show the width of the National Trust Property as variable, but the plats also contain the following disclaimer: “THIS PLAT IS TO SHOW THE LOCATIONS OF THE EXISTING ACCESS EASEMENTS ONLY[.] THIS IS NOT A BOUNDARY SURVEY.” (**R. p. 27, ¶ 4.g; p. 28, ¶6; pp. 54-58**).

Although the surveyed easements lie within Charleston County TMS No. 301-00-00-017, previously annexed into the City of Charleston in 2005, the plats were only approved by planning staff for Charleston County. (**R. p. 27, ¶ 4.g; p. 28, ¶6; pp. 54-58**). Nothing on the plats indicates whether the National Trust of the City of Charleston reviewed and approved the plats, the location of the easements, or the width of the National Trust Property. (**R. p. 27, ¶ 4.g; p. 28, ¶ 6; pp. 54-58**).

In 2017, Whitfield recorded Plat S17/0224 in the ROD Office, purportedly subdividing the Acre from the former GPIC property, and utilizing Plats L09/0225 through L09/0229 to show

the boundaries for the Acre. (R. p. 27, ¶¶ 4.g, 4.h; p. 28, ¶ 6; pp. 54-58; p. 60; p. 75, ¶ 23; p. 94, ¶ 23). Plat S17/0224 also shows Access Easement #3, as shown on Plat L09/0225, running from Highway 61 across the National Trust's property to the Acre. (R. p. 27, ¶¶ 4.g, 4.h; p. 28, ¶ 6; p. 60; p. 75, ¶ 23; p. 94, ¶ 23). The stated width of the National Trust's property on Plat L09/0225 and Plat S17/0224 is shown as 99.69 feet on the north side and 99.7 feet on the south side. (R. p. 27, ¶¶ 4.g, 4.h; p. 28, ¶ 6; pp. 54-58; p. 60; p. 75, ¶ 23; p. 94, ¶ 23). As a result, 62 square feet of the National Trust Property appears to have been included in the Acre. (R. pp. 28-29, ¶¶ 6, 8). "An annexation of the [National Trust] land would necessarily mean that City of Charleston property was annexed." (North Charleston Mem. in Supp. of MTD, p. 3, n. 4).

Whitfield conveyed the Acre, by reference to Plat S17/0224, to Tim Whitfield Construction and Development LLC ("TWC") by Deed 0667/666. (R. pp. 62-65). TWC then conveyed the Acre, as shown on Plat S17/0224, to North Charleston by Deed 0673/023. (R. pp. 67-70; pp.144-47).

On December 21, 2017, North Charleston adopted the Contested Ordinance, which describes the Acre utilizing the same measurements as Plat S17/0224. (R. p. 60; p. 113, ¶ 2; pp. 130-32). The annexation was undertaken pursuant to section 5-3-100 of the South Carolina Code, which permits a municipality to annex property "[i]f the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto" (R. p. 113, ¶ 2; pp. 130-32).

It is undisputed that, on December 21, 2017, the Acre was separated from the corporate limits of North Charleston by the right-of-way for Ashley River Road and the remainder of the National Trust Property, both of which have been in the municipal limits of Charleston since

2005. (**R. p. 132**). It is also undisputed that, on December 21, 2017, no part of the Acre touched the corporate limits of North Charleston. (**R. p. 132**).

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRCPP, 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.

Pursuant to Baird v. Charleston County, 333 S.C. 519, 527-28, 511 S.E.2d 69, 73-74 (1999), the City objects to any attempt by North Charleston to convert the present motion into one for summary through the consideration of evidence outside the complaint or pleadings. In its complaint in the present action (**R. pp. 1-13**), Charleston alleges that the Contested Ordinance attempted to annex the Acre, a portion of which was annexed into Charleston in 2005. (**R. p. 2, ¶ 4; pp. 3-4, ¶¶ 7, 12-17; p. 5, ¶ 23; pp. 5-6, ¶ 28; p. 6, ¶ 33; pp. 7-8, ¶¶ 38.a, 38.c**). These allegations should be dispositive of the present motion.

Nevertheless, to the extent the Court may convert North Charleston’s motion to dismiss into one for summary judgment, the evidence produced by the City shows, in a dispositive manner, that a portion of the property purportedly annexed under the Contested Ordinance was previously annexed into Charleston. At the very least, there is a genuine issue of material fact, respectfully requiring the Court to deny North Charleston’s motion. See Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005) (“The party seeking

summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.”).

DISCUSSION

I. There is at least a genuine issue of material fact that the Contested Ordinance includes property previously annexed into Charleston.

While North Charleston claims, as a matter of law, that North Charleston City Council intended to annex *only* Charleston County TMS No. 301-00-00-797 under the Contested Ordinance, this argument ignores that the tax map sequencing number is based on the public record, not *vice versa*. Section 12-27-610 of the South Carolina Code provides, in pertinent part:

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee.

(Emphasis added).

As Daniel C. Forsberg, a licensed professional engineer and land surveyor in South Carolina, confirms through his affidavit: “The tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat.” (R. p. 28, ¶ 5). “The legal description for the Acre references Plat S17/0224.” (R. p. 28, ¶5). “As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797.” (R. p. 28, ¶ 5). Forsberg concluded:

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then the land that

was annexed included a small portion of the National Trust Property.

(R. p. 29, ¶ 9).

II. By alleging an infringement of its own statutory and proprietary rights, Charleston has standing to challenge North Charleston's attempted annexation of the Acre, warranting a denial of North Charleston's motion to dismiss.

North Charleston attempts to annex the Acre under the auspices of section 5-3-100 of the South Carolina Code. This method of annexation applies when the area sought to be annexed "belongs entirely" to the municipality seeking its annexation. As revealed by the pleadings, the Acre does not belong entirely to North Charleston, but instead includes a portion of the National Trust Property that has been under the exclusive jurisdiction of Charleston since 2005.

The Supreme Court of South Carolina has repeatedly recognized that a party alleging violation of its own proprietary interests or statutory rights has standing to challenge a municipal annexation. See St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) (recognizing certain parties statutorily authorized under section 5-3-150(1) to challenge so-called "75% annexation"); State v. City of Columbia, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992) ("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.").

Here, Charleston clearly alleges a violation of its own statutory rights and proprietary interests. In the complaint, Charleston avers that the annexation of the Acre infringes upon its own statutory and proprietary rights over the National Trust Property, which Charleston annexed in 2005. (R. p. 2, ¶ 4; pp. 3-4, ¶¶ 7, 12-17; p. 5, ¶ 23; pp. 5-6, ¶ 28; p. 6, ¶ 33; pp. 7-8, ¶¶ 38.a, 38.c). In its answer, North Charleston does not dispute that the National Trust Property has

been within the corporate limits of Charleston since 2005. (R. pp. 4-5, ¶¶ 22, 23; pp. 17, ¶¶ 22, 23).

A. Section 5-3-280 of the South Carolina Code confers upon Charleston the statutory right to challenge the attempted annexation of property within its municipal limits.

Section 5-3-280 of the South Carolina Code provides the City with a statutory right to challenge the attempted annexation of property within its corporate limits. In Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953), the Supreme Court of South Carolina interpreted this section, then designated as section 7232(1) of the South Carolina Code (1942). The following paragraph shows *all* changes to section 7232(1) (now section 5-3-280) between 1942 and the present (deletions in ~~strike~~through; additions double-underlined):

Whenever a petition is presented to ~~the~~ a city or town council signed by a majority of the resident freeholders of ~~said town~~ the municipality asking for a reduction of the corporate limits of ~~said the city or town~~, ~~then said the~~ council shall order an election after not less than ten days' public advertisement; ~~such~~. This advertisement shall describe the territory that is proposed to be cut off. ~~At such election, should~~ If a majority of the qualified electors vote at the election in favor of the release of the territory, then said ~~then said the~~ council ~~shall~~ must issue an ordinance declaring the territory no longer a portion of ~~said town~~ the municipality and ~~shall~~ must notify the ~~Secretary of state~~, ~~furnishing him at the same time with~~ State of the new boundaries of ~~said town~~ the municipality.

In Seigler, 224 S.C. at 170, 77 S.E.2d at 901, the Supreme Court of South Carolina addressed this statute in the context of a challenge by the Town of Forest Acres to the attempted annexation, by the Town of Forest Lakes, of territory previously annexed to Forest Acres. In attempting the annexation, Forest Lakes did not follow the detachment procedures set forth in section 7232(1). Id. The Supreme Court in Seigler ultimately invalidated the attempted annexation, explaining:

It will be noted that under Section 7232, in order to reduce the corporate limits of a municipality, a petition asking for such reduction must be signed by a majority of the resident freeholders of said town, after which a majority of the qualified electors must vote in favor of releasing the territory involved. It was clearly the intention of the legislature that the voters of the *entire* town should have a voice in determining the question of detachment.

Appellants' view does not give effect to Section 7232 which, if possible, must be harmonized with the preceding sections relating to the enlargement of the corporate limits of a municipality.

Id. at 176, 77 S.E.2d at 904.

The Court continued:

Statutes of a similar character were before the Supreme Court of Wisconsin in City of Wauwatosa v. City of Milwaukee, 180 Wis. 310, 192 N.W. 982, 983. Sections 925-17 and 925-18 of the Wisconsin statutes authorized the annexation by a municipality of territory lying adjacent thereto, upon the petition of a certain percentage of the electors and property owners in the area proposed to be annexed. Section 925-21a authorized the common council of a municipality to detach a part of its territory upon the petition of a certain proportion of those owning property in the area proposed to be detached. In holding that adjacent territory may not be detached from one municipality and annexed to another without the consent of the common council of the former, as provided by Section 925-21a, the Court said:

"In view of the substantial right thus recognized in the plaintiff as a corporate entity, to and over its corporate territory, the general language in sections 925-17 and 925-18 covering the broad and general field of annexation of territory and referring to territory lying adjacent to any such city, must properly be construed in connection with the express language of section 925-21a, supra, providing for the more limited field of detachment of municipal territory.

"The two statutes, where the literal enforcement of the one clashes with the literal enforcement of the other, must be construed together and harmonized, if possible, so as to permit effect to be given to each, and where such broad and general language is

used in the one as would, if construed literally and separately, as desired by defendant, nullify the evident purpose and express language of the other, it is our duty to prune down the literal language or possible broad construction of the one so as to leave vitality in the other.”

Id. at 176-77, 77 S.E.2d at 904-05 (emphasis added). Moreover, “it is difficult to believe that the legislature would authorize the annexation of a portion of a municipality without setting up some machinery for apportioning the debts, disposing of community property and otherwise adjusting the fiscal affairs of the areas involved.” Id. at 177, 77 S.E.2d at 905.

Thus, since 2005, when it annexed the National Trust Property, Charleston has had a substantial statutory right, codified in section 5-3-280 of the South Carolina Code, to object to any attempt to detach a portion of its municipal boundaries. 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.”).

B. Charleston has other statutory and proprietary rights which would be violated if North Charleston were permitted to annex property within Charleston’s municipal dominion and control.

Since 2005, Charleston has had exclusive jurisdiction over the National Trust Property, to include the portion thereof overlapped by the Acre, as well as proprietary functions and interests of dominion and control over this tract, to include matters pertaining to taxation, land use, and the like.

One need look no further than section 5-7-30 of the South Carolina Code for a list of Charleston's statutory rights with respect to the National Trust Property, including but not limited to: (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"

North Charleston's annexation of the Acre would infringe upon Charleston's right to include the portion thereof overlapping the National Trust Property as part of its comprehensive land use plan, adopt land use and land development regulations applicable to this parcel, or choose to impose an "impact fee" as a condition of development approval to pay a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements." 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).

North Charleston's attempt to annex the Acre 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.").

Charleston has statutory and proprietary rights in and to the properties within its borders. Therefore, Charleston has standing to protect those rights from infringement by other municipalities, such as North Charleston.

III. Charleston has "Barry Tract" standing to challenge the annexation by North Charleston of property already within the municipal limits of Charleston.

Precedent of this State also strongly supports standing being accorded to a municipality challenging an annexation by 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, had the Supreme Court deemed standing an issue, it most assuredly would have raised it as going to the appellate jurisdiction of the Court. As the Court in City of Elkhorn v. City of Omaha, 725

N.W.2d 792, 807 (Neb. 2007) so succinctly stated: “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 attempt to annex the Acre. North Charleston’s motion to dismiss should be denied.

Respectfully Submitted,

By: _____

Frances I. Cantwell
S.C. Bar No. 01121
Special 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 Plaintiff City of Charleston

December 9, 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-10-851

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES)
AND THE CITY OF CHARLESTON,)

Plaintiffs,)

v.)

CITY OF NORTH CHARLESTON,)

Defendant.)

**MEMORANDUM OF
PLAINTIFF NATIONAL TRUST
FOR HISTORIC PRESERVATION
IN THE UNITED STATES IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FOR LACK
OF STANDING**

Plaintiff National Trust for Historic Preservation in the United States ("National Trust") submits this Memorandum in opposition to the motion to dismiss of Defendant, City of North Charleston ("North Charleston"), pursuant to Rules 12 and 56, SCRCF, on the basis that the National Trust does not have standing.

The National Trust, along with the City of Charleston, brings this action to set aside North Charleston's illegal annexation of a 1-acre parcel in the Ashley River Historic District. The description of the property annexed by North Charleston includes a small portion of property owned by the National Trust. Because both the allegations of the Complaint and the record support the standing of the National Trust, Defendant's motion should be denied.

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CLERK OF COURT
NINTH JUDICIAL CIRCUIT
CHARLESTON, SOUTH CAROLINA

FACTS

The National Trust is a property owner in the Ashley River Historic District (“Ashley River Historic District” or “Historic District”) which has been officially recognized for its high historical significance by being placed in the National Register of Historic Places (“National Register”).¹ The National

Trust owns several properties within the Historic District.

The two properties of interest to this case include a National Historic Landmark² property,



Drayton Hall, which is open to the public and operated as a National Trust Historic Site and is individually listed in the National Register, the official list of the Nation's historic places worthy of preservation. The National Trust's second property that is in the middle of this case, in both

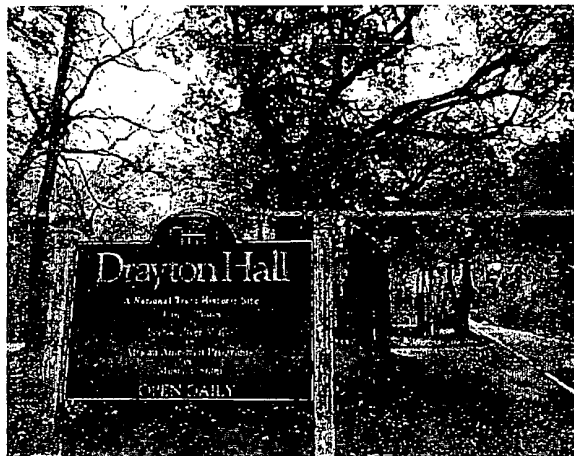
¹ The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act, and managed by the National Park Service, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources. 54 U.S.C. §§ 300101 *et seq.* The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups, and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction. 36 C.F.R. § 60.2. Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation and other federal and state financial incentives, such as historic rehabilitation tax credits. *Id.* § 60.2(b) & (c). A property can be removed from the National Register if the qualities which caused it to be originally listed have been lost or destroyed. 36 C.F.R. § 60.15.

² National Historic Landmarks (NHLs) are historic places that hold exceptional national significance, and today receive heightened protection under the National Historic Preservation Act. Authorized by the Historic Sites Act of 1935, the Secretary of the Interior designates these places as exceptional because of their abilities to illustrate U.S. heritage. Today, we have almost 2,600 NHLs in the United States. See <https://www.nps.gov/articles/roots-of-the-national-historic-landmarks-program.htm> (accessed Dec. 6, 2018).

substance and location, is a long buffer parcel that is 100 feet in width that extends for approximately two miles along the western side of US Highway 61, popularly called the Ashley River Road (Pictured above) (the “National Trust Parcel”). The National Trust also owns other parcels of land in the Historic District that were primarily acquired and are held for preservation and conservation purposes.

The Ashley River Historic District is largely undeveloped and includes historic and archaeological resources that date to the earliest settlement of Charleston in the late 1600s. The area’s properties’ listing in the National Register, including the historic viewshed shown here, attests to the public importance of the preservation and protection of the properties and landscapes within the Historic District.³

The National Trust Parcel is across from Drayton Hall’s driveway and slightly to the north running along the historic Ashley River Road.⁴ This road, which has served as a major transportation route since 1691, is known for its historic viewshed canopy of live oak trees.



³ The Court may take judicial notice of these listings. See National Register of Historic Places, Ashley River Historic District, Charleston County, South Carolina, available at <http://www.nationalregister.sc.gov/dorchester/S10817718009/S10817718009.pdf> and <http://www.nationalregister.sc.gov/dorchester/S10817718009/S10817710158BI.pdf> (additional documentation and boundary increase).

⁴ National Register of Historic Places, Ashley River Road, Charleston County, South Carolina, available at <http://www.nationalregister.sc.gov/dorchester/S10817718010/S10817718010.pdf>.

As evident from the recorded instruments attached to the affidavit of Adam McConnell that North Charleston submitted in support of its Motion for Summary Judgment, The Nature Conservancy conveyed the National Trust Parcel to the National Trust by deed dated January 28, 1980, recorded on February 1, 1980, in the RMC Office for Charleston County at Book 0121 Page 209 (the “National Trust Deed”). The National Trust Deed conveyed a parcel of 26.53 acres, more or less, more particularly described as “[t]hose certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of 11,556 feet in length[.]” The National Trust Parcel is identified on the County’s TMS mapping as TMS Parcel No. 301-00-00-017.

Both of the National Trust’s properties of interest to this case are located within the City of Charleston’s municipal boundaries. The City of Charleston annexed the National Trust Parcel in 2005. This uncontested fact is pivotal to questions relating to the validity of the annexation by North Charleston at the heart of this case.

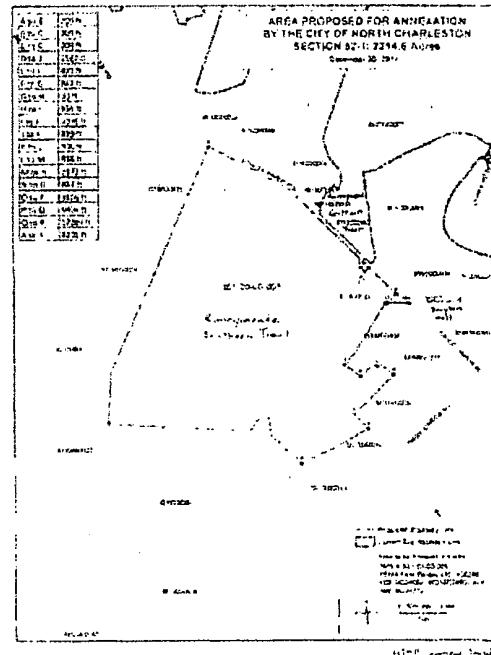
The one-acre parcel of land (the “Acre”) that is subject to this annexation challenge was conveyed on September 12, 2017, by Tim Whitfield Construction and Development LLC (“Whitfield”) to North Charleston, for five dollars. (See, copy of deed that is part of exhibits to Affidavit of MacConnell). Whitfield subdivided the Acre from its much larger 2200-acre tract (TMS Parcel No. 301-00-00-005) that it wanted to annex into North Charleston to set up a sale of 500 acres to a residential developer. (See, paragraphs 50-51 of Whitfield’s Answer and First Amended Counterclaim in Case No. 2018-CP-10-2073, a related case).⁵

⁵ Whitfield later proceeded to annex the remainder of the 2200-acre tract into North Charleston immediately after North Charleston’s annexation of the Acre, based on its contiguity to the Acre. *Ibid.*

The eastern boundary of the Acre abuts the National Trust Parcel, shown below in yellow, along with its location relative to Drayton Hall.

On December 14, 2017, the City Council of North Charleston adopted a Resolution announcing its intent to annex the Acre. On December 21, 2017, the City Council of North Charleston gave final reading and ratified the ordinance, purporting to annex the Acre into North Charleston. The recorded plat of the Acre that was referenced in the annexation ordinance includes a small portion of the National Trust Parcel that is within the City of Charleston. (See, Affidavit of Daniel C. Forsberg at ¶¶8 and 9).

ANNEXATION AREA OVERVIEW



North Charleston did not seek the consent of the National Trust for the purported annexation of a portion of the National Trust Parcel that is within the City of Charleston and lies between the North Charleston and the Acre, nor did the National Trust sign a consent to the purported annexation.

STANDARD OF REVIEW

North Charleston has filed its Motion to Dismiss Pursuant to Rule 12 and Rule 56, SCRPC, but does not set forth any standard of review in its Memorandum of Support. To guide the Court, and because North Charleston has included myriad materials outside of the pleadings and bases the motion in part on Rule 56, SCRPC, the National Trust cannot respond without converting the motions into one for summary judgment. Therefore, the National Trust submits

the Court should view the evidence and all inferences that can be reasonably drawn therefrom in the light most favorable to the National Trust as the nonmoving party. *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 628 (2004). Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* An issue of fact is created if there is a scintilla of evidence in support of the opposing party's position on the fact. *E.g., Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Here the National Trust submits that not only is there a scintilla of evidence but that the record, particularly the recorded deeds and plats before the Court, lead to but one conclusion – the National Trust has standing as a matter of law.

DISCUSSION

The National Trust has standing to sue for the reasons discussed below and is entitled to challenge North Charleston's invalid annexation of the Acre that harms the National Trust's proprietary and statutory rights.

I. THE NATIONAL TRUST'S PROPRIETARY STANDING & STATUTORY RIGHTS

The National Trust has a proprietary interest in North Charleston's annexation of the Acre because the National Trust owns a portion of the Acre that North Charleston attempted to annex. Even if the National Trust Parcel was not directly affected by having its boundary crossed, North Charleston has adversely affected the National Trust's proprietary rights in the National Trust Parcel next to the Acre, as well as its ownership of Drayton Hall, a National Historic Landmark that is a central contributing resource of the Ashley River Historic District. Drayton Hall is one of the primary reasons the National Trust acquired the National Trust Parcel from The Nature Conservancy in 1980: to preserve not only the viewsheds, historic context, and

integrity of Drayton Hall and the Ashley River Historic District, but also the National Register-listed Ashley River Road and its over 300-year-old canopy of live oaks.

Moreover, the National Trust's statutory rights are affected as a result of North Charleston's annexation, including but not limited to the National Trust's statutory rights and expectations created by zoning, planning, and land use regulations.⁶ In fact, Whitfield Construction Company has already alleged in paragraph 53 of its Answer and First Amended Counterclaim in Case No. 2018-CP-10-2073 that it "will seek rezoning from the City of North Charleston for higher density than permitted under agricultural zoning, which it anticipates being granted."

Finally, as North Charleston knows, the National Trust Parcel and Drayton Hall are already located within the City of Charleston. Therefore, the National Trust has standing to challenge the annexation and North Charleston's attempt to leapfrog illegally over Charleston's municipal wall, which South Carolina has never allowed. *See, e.g., Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (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.")

⁶ As noted in the minutes of the meeting of North Charleston City Council on December 14, 2017, attached to the MacConnell Affidavit filed by North Charleston, "Acceptance of [the Acre] would allow the City to eventually establish a staging area for City personnel/equipment as may be required from time to time to provide City services to those properties within its jurisdiction. . . . Services to this property will be effective immediately after final reading[.] Later, "Mr. King noted that the subject property is West of the Ashley, and if the annexation is approved a lawsuit will surely be filed against the City, costing the City possibly millions of dollars. He stated his opposition to the annexation." In addition, "Mr. Brinson asked and Mayor Summey confirmed that there are no current development plans, but when the time comes, the City would consider development. . . . He acknowledged that this annexation may be challenged, but that it will be well worth it to have this property under the City's jurisdictions." *Id.*

Ex Parte Wilson is instructive on the ultimate issue in this case. 391 S.C. 565, 707 S.E.2d 402 (2011). There, in a challenge to an annexation by the Town of Yemasee pursuant to the 100% method of annexation, the South Carolina Supreme Court held that, under the facts of that case, a person who did not own property within the land annexed did not have standing to mount a challenge to the annexation. The substance of the holding in *Ex Parte Wilson* is that a person who owns property that is purportedly annexed has standing to mount a challenge to an annexation pursuant to a 100% method. See S.C. Code Ann. § 5-3-150(3). The Court specifically stated that a property owner has standing to challenge an annexation if there is an infringement of its own proprietary interests or statutory rights. *Id.* at 572, 707 S.E.2d at 406 (citing S.C. Code Ann. § 5-3-150(3)). See also *St. Andrews Public Service District*, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002).

Here, resolving all inferences in favor of the National Trust, the National Trust has asserted an infringement on its proprietary rights and statutory rights as set forth on the face of its Complaint. See Compl. of the National Trust and City of Charleston, ¶ 9 (alleging violation of proprietary and statutory rights) and ¶ 60 (requesting the Court to enjoin North Charleston from exercising governmental authority over the property subject to the contested annexation ordinance). In addition, North Charleston cannot show an absence of any issues of material fact or that it is entitled to judgment as a matter of law as required by the standard of review for granting summary judgment. By contrast, all of the evidence and law confirms the National Trust's standing. As alleged in the National Trust's Complaint and as shown through the pleadings, the discovery to date, the affidavit of Adam MacConnell with exhibits submitted with North Charleston's Motion for Partial Summary Judgment, the affidavit of Daniel C. Forsberg submitted in opposition to North Charleston's Motion for Partial Summary Judgment, and the

grounds recited in the National Trust's Motion for Summary Judgment, North Charleston is not entitled to dismissal under either Rule 12 or Rule 56, SCRCP.⁷

Section 5-3-100 of the South Carolina Code purports to permit a municipality to annex property that "belongs entirely to the municipality seeking its annexation" if such property is "adjacent" to the municipality, and North Charleston has relied solely on this statute to justify the annexation. At the time of this purported annexation, however, the Acre did not "belong entirely to" North Charleston because the National Trust owns fee simple title to a portion of the Acre. See Affidavit of Forsberg submitted in opposition to North Charleston's motions.

Because North Charleston did not own 100% of the property annexed and because the National Trust owns a portion of the property annexed, the National Trust's proprietary and statutory rights grant it standing to challenge North Charleston's annexation. *St. Andrews Public Service District*, 349 S.C. at 604, 564 S.E.2d at 648.

II. THE NATIONAL TRUST'S PUBLIC INTEREST STANDING

Although the Court need not reach this issue if it rules against North Charleston on the issue of proprietary standing, the National Trust has independent standing to challenge North Charleston's annexation of the Acre under South Carolina's public importance exception to constitutional standing requirements.

The South Carolina Supreme Court has often recognized the "public importance" exception to general standing requirements under narrow circumstances present here. See, e.g., *Freemantle v. Preston*, 398 S.C. 186, 193-95, 728 S.E.2d 40, 44 (2012). "[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public

⁷ North Charleston does not specify which section of Rule 12 applies, although 12(b) applies to motions to dismiss for lack of jurisdiction, which is the gist of North Charleston's Motion.

importance as to require its resolution for future guidance.” *Id.* at 193, 669 S.E.2d at 44 (quoting *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). In cases falling within the ambit of important public interest, standing is conferred “without requiring the plaintiff to show he has an interest greater than other potential plaintiffs.” *Davis*, 372 S.C. at 500, 642 S.E.2d at 741–42.

A matter is deemed to be of public importance only where a resolution is needed for future guidance and is inextricably connected to the public need. *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d, 470, 472 (2004). Thus, “[f]or a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.” *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341. Moreover, this nexus between the public importance exception and the need for future guidance from the Court is invariably linked to a need for and entitlement to injunctive relief. *Freemantle*, 398 S.C. at 194, 728 S.E.2d at 44.

Here, the Court may take judicial notice of the fact that the federally designated Ashley River Historic District, which includes both the Acre and the National Trust Parcel, is listed in the National Register, this nation’s inventory of significant historic places. See notes 2 & 3, *supra*. In addition, with more than one million members and supporters nationwide,⁸ the National Trust is a private, charitable, and educational non-profit corporation existing in good standing under the laws of the District of Columbia and authorized to do business in South Carolina. The National Trust’s Congressional charter also requires it to protect and defend America’s historic resources, to further the historic preservation policy of the United States, and to “facilitate public participation in the preservation of our nation’s heritage.” See 54 U.S.C. §

⁸ Compl. of the National Trust and City of Charleston, ¶ 6.

312102. The powers of the National Trust include the power to bring suit in its corporate name. *Id.* § 312105(c). In addition, as described above, the National Trust owns property within the area subject to this lawsuit and within the Ashley River Historic District, including the National Trust Parcel and Drayton Hall, which receives over 50,000 visitors each year. Compl. of the National Trust and City of Charleston, ¶ 6.

Furthermore, during its long history, the National Trust's record of involvement in the South Carolina on issues related to historic preservation advocacy and stewardship on behalf of the nation and its members is extensive. Representative examples of the National Trust's history of engagement to assure protection of the Ashley River Historic District include:

- Since 1974, ownership, stewardship, and management of Drayton Hall, a National Historic Landmark in Charleston, South Carolina;
- In 1979-1981, litigation against the Federal Highway Administration to challenge the widening of Highway 61 near Drayton Hall and Middleton Place, both National Historic Landmarks in the Ashley River Historic District.
- 1978-1990s, creation of an Ashley River Road easement program to encourage property owners within the Historic District to donate preservation easements on their properties;
- In 1995, designation of the Ashley River Historic District in Charleston, South Carolina, on the National Trust's list of America's 11 Most Endangered Historic Places, in response to threats of intensive development;
- In the early 2000s, preservation advocacy related to the annexation fight between the Town of Summerville and North Charleston related to the proposed Watson Hill development in Dorchester County, South Carolina;

- In 2018, designation of the Ashley River Historic District in Charleston, South Carolina on the National Trust’s list of America’s 11 Most Endangered Places and as a National Treasure,⁹ in response to North Charleston’s annexation threat; and
- In 2019, the National Trust will grant a preservation easement on three parcels across the river from Drayton Hall (TMS Nos. 406-00-00-011, 406-00-00-039, 406-00-00-040) to the Lowcountry Land Trust as part of mitigation for a Natural Resources Damage claim.

In light of the National Trust’s mission, property ownership, and long history of engagement specifically in the Ashley River Historic District, this case clearly falls within the ambit of the public interest under the narrow circumstances before the Court. A determination of the issues would be helpful for future guidance in the public realm for instruction on whether it is permissible for one municipality to jump over another’s municipal wall in its zeal for annexation. The public interest is further implicated where, as here, the consequences of annexation will invariably lead to the diminishment of a nationally significant historic area, the Ashley River Historic District. *See, e.g., Freemantle*, 398 S.C. at 193-95, 728 S.E.2d at 44. Finally, the guidance needed from the Court is invariably linked to a need for injunctive relief, as the National Trust’s Complaint makes clear. *Id.*

CONCLUSION

As Justice Kittredge noted in *Ex Parte Wilson*, “A town or municipality may not

⁹ National Treasures is a program of the National Trust designed to protect and preserve thousands of irreplaceable buildings, landscapes, and communities across the United States. As part of this work, the National Trust raises funds, builds coalitions to prevent demolition, advocates in courts to save historic sites and works to develop strategies to make sure that the icons of the past remain with us in the future. *See* <https://savingplaces.org/national-treasures#.XAImIttKhHE> (accessed Dec. 6. 2018).

undertake a “fast track” annexation—such as the one attempted here—without a petition signed by “all persons owning real estate in the area requesting annexation.” 391 S.C. at 572, 707 S.E.2d at 406. This is exactly what happened when North Charleston attempted to fast track its annexation of the Acre even though the National Trust owns a portion of it, did not consent, and suffered harm to its statutory rights. In addition, as an alternative ground, the National Trust has independent standing to sue under South Carolina’s public interest exception.

For these reasons, the Court should deny North Charleston’s Motion to Dismiss for lack of standing.

Respectfully submitted,

By: 

G. Trenholm Walker (S.C. Bar #5777)
WALKER, GRESSETTE, FREEMAN,
& LINTON, LLC
P.O. Box 22167
Charleston, SC 29413
Tel: 843-727-2200
Email: walker@wgflaw.com

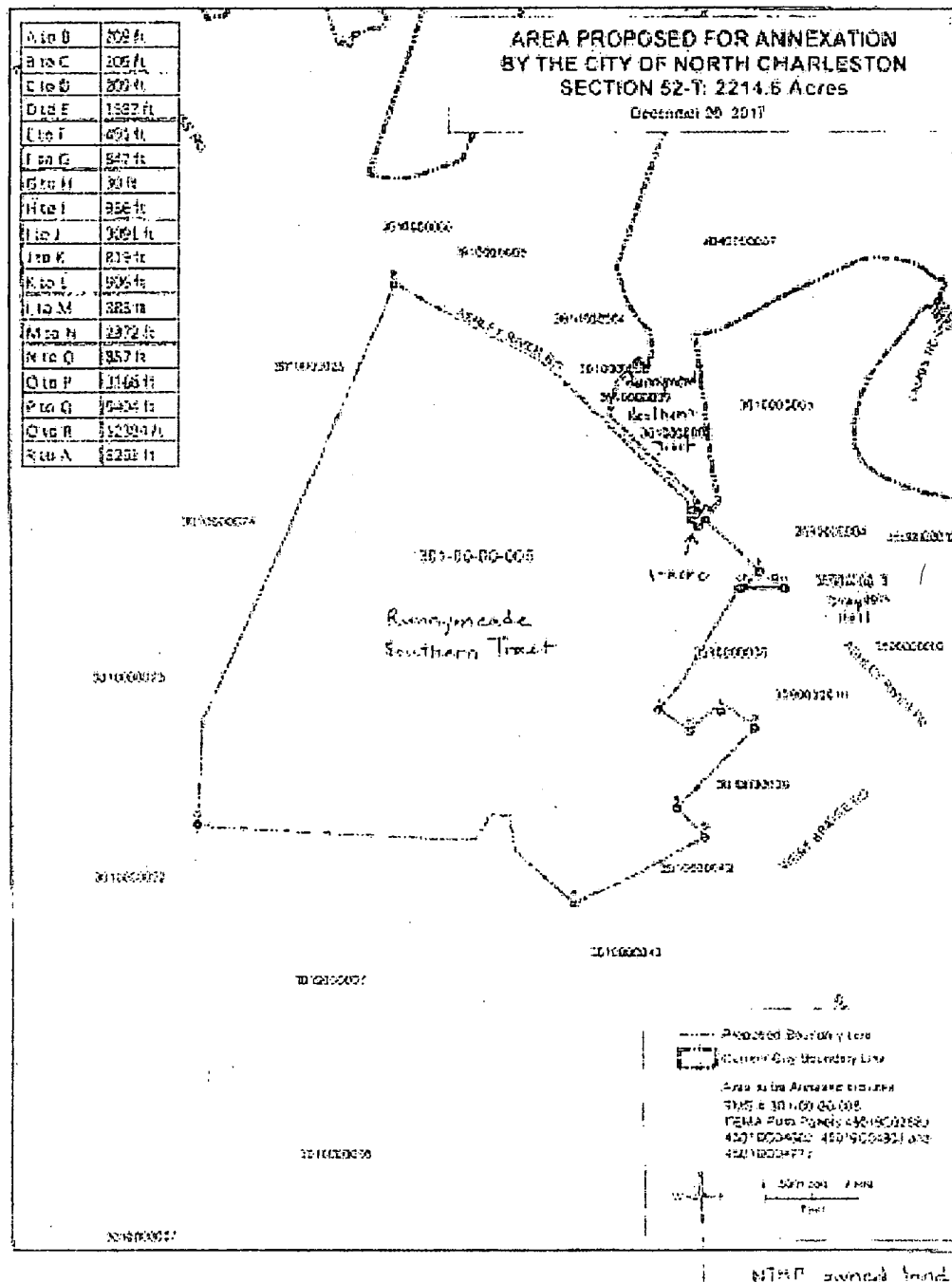
William J. Cook (S.C. Bar #12183)
National Trust for Historic Preservation
2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037
Tel: 843-801-3366
Email: wcook@savingplaces.org

Amy H. Wooten (SC Bar #100128)
BROWN LAW, LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601
Tel: 919-719-0854
Email: amy@brownlawllp.com

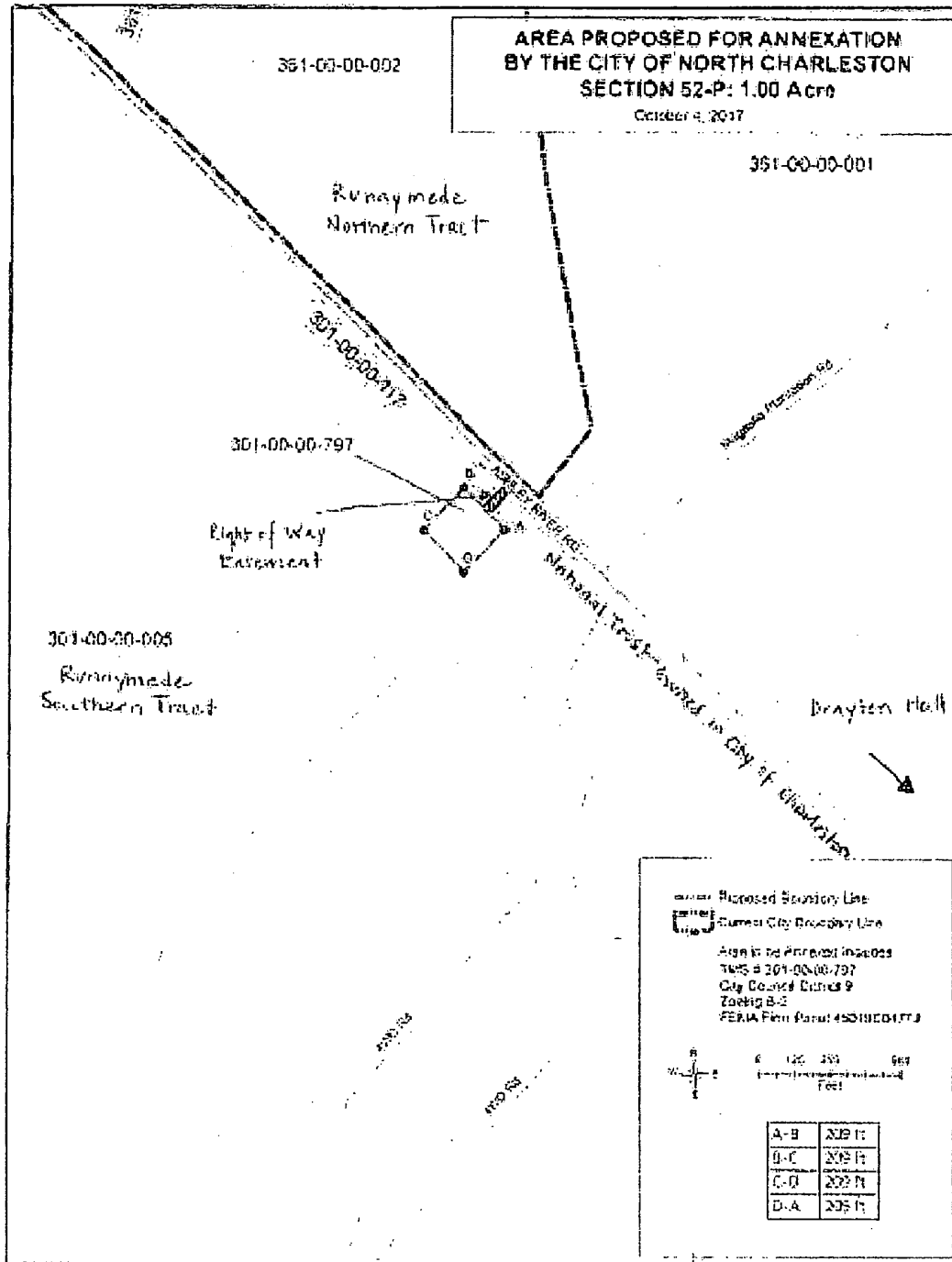
**ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES**

[Explanatory maps on next two pages]

ANNEXATION AREA OVERVIEW



ANNEXATION AREA DETAIL



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0851
NATIONAL TRUST FOR HISTORIC	)	
PRESERVATION IN THE UNITED STATES	)	
AND THE CITY OF CHARLESTON,	)	
	)	
PLAINTIFFS,	)	<u>PLAINTIFFS' CONSOLIDATED</u>
	)	<u>MEMORANDUM ON</u>
v.	)	<u>SUMMARY JUDGMENT MOTIONS</u>
	)	(Contiguity/Adjacency)
	)	
CITY OF NORTH CHARLESTON,	)	
	)	
DEFENDANT.	)	

2018 DEC 10 PM 3:42
CLERK OF COURT

INTRODUCTION

In this annexation dispute, Plaintiffs National Trust for Historic Preservation in the United States and the City of Charleston (collectively, “Plaintiffs”) challenge the validity of Ordinance No. 2017-080 (the “Contested Ordinance”), adopted by the City Council of North Charleston on December 21, 2017. (**Plts.’ Record (“R.”) pp. 130-32**).¹ The Contested Ordinance purports to annex a one (1) acre parcel (the “Acre”), designated as TMS No. 301-00-00-797, into the municipal limits of Defendant City of North Charleston (“Defendant” or “North Charleston”). (**R. p. 130-32**).

On October 9, 2018, North Charleston moved for partial summary judgment on the issue of whether the property annexed by the Contested Ordinance was adjacent to North Charleston’s municipal limits. In its motion, North Charleston raises the novel argument that (1) contiguity is

¹ This memorandum is supported by the Plaintiffs’ complaint; Defendant’s Answer; the Affidavit of Daniel C. Forsberg and exhibits thereto; Plaintiffs’ Complaint in Case No. 2018-CP-10-0848; Defendant’s Answer in Case No. 2018-CP-10-0848; and the affidavit of Adam McConnell, with the attachments thereto. These supporting documents are collectively attached hereto and consecutively numbered from PLTS’ RECORD P. 1 to PLTS’ RECORD P. 171 for ease of reference.

not required between the Acre and the municipal limits of North Charleston; and (2) the Acre is adjacent, as a matter of law, to the municipal limits of North Charleston because the Acre is in “close proximity” or “near” such municipal limits, even though the intervening property (described below as the “National Trust Property”) has been in the municipal limits of Plaintiff City of Charleston (“Charleston”) since 2005. (R. p. 5, ¶ 23; p. 17, ¶ 23).

Plaintiffs filed a cross-motion for summary judgment, arguing, as a matter of law, that (1) the Acre was required to be contiguous to North Charleston; (2) the Acre was not contiguous to North Charleston; and (3) the Acre was not adjacent to North Charleston.

Plaintiffs respectfully submit this Memorandum of Law in opposition to Defendant’s motion and in support of Plaintiffs’ cross-motion. As more fully set out hereafter, regardless of how the terms “contiguous” or “adjacent” may be defined, both contiguity and adjacency are destroyed when, as in this case, one municipality attempts to “leap frog” over the municipal limits of another. In this respect, the Court need not reach the precise definition of “contiguous” or “adjacent.”

Nevertheless, it is well settled in South Carolina that, even in the absence of statutory language requiring “contiguity,” all municipal annexations require contiguity. Section 5-3-305 of the South Carolina Code, codifying the definition of “contiguous” for purposes of a municipal annexation, does not change this common law requirement.

In any event, the Contested Ordinance does not comply with the statutory definition of “contiguous” in section 5-3-305 or the common law definitions of “contiguous” and “adjacent,” which both mean “touching.” In fact, in case after case, South Carolina appellate courts have recognized that the *only* time physical touching is *not* required to establish contiguity under section 5-3-305 or “adjacency” under the common law is when contiguity would be defeated by

enumerated natural or artificial barriers such as marshes, roads, or streams. And, even then, contiguity and adjacency would be “destroyed” if the intervening marsh, road, or stream had been previously annexed by another municipality. North Charleston points to nothing in the case law or statutes showing any intention by the General Assembly or appellate courts to abrogate the common law principles or authorize “leap frog” annexations.

Consequently, North Charleston’s motion for summary judgment should be denied, and Plaintiffs’ cross-motion should be granted.

FACTS

The properties in question descend from a common grantor and were once part of the same large timber tract, consisting of approximately 12,293 acres along the western side of Highway 61, also known as Ashley River Road. (R. pp. 31-35). On January 2, 1980, this common grantor conveyed to The Nature Conservancy (the “Conservancy”) a 26.53-acre parcel of land, abutting against the southern right-of-way of Ashley River Road, said parcel being described as follows:

[T]hat certain tract or parcel of land, in fee, situate, lying and being along the southern right of way line of Highway 61, County of Charleston, State of South Carolina, containing Twenty Six and Fifty Three Hundredths (26.53) acres, more or less, and more particularly described as follows:

Those certain strips or parcels of land, **being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length**, composed of three strips of land, and being along the northern boundary line of all of the property owned by Grantor along the southern right-of-way line of Highway 61 TMS No. 301-00-00-017

(R. pp. 136-39).

Shortly afterwards, on January 28, 1980, the Conservancy conveyed this 26.53-acre parcel (the “National Trust Property”) to Plaintiff National Trust for Historic Preservation in the United States (the “National Trust”), by Deed O121/209, using identical language to describe such property. **(R. pp. 133-35)**. In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston, including the National Trust Property and the right-of-way for Highway 61 as it abuts the National Trust Property. **(R. p. 5, ¶ 23; p. 17, ¶ 23; p. 75, ¶ 21; p. 93, ¶ 21)**.

In the meantime, in 1989, Whitfield Construction Company (“Whitfield”) acquired approximately 2,294.17 acres of real property, abutting to the southwest of the National Trust Property, as shown on Plat BP/129. **(R. p. 46; pp. 48-52; pp. 74-74, ¶¶ 18-20; p. 93, ¶¶ 18-20)**. In 2017, Whitfield purportedly subdivided the Acre from its remaining property via Plat S17/0224. **(R. p. 28, ¶ 6; p. 60; p. 75, ¶ 23; p. 94, ¶ 23)**. The stated width of the National Trust’s property, as shown on Plat S17/0224, is 99.69 feet on the north side and 99.7 feet on the south side. **(R. p. 28, ¶ 6; p. 60; p. 75, ¶ 23; p. 94, ¶ 23)**. As a result, approximately 62 square feet of the National Trust Property appears to have been included in the Acre. **(R. pp. 28-29, ¶¶ 6, 8)**. “An annexation of the [National Trust] land would necessarily mean that City of Charleston property was annexed.” **(North Charleston Mem. in Supp. of MTD, p. 3, n. 4)**.

Whitfield conveyed the Acre, by reference to Plat S17/0224, to Tim Whitfield Construction and Development LLC (“TWC”) by Deed 0667/666. **(R. pp. 62-65)**. TWC then conveyed the Acre, as shown on Plat S17/0224, to North Charleston by Deed 0673/023. **(R. pp. 67-70, pp. 144-47)**. On December 21, 2017, North Charleston adopted the Contested Ordinance, which describes the Acre utilizing the same measurements as Plat S17/0224. **(R. p. 113, ¶ 2; pp. 130-32)**. North Charleston purported to annex the Acre utilizing section 5-3-100 of the South Carolina Code,

which permits a municipality to annex property “[i]f the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto” (**R. pp. 130-32**).

It is undisputed that, on December 21, 2017, the Acre was separated from the corporate limits of North Charleston by the right-of-way for Ashley River Road and the remainder of National Trust Property, both of which have been in the municipal limits of Charleston since 2005. (**R. p. 132**). It is also undisputed that, on December 21, 2017, no part of the Acre touched the corporate limits of North Charleston. (**R. p. 132**). The present motions are directed to whether North Charleston could validly annex the Acre under these circumstances.

STANDARD OF REVIEW

“Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016).

DISCUSSION

I. North Charleston’s interpretation of section 5-3-100 of the South Carolina Code impermissibly abrogates the common law requirement of contiguity, which applies even in the absence of statutory language to that effect.

North Charleston purported to annex the Acre utilizing section 5-3-100 of the South Carolina Code, which provides, in relevant part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality . . . Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

(Emphasis added). This statute has been largely unchanged since its adoption in 1955.² The General Assembly has never attempted to statutorily define the term “adjacent” in section 5-3-100 or any other annexation statute.

North Charleston maintains that this statute, applicable only when the annexed territory belongs entirely to the annexing municipality, requires only “adjacency,” and, thus, the Acre may be annexed because it is “near” on “in close proximity to” North Charleston’s municipal borders. This argument ignores the common law requirement for contiguity with respect to all municipal annexations.

In fact, shortly after the enactment of the original version of section 5-3-100 in 1955, the Supreme Court of South Carolina, in Tovey v. City of Charleston, 237 S.C. 475, 483, 117 S.E.2d 872, 876 (1961), held that contiguity would be required for a municipal annexation even if the statute under which the annexation was accomplished did *not* so provide:

The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to ‘adjacent territory’ necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect Such is ordinarily essential to make the city a collective body having unity and compactness.

² As originally enacted in 1955, this section provided, in pertinent part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, such territory may be annexed by resolution of the governing body of the municipality Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation shall be complete, *and the election provided for in §§ 47-14 to 47-17 shall not be required.*

See 1955 (49) 1970; S.C. Code Ann. § 47-18.1 (1962) (emphasis added). The underlined language was changed to “is” and the italicized language was deleted between 1955 and the present.

(Emphasis added; internal citations omitted).

In Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996), the Supreme Court of South Carolina reaffirmed the common law requirement of contiguity, extending it to incorporations, as well as annexations:

Contrary to appellant's assertion, territory sought to be incorporated must be contiguous. McQuill[i]n, Municipal Corporations, § 3.15(f). See also 1983 Op. Att'y Gen. 83-63 (contiguity requirement applies to incorporations as well as annexations). Further, we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). We find the circuit court correctly held contiguity is required for incorporation.

(Double emphasis added); see also St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605-06, 564 S.E.2d 647, 649 (2002) ("We reiterate that the sole requirement for annexation is contiguity.").

II. Section 5-3-305 of the South Carolina Code does not abrogate the common law requirement for contiguity, as North Charleston contends.

Since 2000, the test for "contiguity" in South Carolina has been governed by section 5-3-305 of the South Carolina Code; which provides:

For purposes of this chapter, "contiguous" means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

North Charleston's novel interpretation of Section 5-3-100 would require the Court to construe section 5-3-305 of the South Carolina in complete derogation of the common law requirement that contiguity is required for all municipal annexations.

Absent clear legislative intent to the contrary, there is a presumption against such change to the common law by way of statutory construction. "Statutes will not be held in derogation of the common law unless the statute itself shows that such was the object and intention of the lawmakers, and the common law will not be changed by doubtful implication." 16 Jade St., LLC v. R. Design Constr. Co., LLC, 398 S.C. 338, 347, 728 S.E.2d 448, 452-453 (2012), quoting 82 C.J.S. Statutes § 534. As the Supreme Court of South Carolina explained in Nuckolls v. Great Atl. & Pac. Tea Co., 192 S.C. 156, 161, 5 S.E.2d 862, 864 (1939):

Regarding the presumption against change of the common law by a statute, it is stated in 25 R. C. L. 1054, that it is not presumed that the Legislature intended to abrogate or modify a rule of the common law by the enactment of a statute upon the same subject; that it is rather to be presumed that no change in the common law was intended unless the language employed clearly indicates such an intention; that the rules of the common law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.

(Emphasis added).

In the context of changes to annexation statutes, the Supreme Court of South Carolina has explained:

"It is a rule of construction that changes made by a revision of the statutes will not be construed as altering the law, unless it is clear that such was the intention, and, if the revised statute is ambiguous or susceptible of two constructions, reference may be had to prior statutes for the purpose of ascertaining the intent of the Legislature." *Dennis v. Independent School Dist.*, 166 Iowa 744, 148 N.W. 1007, 1009. In the case of a general revision or codification of the laws, "it is well settled that neither an alteration in phraseology, nor an omission or addition of words, necessarily indicate an alteration of the construction of the earlier act. Indeed, the rule favoring the

construction borne by the original statutes or sections is applied, even though in the course of revision or consolidation, the language may have been somewhat changed and the revised or consolidated statutes will be construed as bearing the same meaning as the original statutes or sections, unless the language of the revision or consolidation plainly requires a change of construction to conform to the manifest intent of the legislature. These rules are based upon the fact that the new language may be attributed to a desire to condense and simplify the law, or to improve the phraseology." 50 Am. Jur., Statutes, Section 447.

When the change in phraseology involved in this case is considered in the light of the rule above stated, it certainly does not clearly appear that it was the intention of the legislature to substantially alter the manner in which the corporate limits of a municipality may be extended or restricted. On the contrary, we have a change in phraseology which is ambiguous and the real intent of the legislature can only be gathered by recurring to the original statute.

Forest Acres v. Seigler, 224 S.C. 166, 179-80, 77 S.E.2d 900, 906 (1953).

There is simply no suggestion in the statutory scheme, much less expressed intent, that the General Assembly, in enacting section 5-3-305 of the South Carolina Code, intended to imbue municipalities with new authority to annex in a manner that is inconsistent with the judicial construction of the annexation statutes as requiring "touching." Sight should not be lost of the fact that the General Assembly called out specific types of lands as affecting an area's being contiguous, which coincide with the types of lands the judiciary had theretofore (and since) construed as also affecting an area's being eligible for annexation. In enacting section 5-3-305, the General Assembly simply codified the judicial construction of what areas were subject to annexation. Additionally, if the General Assembly sought to overrule the common law prohibition on "leap frog" annexations, it would have done so much more clearly.

A review of other South Carolina annexation statutes is noteworthy, if not conclusive, on the issue. As to the geographic relationship of the annexed territory to the annexing municipality, some statutes require that the territory be "adjacent." See S.C. Code Ann. § 5-3-100 (permitting

annexation of certain lands owned by annexing municipality); S.C. Code Ann. § 5-3-140 (authorizing annexation of lands belonging entirely to state or federal governments). Others require that the territory be “adjoining.” See S.C. Code Ann. § 5-3-250 (applicable to cemeteries). Still others require that the territory be “contiguous.” See S.C. Code Ann. § 5-3-150(1) (annexation by “75% method”); S.C. Code Ann. § 5-3-150(3) (annexation by “100% method”); S.C. Code Ann. § 5-3-260 (applicable to church property); S.C. Code Ann. § 5-3-300 (annexation by petition and election). Finally, some annexation statutes appear to contain no geographic requirements at all. See S.C. Code Ann. § 5-3-120 (annexation if entire area belongs to a corporation only); S.C. Code Ann. § 5-3-130 (annexation if area proposed to be annexed belongs entirely to a school district).

North Charleston’s interpretation of section 5-3-100 and its omission of the common law requirement for contiguity would permit a municipality to essentially reach across intervening properties and annex properties owned entirely by a school district or owned entirely by a corporation, with no objective standard for what is “adjacent,” e.g., 10 feet, 100 feet, 1000 feet, etc. Such a reading would be absurd and lead to a result that neither the General Assembly nor the Supreme Court of South Carolina ever intended because the only “standard” under North Charleston’s proposed new rule would be the size of the annexing municipality’s appetite. See Florence County v. Moore, 344 S.C. 596, 601, 545 S.E.2d 507, 509 (2001) (“Our goal in construing statutes is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”).

Nothing in Section 5-3-305 evinces any legislative intent, much less clear and unambiguous intent, to set aside the common law requirement for contiguity in municipal annexations.

III. The Contested Ordinance fails the statutory test for establishing “contiguity.”

North Charleston concedes that, as of December 21, 2017, the Acre was separated from North Charleston’s municipal limits by Ashley River Road and the National Trust Property. The Contested Ordinance therefore fails the statutory test for “contiguity” in section 5-3-305 because the Acre lacked a “continuous border” with the municipal limits of North Charleston on December 21, 2017.

In fact, as North Charleston explains in its memorandum in support of its motion to dismiss on Plaintiffs’ purported lack of standing (pp. 1-2):

North Charleston, in late 2017, engaged in annexation activity west of the Ashley River. This began when North Charleston annexed the roughly 113 acre Runneymede Plantation parcel (TMS 361-00-00-002) in October of 2017. That property lies directly across the Ashley River from North Charleston and thus was contiguous.

North Charleston later obtained title to a one-acre parcel (TMS# 301-00-00-797) that lies just over one hundred (100') feet to the Southwest of Runneymede. Runneymede and the one-acre parcel do not share a common boundary. As shown on the map below, they are separated by Ashley River Road and a roughly 100' wide parcel, TMS 301-00-00-017 (hereinafter, the “100' strip.”). The 100' strip is owned by the Trust and previously annexed by Charleston. See Complaint, 2018-CP-10-851, Para 15-17.

(Emphasis added).

Consequently, the Contested Ordinance fails the statutory test for “contiguity,” despite clear case law requiring contiguity in all municipal annexations.

IV. The Contested Ordinance fails the common law test for “contiguity” and “adjacency.” Under the common law of South Carolina, “contiguous” and “adjacent” mean the same thing, and South Carolina case law precludes a finding of common law contiguity or adjacency when intervening property has previously been annexed to another municipality.

“Courts have generally held that contiguous is synonymous with the terms ‘adjacent to’ or ‘adjoining.’” St. Andrews Pub. Serv. Dist. v. City Council, 339 S.C. 320, 324-25, 529 S.E.2d 64,

66 (Ct. App. 2000), rev'd on other grounds by St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002); quoting Erwin S. Barbre, Annotation, What Land is Contiguous or Adjacent to Municipality so as to be Subject to Annexation, 49 A.L.R.3d 589, 599 (1973). As a result, to determine the meaning of "adjacent" in section 5-3-100, one may look to annexation cases interpreting the common law term "contiguous," especially where, as here, the pertinent statute has not been substantively changed since its original enactment in 1955.

In this respect, South Carolina case law outright rejects the notion that common law contiguity, i.e., adjacency, exists in the context of a "leap-frog" annexation, in which one municipality attempts to annex or incorporate territory separated by property within a different municipality. For example, in Glaze v. Grooms, 324 S.C. 249, 253, 478 S.E.2d 841, 844 (1996), the Supreme Court of South Carolina, applying the common law concept of "contiguity" to an attempted municipal incorporation, explained:

We agree with Appellants' basic proposition that contiguity is not destroyed by water or marshlands which separate parcels of highland. See, e.g., Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961); Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). However, the flaw in Appellants' argument is that it essentially disregards the fact that the waters/wetlands it seeks to use to establish contiguity have already been annexed by another municipality.

(Emphasis added). In fact, the Court in Glaze emphasized: "It defies the very concept of contiguity to suggest that one municipality may use an adjacent municipality's annexed territory to establish contiguity." Id. at 254, 478 S.E.2d at 844 (emphasis added); see also Kizer v. Clark, 360 S.C. 86, 91, 600 S.E.2d 529, 532 (2004) ("[In Glaze, we] agreed that marshlands and creeks do not destroy contiguity; however, these marshlands and creeks had previously been annexed by other municipalities and therefore could not be used to establish Town's contiguity.").

More recently, in Sonoco Prods. Co. v. S.C. Dep't of Revenue, 378 S.C. 385, 393, 662 S.E.2d 599, 603 (2008), the Supreme Court of South Carolina parenthetically cited to this passage from Glaze for the proposition that a “town lacked [the] requisite contiguity to incorporate where waters/wetlands it sought to use to establish contiguity had already been annexed by another municipality.”

In Sonoco, the Supreme Court recognized that an intervening public road, owned in fee by Sonoco, could not destroy the contiguity between two developed parcels, also owned by Sonoco, for purposes of a tax law which contained no statutory definition of “contiguity.” Id. at 391, 662 S.E.2d at 602. In looking to the definition of “contiguity” in other cases and statutes, including in the annexation context, the Supreme Court concluded that the road did not destroy contiguity because there were no intervening landowners, explaining: “Thus, as in the annexation case, there is no intervening landowner in this case that would destroy contiguity.” Id. at 396, 662 S.E.2d at 604 (emphasis and double-emphasis added).

Likewise, in St. Andrews Pub. Serv. Dist., 339 S.C. at 325, 529 S.E.2d at 66, the Court of Appeals emphasized that “the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous.” In Sonoco, 378 S.C. at 394, 662 S.E.2d at 603-04, the Supreme Court of South Carolina parenthetically reaffirmed the “general contiguity analysis in municipal annexation cases[s]” articulated by the Court of Appeals in St. Andrews Pub. Serv. Dist., explaining that the opinion of the Court of Appeals had been previously reversed only on the issue of standing.

Consequently, in the present case, there is no need to precisely define the term “adjacent” in section 5-3-100 because, whatever the meaning, adjacency is destroyed, as a matter of law, by

intervening, privately-owned property, especially when, as in the present case, such intervening property has been annexed to another municipality.

V. To the extent the Court finds it necessary to precisely define “adjacent,” as used in section 5-3-100, South Carolina law establishes that adjacent, like the common law term “contiguous,” means “touching.”

As previously discussed, under South Carolina case law, the common law definition of “contiguous,” is synonymous with the terms “adjacent” and “adjoining.” See St. Andrews Pub. Serv. Dist. v. City Council, 339 S.C. 320, 324-25, 529 S.E.2d 64, 66 (Ct. App. 2000), rev’d on other grounds by St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002) (holding that contiguous, adjacent, and adjoining have all been interpreted the same).

“The statutory word ‘contiguous’ must be afforded its ordinary meaning of ‘touching.’” Bryant v. Charleston, 295 S.C. 408, 411, 368 S.E.2d 899, 901 (1988); see St. Andrews Pub. Serv. Dist., 339 S.C. at 325, 529 S.E.2d at 66 (adopting this principle from Bryant); see also Sonoco Prods. Co. v. S.C. Dep’t of Revenue, 378 S.C. 385, 393, 662 S.E.2d 599, 603 (2008) (affirming contiguity analysis in St. Andrews and Bryant).

VI. South Carolina recognizes only one exception to the requirement for “physical touching” in municipal annexations, that being when certain intervening features such as roads, waterways, and marshes, would defeat contiguity. This exception does not apply in the present case.

While touching is generally required for any municipal annexation, South Carolina has recognized once exception not pertinent to the present case. Physical touching will not be required when certain intervening features, such as roads, waterways, and marshes, would destroy contiguity. This principle was first recognized under the common law, but incorporated into the statutory definition of “contiguous” in section 5-3-305.

While requiring contiguity or adjacency between the annexed territory and the municipality, appellate courts in South Carolina acknowledge that certain intervening features,

such as roads, waterways, and marshes, would not defeat contiguity. See Tovey v. Charleston, 237 S.C. 475, 484-85, 117 S.E.2d 872, 876 (1961) (“The plat of the annexed territory introduced in evidence shows area ‘A’ as extending to the eastern bank of the Ashley River. There is, therefore, no intervening space between the annexed areas and the former city boundaries. We do not think the fact that they are separated by a navigable stream breaks the contiguity.”); Bryant v. Charleston, 295 S.C. 408, 411, 368 S.E.2d 899, 901 (1988) (“We further hold that contiguity is not destroyed by water or marshland within either the annexing municipality’s existing boundaries or those of the property to be annexed merely because it separates the parcels of highland involved.”); St. Andrews Pub. Serv. Dist. v. City Council, 339 S.C. 320, 325, 529 S.E.2d 64, 66 (Ct. App. 2000) (“The Supreme Court has rejected an argument that the annexed parcels must have the additional qualifications of unity, substantial physical touching, or a common boundary However, the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous.”); Beaufort County v. Trask, 349 S.C. 522, 527, 563 S.E.2d 660, 662 (Ct. App. 2002) (“We interpret this argument to mean that the requirement of contiguity was not met because of the presence of the waters and marshes of the Beaufort River between the Trask property and the City. We agree with the trial court, however, that the separation between the City and the Trask property by the waters and marshes of the Beaufort River did not destroy contiguity.”).

This interpretation has also been accepted by the Attorney General of South Carolina (the “AG”) on facts almost identical to those in the present case. In 2005, the AG construed the phrase “adjacent to” in section 5-3-100, rejecting the construction of the term to mean “near,” and, instead, opining that it means “touching.” Specifically, the AG addressed “whether[,] if a city purchases a

property which is one property removed from the city limits, [] it [may] be annexed as being 'near.'" See S.C. Atty. Gen. Op. filed January 18, 2005.

The Attorney General answered "no," explaining:

[I]n my opinion, the term "adjacent" as used in Section 5-3-100 should be construed in keeping with the term "contiguous" as set forth by Section 5-3-305 which is defined as "property which is adjacent to a municipality and shares a continuous border." Therefore, as to your situation regarding purchase of property which is one property removed from the city limits, such property may not be annexed as being "near." Regardless of the size of any property in between the property, in my opinion, the property to be annexed must be touching the property of the municipality. Similarly, properties "adjacent" should not be construed as two properties separate and still near. Again, in my opinion, the property to be annexed must be touching the property of the municipality.

Id.

No case in South Carolina has held that contiguity includes an intervening tract of land owned by a private party, as in this case. As discussed supra, such an intervening tract of land destroys contiguity, as a matter of law.

VII. The Court should reject North Charleston's invitation to reinterpret the common law definition of "adjacent" to mean "near" or "in close proximity."

The case of Bd. of County Comm'rs v. City of Cheyenne, 85 P.3d 999 (Wisc. 2004) is instructive on the issue before the Court. There, the City of Cheyenne attempted to annex a parcel of land, known as "Saddle Ridge," that was separated from its borders by approximately one-quarter of a mile. Id. at 1001. The Supreme Court of Wyoming recognized:

As we will explain further, we conclude that, by limiting annexation to lands that are either contiguous or adjacent, the legislature intended to limit annexation to lands sharing a common boundary with the municipality or touching at some point, with the exception of lands that are separated from the municipality only by those natural or artificial 'barriers' listed in Wyo. Stat. Ann. § 15-1-402(b) [providing that contiguity will not be adversely affected by the existence of a platted street or alley, a public or private right-of-way,

a public or private transportation right-of-way, a lake, stream, reservoir or other natural or artificial waterway located between the annexing city or town and the land sought to be annexed]. This conclusion is consistent with what appears to be the majority rule, it is consistent with what this Court said in In re West Laramie, 457 P.2d 498, 501 (Wyo. 1969) (“under our statute the only requirement with respect to the scope and extent of the area to be annexed is that it must be contiguous to the annexing city or town”), it is consistent with the opinion of the Attorney General of the State of Wyoming, and it is consistent with reason and good sense.

Id. at 1006 (emphasis added).

As to the specific argument proffered by the City of Cheyenne that the property need only be “near” its borders to be adjacent, the Court held:

If the City’s interpretation of the statute—that lands need only be “nearby”—is correct, there would be no reason for the exceptions that are spelled out in Wyo. Stat. Ann. § 15-1-402(b). If “nearby” lands that do not touch the municipal boundaries may be annexed, there is no reason specially to permit annexation of lands separated from the municipality by roads, rivers, and the like. In interpreting statutes, we are to read related laws together and we are to give effect to all the words used

We also note that the common dictionary definitions of both “contiguous” and “adjacent” incorporate the concept of there being nothing similar intervening. For example, buildings are neither contiguous with nor adjacent to one another if there is another building between them. Similarly, land is neither contiguous with nor adjacent to a municipality where the land is separated from the municipal boundaries by anything other than a road, river, or the like.

We interpret statutes in their context; that is, with consideration given to other statutes *in pari materia* and in the light of their object, purpose and public policy. . . . We ascribe to statutes a reasonable intent. . . . Application of these principles to Wyoming’s annexation statutes leads us to the conclusion that the pervasive tone or tenor of the statutes is strictly to limit the ability of municipalities to annex territory. The statutes prescribe a carefully delineated annexation process, limited by numerous mandated findings. The most reasonable interpretation of the words “contiguous with or adjacent to” in this context is that the legislature intended to limit annexation to lands touching a municipality’s boundaries. There is no

suggestion in the entire statutory scheme that the legislature intended to vest municipalities with the discretion to determine what land is “adjacent”—meaning “nearby”—on a case-by-case basis. The result of such an interpretation could be “crazy quilt” or “leap frog” annexation that would run counter to the concerns expressed in the statutory mandates.

Id. at 1007 (emphasis and double-emphasis added).

The Supreme Court of Wyoming’s reasoning resonates here. If “adjacency” means something other than touching, there would have been no need for the General Assembly, like the Wyoming legislature, to call out specific types of lands that do not destroy or adversely affect contiguity, as it did in section 5-3-305, providing, in relevant part:

For purposes of this chapter, “contiguous” means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

See Fuller v. S.C. Tax Com., 128 S.C. 14, 22, 121 S.E. 478, 481 (1924) (“[W]here the language incorporated into a statute is identical or substantially identical with that appearing in similar statutes of other States which have received judicial construction and interpretation prior to the adoption of the statute under consideration, in the absence of an expressed intention to the contrary it will be presumed that the subsequently enacted statute was intended to be understood and applied in accordance with the construction given it by the Courts of the states which had first adopted it.”).

The reasoning of the Supreme Court of Wyoming is by no means an outlier. A myriad of other courts interpreting the terms adjacency and contiguity in the context of annexation have come down on the side of adjacency and contiguity being synonymous and requiring some degree of

touching, unless separated by some natural or artificial barrier. See, e.g., Hillman v. Pocatello, 256 P.2d 1072, 1073 (Idaho 1953) (“The words ‘adjacent’ and ‘contiguous’ so used must be construed to have a meaning in their primary and obvious sense, and the territory to be annexed must be adjoining, contiguous, conterminous or abutting.”); Swedlund v. City of Hastings, 501 N.W.2d 302, 305 (Neb. 1993) (“The terms ‘contiguous’ and ‘adjacent’ have been used synonymously and interchangeably by the court.”).

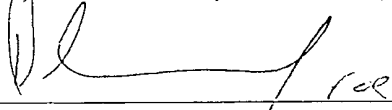
CONCLUSION

The common law requires an annexed area to be contiguous. Section 5-3-305 did not displace the common law. It codified the common law, calling out natural or artificial features such as rights-of-way, marshes and bodies of water that do not affect contiguity. In contradistinction to these well-settled principles, the Contested Ordinance “leaps” over intervening property, including a privately-owned parcel titled to the National Trust, lying within the municipal limits of the City of Charleston. The General Assembly has never shown any intent to authorize such “crazy-quilt” or “leap frog” annexations.

For each of the foregoing reasons, Plaintiffs respectfully request that the Court deny North Charleston’s motion for summary judgment and grant Plaintiffs’ cross-motion, finding, as a matter of law, that the Contested Ordinance was an invalid “leap frog” annexation.

Respectfully Submitted,

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

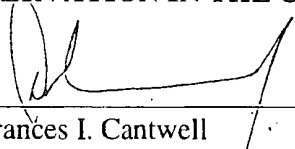
By: 
G. Trenholm Walker (S.C. Bar #5777)
P.O. Box 22167
Charleston, SC 29413
Tel: 843-727-2200

Email: walker@wgflaw.com

William J. Cook (S.C. Bar #12183)
National Trust for Historic Preservation
2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037
Tel: 843-801-3366
Email: wcook@savingplaces.org

Amy H. Wooten (SC Bar #100128)
BROWN LAW, LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601
Tel: 919-719-0854
Email: amy@brownlawllp.com

**ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES**

By: 

Frances I. Cantwell
S.C. Bar No. 01121
Special 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 PLAINTIFF
CITY OF CHARLESTON**

December 9, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
	)	
National Trust for Historic	)	Case No. 2018-CP-10-851
Preservation in the United States	)	
And the City of Charleston,	)	Memorandum of Support of the
	)	City of North Charleston's Motion
Plaintiffs,	)	to Dismiss Due to Lack of Standing
	)	
v	)	
	)	
City of North Charleston	)	(1 Acre Case)
	)	
<u>Defendant.</u>	)	

The Plaintiffs lack standing to challenge the City of North Charleston's annexation.

Supporting Argument

The Plaintiffs National Trust for Historic Places (hereinafter, the "Trust") and City of Charleston (Hereinafter, "Charleston") lack standing to challenge the City of North Charleston's annexation.

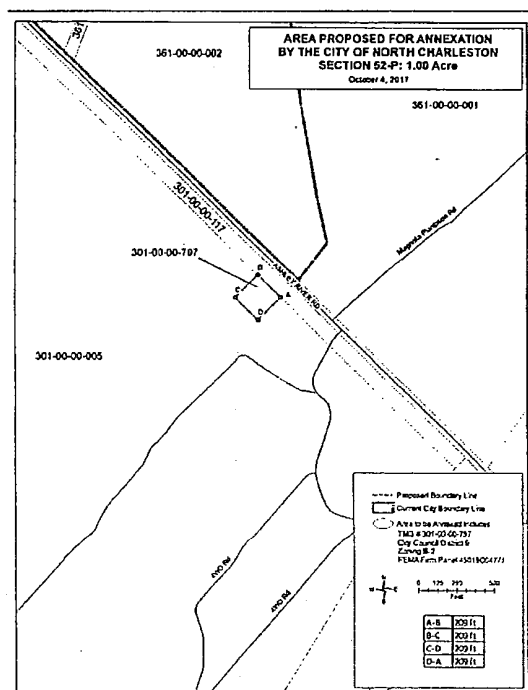
North Charleston, in late 2017, engaged in annexation activity west of the Ashley River. This began when North Charleston annexed the roughly 113 acre Runnymede Plantation parcel (TMS 361-00-00-002) in October of 2017. That property lies directly across the Ashley River from North Charleston and thus was contiguous.

North Charleston later obtained title to a one-acre parcel (TMS# 301-00-00-797) that lies just over one hundred (100') feet to the Southwest of Runnymede. Runnymede and the one-acre parcel do not share a common boundary. As shown on the map below, they are separated by Ashley River Road and a roughly 100' wide¹ parcel, TMS 301-00-00-017 (hereinafter, the "100' strip."). The 100' strip is owned by the Trust and previously

¹ All references to "100'" are intended to be approximate.

annexed by Charleston. See Complaint, 2018-CP-10-851, Para 15-17. In December of 2017 the City of North Charleston annexed the one-acre parcel that North Charleston owns. Id. At Para. 14. The one-acre parcel annexation has drawn challenge by the Trust and Charleston.

The Trust claims standing for this challenge based on its argument that North Charleston annexed part of the 100' strip it owns. The City of Charleston claims standing based on the fact that the City of Charleston previously annexed the Trust's 100' strip. The standing of the Trust and the City of Charleston both fail, however, because as a matter of law there is no way that North Charleston can be said to have annexed the 100' strip controlled by the Trust and Charleston.



Argument

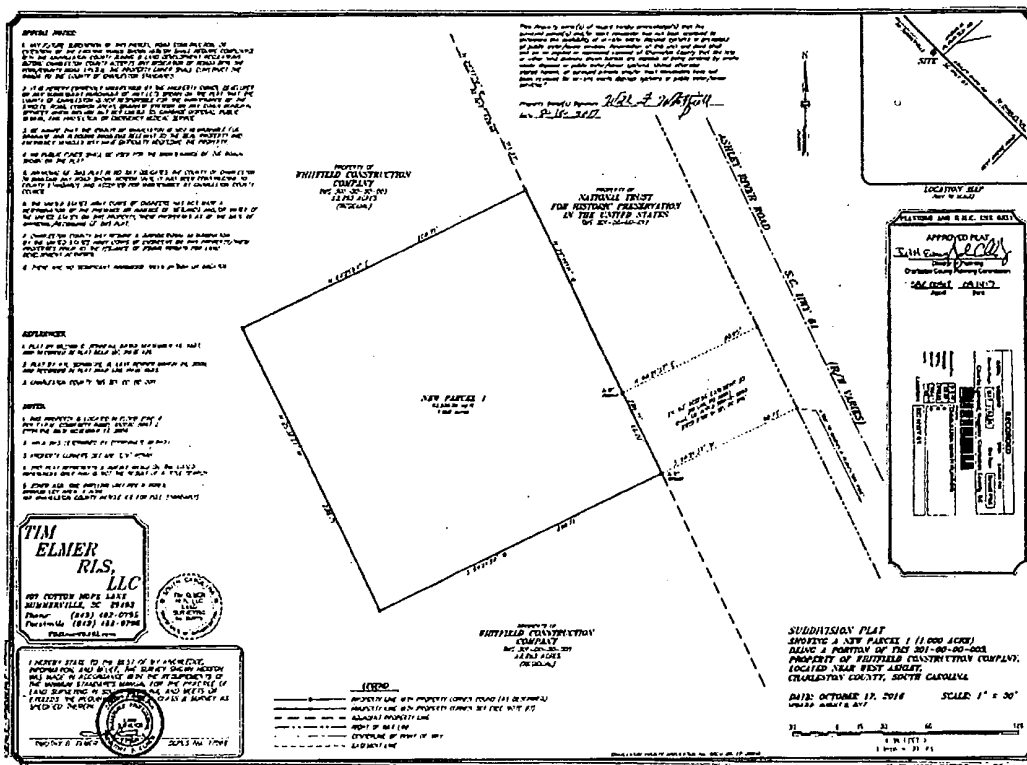
Standing is required in order to pursue an annexation challenge. Vicary v. Town of Awendaw, 417 S.C. 631, 637-38 (SC App. 2016). There are only two groups with standing to challenge a 100% annexation: (1) property owners of annexed land and (2) the Attorney General of South Carolina. Id.² The Trust and Charleston fall into neither category.

The Trust's attempt to claim "property owner" standing is legally insufficient because North Charleston claims to neither have annexed nor own any portion of the Trusts' land.³ (Since Charleston's standing claim is essentially derivative⁴, a lack of Trust standing also amounts to a lack of standing for Charleston.) The Trust, contrary to established South Carolina law, claims that one property line on the one-acre parcel boundary was off by approximately 3/10ths of a foot, thus causing North Charleston to take ownership and annex land actually owned by the Trust and already part of the City of Charleston. See Complaint, Para. 28-30 and 38(b). The plat reproduced below illustrates the argument.

² 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.")

³ The Trusts' claim of "public importance standing" is clearly foreclosed by Vicary.

⁴ An annexation of the Trust land would necessarily mean that City of Charleston property was annexed.



This plat shows the eastern boundary line, shared in common with the Trust, as being 99.7' away from Ashley River Road. The original deed by which the Trust obtained title to the 100' strip described the Trust parcel as extending in 100' from Ashley River Road.

As a matter of law, no error in the legal description or plat for the one-acre parcel could have resulted in the City of North Charleston obtaining any ownership of land belonging to the Trust. A grantor simply cannot bestow upon a grantee more than what the grantor owns to begin with.⁵ Thus, no matter what North Charleston's deed to the 1 acre might say, it cannot give North Charleston title to any of the Trust's land. That is even

⁵ See *F.C. Enterprises, Inc. v. Dibble*, 335, SC 260, 266 (SC App. 1999); *Cummins 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 in the deed); *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); *Hutto v. Ray*, 192 S.C. 364, 6 S.E.2d 747 (1940).

more apparent here given that the City of North Charleston received a Quit Claim, rather than Warranty, deed to the property.⁶ Thus, even if the Trust is correct that its boundary is 100' from Ashley River Road rather than 99.7', the result would not be that North Charleston owns any of the Trust's 100' strip property. As a matter of law, the Trust would retain its full undiminished property and any error could only reduce the amount of land obtained by North Charleston to something less than a perfect acre to 99.999% of an acre. So even if TMS# 301-00-00-797 (the one acre tract) ended up being less than one acre, there is no way it could ever contain any portion of land owned by the Trust. Accordingly, there is no way the Trust can show it owns any portion of the annexed one acre (TMS# 301-00-00-797.)

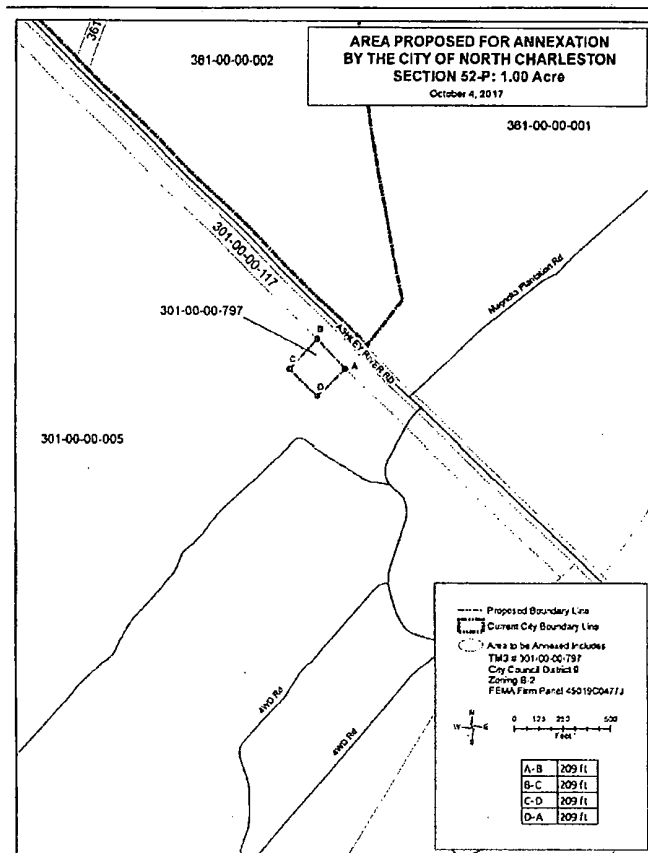
On a similar note, neither Charleston nor the Trust may claim that North Charleston annexed lands already annexed into the City of Charleston.

First, as discussed above, the title conveying the one-acre tract to North Charleston was legally incapable of conveying property owned by the Trust. Thus, it is impossible to argue that any land of the Trust (previously annexed into Charleston) was annexed here. This is confirmed by reference to the annexation petition and ordinance relevant to this case. The City of North Charleston annexed the one-acre parcel by way of Ordinance No. 2017-080. The ordinance specifically said that the area being annexed was TMS 301-00-00-797. That is the parcel number for North Charleston's acre and is totally distinct from parcel No. 301-00-00-017 owned by the Trust. Additionally, the Ordinance specifically noted that North Charleston was annexing "approximately" 1.0 acres, thus specifically

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." *Williston on Contracts*, Section 70:171, 4th Edition.

allowing for the fact that it may not be a “perfect” acre. North Charleston even went so far as 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 within the Annexation Ordinance / Petition shows that even if the 3/10th of a foot error claimed by the Trust did exist, it would not have shifted the annexation boundary over onto land owned by the Trust.



The accompanying legal description was 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 for annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG, Agricultural District.

There are two significant aspects of this legal description. *First*, note that line "A" – "B" is described as the property line that the one-acre parcel shares in common with the Trust's 100' strip. Nowhere did North Charleston Council express a desire take any portion of the 100' strip (TMS 301-00-00-017) owned by the Trust. To the contrary, North Charleston annexation petition specifically said it was annexing property wholly owned by the City. *Second*, since the point of beginning for all measurements is the property line shared in common with the Trust's 100' strip (not Ashley River Road) and the direction of measurement is away from the shared boundary of the 100' strip, any error in the location of Point A on the plat would have the result of reducing either the acreage owned by the City or the acreage retained by the grantor (Whitfield). There is no way to argue that North Charleston took or claims land owned by the Trust or previously annexed by the City of Charleston.

Conclusion

The Complaint filed by the National Trust and the City of Charleston must be dismissed. Neither can satisfy the legal standing requirement necessary to maintain this lawsuit.



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 4th day of December, 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-10-0851
NATIONAL TRUST FOR HISTORIC	)	
PRESERVATION IN THE UNITED STATES	)	
AND THE CITY OF CHARLESTON,	)	
	)	
PLAINTIFFS,	)	<u>Order Denying Defendant North</u>
	)	<u>Charleston's Motion to Dismiss</u>
v.	)	
	)	
CITY OF NORTH CHARLESTON,	)	
	)	
DEFENDANT.	)	

This matter came to be heard before me on December 10, 2018, regarding Defendant City of North Charleston's ("North Charleston") motion to dismiss the complaint filed by Plaintiffs National Trust for Historic Preservation in the United States (the "National Trust") and the City of Charleston ("Charleston") (collectively, "Plaintiffs").

North Charleston contends that Plaintiffs lack standing to challenge the validity of Ordinance No. 2017-080 (the "Ordinance"), adopted by the City Council of North Charleston on December 21, 2017, which purports to annex an approximately one (1) acre tract (the "Acre") designated as Charleston County TMS No. 301-00-00-797 into the City of North Charleston.

This Court has considered the pleadings, affidavits, exhibits, memoranda, and arguments of counsel. Based on the foregoing, the Court denies North Charleston's motion. The National Trust has standing because it owns, or there exists a reasonable inference that it owns, a portion of the property purportedly annexed by the Ordinance. Charleston has standing because the Ordinance seemingly annexed property already lying within the municipal limits of Charleston.

North Charleston urges the Court to find that the City Council of North Charleston ("Council") intended to annex *only* property that North Charleston owned at the time the

Ordinance was adopted. This argument is compelling, but ignores that Council believed, albeit mistakenly, that the entire Acre, i.e. all of TMS No. 301-00-00-797, was owned by North Charleston *at the time Council adopted the Ordinance*. To the extent North Charleston later discovered that the National Trust owned or claimed to own a portion of the Acre, such after-acquired knowledge could not retroactively change the plain language of the Ordinance, the legislative intent of the Ordinance, or what was annexed.

Notwithstanding the allegations and evidence supporting Plaintiffs' statutory standing, this matter also involves issues of sufficient public importance to apply the "public importance" exception to the general standing framework applicable in annexation cases. Here, the Ordinance permits North Charleston to "leap frog" over the municipal limits of Charleston, and the parties concede that such an annexation, based on North Charleston's broad interpretation of section 5-3-100 of the South Carolina Code, has never been addressed by appellate courts in South Carolina. Municipalities clearly need guidance on this issue.

The issue in this case is therefore one of substantial public importance because it is "inextricably connected to the public need for resolution for future guidance." See Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13).

FACTS

In 1967, Georgia-Pacific Investment Corporation ("GPIC") obtained title to approximately 12,293 acres of real property in Charleston County, South Carolina. (R. pp. 31-35).¹ In 1980,

¹ On December 10, 2018, Plaintiffs filed certain pleadings, affidavits, and exhibits with the Court, consecutively paginated and labeled "Plaintiffs' Record." The citations in this Order are to the pages of such Record. Each of the documents within Plaintiffs' Record had been provided to the Court before December 10, 2018.

GPIC conveyed 26.53 acres, more or less, of this property (the “National Trust Property”) to the Nature Conservancy (the “Conservancy”), which the Conservancy immediately conveyed to the National Trust. (R. pp. 133-135; pp. 136-39). The National Trust Property, designated in the deeds as TMS No. 301-00-00-017, lies along the southern right-of-way line of Highway 61, being 100 feet in width and approximately 11,556 feet in length. (R. p. 133, p. 136).

In 1989, GPIC conveyed its remaining property, consisting of 2,294.17 acres shown on Plat BP/129 to Whitfield Construction Company (“Whitfield”). (R. p. 46; pp. 48-52; pp. 74-75, ¶¶ 18-20; p. 93, ¶¶ 18-20). Charleston County assigned TMS No. 301-00-00-005 to the property conveyed by GPIC to Whitfield. (R. p. 51).

In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston’s municipal limits, including the National Trust Property. (R. p. 3, ¶ 16; p. 16, ¶ 16; p. 5, ¶ 23; p. 17, ¶ 23; p. 75, ¶ 21; p. 93, ¶ 21).

In 2009, Whitfield recorded Plats L09/0225 through L09/0229 (the “Easement Plats”), describing 18 purported access easements over the National Trust Property. (R. p. 27, ¶ 4.g; p. 28, ¶ 6; pp. 54-58; p. 75, ¶ 22; pp. 93-94, ¶ 22). The Easements Plats show the width of the National Trust Property as variable, but also contain a disclaimer that the plats are not boundary surveys. (R. p. 27, ¶ 4.g; p. 28, ¶ 6; pp. 54-58); see S.C. Code Regs. 49-430.C(14) (defining “boundary survey”). There is no evidence that Plaintiffs were aware of the Easement Plats at the time.

In 2017, Whitfield recorded Plat S17/0224 in the ROD Office, purportedly subdividing the Acre from the former GPIC property. (R. p. 27, ¶¶ 4.g, 4.h; p. 28, ¶ 6; pp. 54-58; p. 60; p. 75, ¶ 23; p. 94, ¶ 23). The stated width of the National Trust’s property on both Plat L09/0225 and Plat S17/0224 is shown as 99.69 feet on the north side and 99.7 feet on the south side. (R. p. 27, ¶¶ 4.g, 4.h; p. 28, ¶ 6; pp. 54-58; p. 60; p. 75, ¶ 23; p. 94, ¶ 23). As a result, it appears that

approximately 62 square feet of the National Trust Property was included in the Acre. (R. pp. 28-29, ¶¶ 6, 8). The Acre, as shown on Plat S17/0224, was ultimately conveyed to North Charleston. (R. pp. 67-70; pp. 144-47). Charleston County assigned TMS No. 301-00-00-797 to the Acre, utilizing Plat S17/0224. (R. p. 28, ¶ 5). Therefore, the Acre, as described by Plat S17/0224 or by TMS No. 301-00-00-797, includes a small portion of the National Trust Property. (R. p. 29, ¶ 9). On December 21, 2017, North Charleston adopted the Ordinance, purporting to annex the Acre. (R. p. 124, pp. 130-132).

STANDARD OF REVIEW

North Charleston's motion refers to Rule 12, SCRPC, and Rule 56, SCRPC. "Under Rule 12(b)(6), SCRPC, 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.

At the hearing on the present motion, both parties proffered evidence outside the pleadings. On October 9, 2018, North Charleston served the affidavit of Adam McConnell in support of its motion. On December 6, 2018, Plaintiffs provided the Court and all parties, by email, with the affidavit of Daniel C. Forsberg, which was later filed on December 10, 2018. "If on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56" Rule 12(b), SCRPC.

“Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Baird, 333 S.C. at 529, 511 S.E.2d at 74. “In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party.” Id. “In general, if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented.” Id.

Plaintiffs allege the Ordinance attempted to annex the Acre, a portion of which included the National Trust Property that was annexed into Charleston in 2005. (R. p. 2, ¶ 4; pp. 3-4, ¶¶ 7, 12-17; p. 5, ¶ 23; pp. 5-6, ¶ 28; p. 6, ¶ 33; pp. 7-8, ¶¶ 38.a, 38.c). These allegations are dispositive for a Rule 12(b)(6) motion. For the additional reasons set forth *supra*, North Charleston also fails to meet the standard for obtaining summary judgment on the issue of standing.

LAW/ANALYSIS

I. The National Trust has standing to challenge the Ordinance because there is at least a genuine issue of material fact that the National Trust owns a portion of the Acre.

North Charleston annexed the Acre under the auspices of section 5-3-100 of the South Carolina Code, a method of annexation available when the area sought to be annexed “belongs entirely” to the municipality seeking its annexation. There is at least a genuine issue of material fact that the Acre does not belong entirely to North Charleston, but instead includes a portion of the National Trust Property owned in fee simple absolute by the National Trust.

The Supreme Court of South Carolina has repeatedly recognized that a party alleging a violation of its own proprietary interests or statutory rights has standing to challenge a municipal annexation. See St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002) (“In order to challenge a 100% annexation, the challenger must assert an infringement

of its own proprietary interests or statutory rights.”); State v. City of Columbia, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992) (“We find that respondent has standing to contest only the annexation of its own property as referenced in its notice of intention to contest annexation.”).

Here, Plaintiffs produced evidence creating at least a genuine issue of material fact that the National Trust owns a portion of the Acre. For example, Forsberg, Plaintiffs’ expert Professional Engineer and Land Surveyor, submitted an affidavit explaining that “it appears, to a reasonable degree of certainty, based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property.” (R. p. 29, ¶ 9). The title documents attached to Forsberg’s affidavit appear to support his opinion. (R. pp. 26-70).

II. Charleston has standing to challenge the Ordinance because there is at least a genuine issue of material fact that a portion of the Acre was annexed into Charleston in 2005.

For the same reason, there is at least a genuine issue of material fact that Charleston has standing to challenge the Ordinance because a portion of the area purportedly annexed has been in Charleston since 2005.

Since 2005, when Charleston annexed the National Trust Property, Charleston has had statutory rights, codified in sections 5-3-40, 5-3-280, and 5-3-285 of the South Carolina Code, to object to any attempt to adjust or detach a portion of its incorporated territory. In Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953), the Supreme Court applied the forerunner to section 5-3-280 to void an attempt by the Town of Forest Lakes to annex property already within the Town of Forest Acres for failure to adhere to the detachment statute, recognizing the substantial right of the Town of Forest Acres in the area to be annexed. 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.”); cf. 2 McQuillin, The Law of Municipal Corporations § 7.8 (3d ed. Rev. 2006) (“It is firmly established that there cannot be, at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges.”).

Additional statutory rights and proprietary interests of dominion and control of property within its boundaries are accorded to Charleston over lands within its municipal borders by way of section 5-7-30 of the South Carolina Code, which gives Charleston: (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” Title 6 of the South Carolina Code imbues Charleston with further powers over lands within its borders, to include the right to zone and implement fees.

Having statutory and proprietary rights in and to the properties within its borders, Charleston has standing to protect those rights from infringement by others, including other municipalities like North Charleston.

III. There is at least a genuine issue of material fact that North Charleston's City Council intended to annex the Acre, as shown on Plat S17/0224 and designated as Charleston County TMS No. 301-00-00-797.

North Charleston contends that, regardless of Forsberg's affidavit or the exhibits attached thereto, its City Council intended only to annex property owned by North Charleston, based on the plain language of the Ordinance.

"The primary consideration in legislative construction is to ascertain the intent of the legislative body enacting the legislation." Fairfield Ocean Ridge, Inc. v. Edisto Beach, 294 S.C. 475, 481, 366 S.E.2d 15, 19 (Ct. App. 1988). "When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used." Id. "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." Durant v. Bennett, 54 F.2d 634, 639 (D.S.C. 1931); 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); see also 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.").

Here, the evidence establishes that the City Council of North Charleston believed it owned the entirety of the Acre, including the portion owned by the National Trust, at the time it enacted the Ordinance. For instance, the Ordinance itself describes the annexed area as including "one acre identified as parcel designated TMS #301-00-00-797." (**R. p. 131**). Likewise, the legal description for the Acre includes points described as A-B-C-D-A on the attached map, and each of these points is described with reference to the "property line of parcel designated TMS #301-00-00-797." (**R.**

p. 131). The map attached to the Ordinance likewise shows the property being annexed as “301-00-00-797.” (R. p. 132).

Finally, according to the allegations in North Charleston’s answer and counterclaims in the present action, North Charleston continues to assert ownership of the entire parcel: “North Charleston admits only that the Plaintiffs seek to challenge North Charleston’s annexation of TMS 301-00-00-797 . . . , but . . . denies that North Charleston owns less than the entirety of the land described generally as ‘the Acre’” (R. pp. 14-15, ¶ 4); see also (R. p. 15, ¶ 5) (denying that the National Trust owns any portion of the Acre); (R. pp. 16-17, ¶ 17) (“North Charleston denies that the legal boundary width of The Shoestring is a perfect 100’ in all locations along its length or in those areas adjacent to the Acre.”); (R. p. 19, ¶ 31) (“North Charleston denies any suggestion that it is not the sole owner of the Acre”); (R. p. 22, ¶ 57) (describing property owned by North Charleston by reference to deed and Plat S17/0224); (R. p. 23, ¶ 61) (“Plaintiffs . . . make unconscionable claims and pretensions against North Charleston’s title, claiming that boundaries to North Charleston’s property were other than those established by survey or deed and encroaches onto National Trust’s property.”).

IV. While the Plaintiffs have established statutory and proprietary standing, North Charleston’s annexation of the Acre under section 5-3-100 of the South Carolina Code also triggers issues of substantial public interest, requiring adjudication for future guidance.

The issues posed by this annexation contest are novel and unique. North Charleston, under the auspices of section 5-3-100, attempted to annex the Acre, which it admits does not touch its borders and which it admits is separated from its borders by lands in Charleston. Section 5-3-100 is a method of annexation available to municipalities and counties when the land that is subject to the annexation “belongs entirely” to the municipality or county and is “adjacent” thereto.

North Charleston contends the Acre qualifies for annexation because it is adjacent, or near, its municipal borders, such that the Acre need not be contiguous, or share a common border, with North Charleston. Plaintiffs counter that, for purposes of annexation, “adjacent” is synonymous with the common law meaning of “contiguous,” and each requires some degree of touching. The Court has been unable to find any case interpreting section 5-3-100 or any State precedent authorizing one municipality to “leap frog” another municipality’s boundaries, absent affirmative legislative authority. In the absence of an adjudication of these issues, municipality’s will be given no guidance as to when section 5-3-100 applies. It is also easy to see how a municipal “turf war” could ensue if the term “adjacent” is left undefined.

The Court is acutely aware of State precedent regarding annexation contests and the public importance exception to allow standing. The Court is also aware, however, that the public importance exception has been relaxed under discreet, limited circumstances when future guidance is paramount. The Court finds that the facts of this case qualify as such a circumstance.

The case of Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13), filed on December 19, 2018, is instructive, if not directly on point. In Vicary, the Court applied the test for relaxing traditional standing rules to annexation cases: “For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.” See ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

While the “nefarious conduct” alleged against the Town of Awendaw in Vicary is not at all present here, this case, like Vicary, involves novel issues, inextricably connected to the public need for court resolution for future guidance. These issues will also escape judicial review, absent standing being conferred under the “public importance” exception to the general standing

framework, and the factual scenario posed by this case is subject to being repeated in other locales across the State. Therefore, it appears imperative, of significant public importance, and in furtherance of maintaining sound public policy, that standing be accorded to challenge this annexation. See ATC, 380 S.C. at 199, 669 S.E.2d at 341 (“The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.”).

Here, the public importance of orderly and predictable municipal growth, in the context of this case, is directly tied to the need by the public for reliable ground rules and requires court resolution for future guidance to the municipalities in this suit, as well to other across the State.

NOW, THEREFORE, in light of the foregoing, it is

ORDERED that the motion before the Court be, and hereby is, dismissed,
and it is SO ORDERED.

_____, 2019
_____, South Carolina

Eugene C. Griffith, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2018-CP-10-0851
NATIONAL TRUST FOR HISTORIC	)	
PRESERVATION IN THE UNITED STATES	)	
AND THE CITY OF CHARLESTON,	)	
	)	
PLAINTIFFS,	)	<u>Order Denying Defendant's Motion</u>
	)	<u>for Summary Judgment and Granting</u>
v.	)	<u>Plaintiffs' Cross-Motion for Summary</u>
	)	<u>Judgment on Adjacency</u>
CITY OF NORTH CHARLESTON,	)	
	)	
DEFENDANT.	)	

In this annexation dispute, Plaintiffs National Trust for Historic Preservation in the United States (the "National Trust") and the City of Charleston ("Charleston") (collectively, "Plaintiffs") challenge the validity of Ordinance No. 2017-080 (the "Ordinance"), adopted by the City Council of North Charleston on December 21, 2017, which purports to annex an approximately one (1) acre tract (the "Acre") designated as Charleston County TMS No. 301-00-00-797 into the City of North Charleston ("North Charleston").

The parties filed cross-motions for summary judgment on the issue of whether North Charleston could legally annex property which, at the time of the annexation, was separated from its existing municipal limits by other property owned in fee simple by the National Trust and lying within Charleston's corporate boundaries. North Charleston contends that section 5-3-100 of the South Carolina Code authorized it to adopt the Ordinance because, at the time, the Acre was "near" or "in close proximity to" North Charleston's existing municipal limits, notwithstanding the intervening property.

Plaintiffs contend that North Charleston's annexation failed as a matter of law because the Acre did not meet the common law requirement that it be contiguous or the statutory requirement

that it be adjacent to North Charleston's municipal limits at the time of the purported annexation. Plaintiffs also assert that, as a matter of law, property may not be adjacent to an annexing municipality if such property is separated by land within a separate municipality.

This Court has considered the pleadings, affidavits, exhibits, memoranda, and arguments of counsel. Based on the foregoing, the Court denies North Charleston's motion, and grants Plaintiffs' cross-motion for summary judgment. The Court does not interpret section 5-3-100 to authorize so-called "leap frog" annexations. As a result, North Charleston could not legally annex property separated from the existing municipal limits of North Charleston by property owned in fee simple by the National Trust and previously annexed into Charleston.

FACTS

In 1980, the National Trust acquired fee simple title to 26.53 acres, more or less, of real property, lying on the southern right-of-way line of Highway 61, being 100 feet in width and approximately 11,556 feet in length (the "National Trust Property"). (**R. pp. 133-135**).¹ Charleston County assigned TMS No. 301-00-00-017 to this property. (**R. p. 133**).

In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston's municipal limits, including the National Trust Property. (**R. p. 5, ¶ 23; p. 17, ¶ 23; p. 75, ¶ 21; p. 93, ¶ 21**).

In 2017, Whitfield Construction Company ("Whitfield") recorded Plat S17/0224 in the RMC Office (now the Register of Deeds Office or "ROD") for Charleston County, South Carolina, subdividing the Acre, designated as Charleston County TMS No. 301-00-00-797, from a larger

¹ On December 10, 2018, Plaintiffs filed certain pleadings, affidavits, and exhibits with the Court, consecutively paginated and labeled "Plaintiffs' Record." The citations in this Order are to the pages of such Record. Each of the documents within Plaintiffs' Record had been provided to the Court before December 10, 2018.

tract of more than 2200 acres. (R. p. 28, ¶ 5; p. 60).² Subsequently, Whitfield conveyed the Acre to a third party, who then conveyed the Acre to North Charleston. (R. pp. 62-65, pp. 67-70).

On December 21, 2017, the City Council of North Charleston enacted the Ordinance, purporting to annex the Acre under section 5-3-100 of the South Carolina, permitting a municipality to annex territory that “belongs entirely” to it if the territory is “adjacent” to such municipality. (R. pp. 130-132). At the time, North Charleston believed the Acre belonged entirely to North Charleston. (R. pp. 130-132); see also (R. p. 22, ¶ 57) (claiming ownership to entirety of the Acre). It appears undisputed that the Acre is separated from the municipal limits of North Charleston by (1) the right-of-way for Highway 61; and (2) the National Trust Property, or whatever portion thereof that is not part of the Acre. (R. p. 4, ¶ 22; R. p. 17, ¶ 22). North Charleston concedes that the National Trust Property has been located within the municipal limits of Charleston since 2005. (R. p. 5, ¶ 23, ¶ 25; p. 16, ¶ 15; p. 17, ¶ 23; pp. 17-18, ¶ 25). It is also undisputed that no part of the Acre touches the corporate limits of North Charleston. (R. p. 132).

On March 20, 2018, Plaintiffs filed their complaint, challenging the Ordinance on various grounds, including lack of contiguity, lack of adjacency, and violation of this State’s public policy against “leap frog” annexations. (R. pp. 7-8, ¶ 38).

STANDARD OF REVIEW

“Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

² Plaintiffs claim that the Acre includes a small portion of the National Trust Property, and this claim is supported by the affidavit of Daniel C. Forsberg, a Professional Engineer and Licensed Surveyor, who explained that “the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property.” (R. p. 29, ¶ 8). The Court addressed this issue in a separate Order denying North Charleston’s motion to dismiss.

of law.” Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016).

The present motions turn on the interpretation of a statute, which may be determined by the Court as a matter of law. See Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13) (“[T]he interpretation of a statute is a question of law.”); 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.”).

LAW/ANALYSIS

I. The common law of South Carolina requires contiguity, even in the absence of statutory language to that effect.

North Charleston purported to annex the Acre utilizing section 5-3-100 of the South Carolina Code, which provides, in relevant part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality . . . Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

This statute was originally enacted in 1955, and there have been no substantive changes to it since that time. See 1955 (49) 1970; S.C. Code Ann. § 47-18.1 (1962). The General Assembly has never attempted to statutorily define the term “adjacent” in this statute.

North Charleston concedes that neither statutory contiguity (defined in section 5-3-205 of the South Carolina Code) nor common law contiguity exist in this case. Instead, North Charleston contends that this statute, applicable only when the annexed territory belongs entirely to the annexing municipality, requires only “adjacency,” which North Charleston distinguishes from “contiguity.” According to North Charleston, the Acre is “adjacent” to its municipal boundaries

because it is “near” or “in close proximity” to such borders. To accept this argument would require that the Court disregard the common law of this State pertaining to municipal annexations, which requires contiguity, or touching, between the annexing municipality and the annexed property, except in limited circumstances not at issue in the present case. For reasons hereafter set forth, the Court declines to construe the statute as urged by North Charleston.

Shortly after the enactment of the original version of section 5-3-100 in 1955, the Supreme Court of South Carolina, in Tovey v. City of Charleston, 237 S.C. 475, 483, 117 S.E.2d 872, 876 (1961), held that contiguity is required for a municipal annexation, even in the absence of a statutory requirement:

The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to ‘adjacent territory’ necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect Such is ordinarily essential to make the city a collective body having unity and compactness.

(Internal citations omitted).

In Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996), the Supreme Court reaffirmed the common law requirement of contiguity, extending it to incorporations, as well as annexations:

Contrary to appellant’s assertion, territory sought to be incorporated must be contiguous. McQuill[i]n, Municipal Corporations, § 3.15(f). See also 1983 Op. Att’y Gen. 83-63 (contiguity requirement applies to incorporations as well as annexations). Further, we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). We find the circuit court correctly held contiguity is required for incorporation.

See also St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605-06, 564 S.E.2d 647, 649 (2002) (“We reiterate that the sole requirement for annexation is contiguity.”).

II. North Charleston’s attempt to annex the Acre did not meet the common law requirement for contiguity, which is synonymous with adjacency.

Having determined that contiguity is required even in the absence of a statutory requirement to that effect, the issue turns to whether the Acre meets the common law requirement for contiguity, which is the same as “adjacency.”

“Courts have generally held that contiguous is synonymous with the terms ‘adjacent to’ or ‘adjoining.’” St. Andrews Pub. Serv. Dist. v. City Council, 339 S.C. 320, 324, 529 S.E.2d 64, 66 (Ct. App. 2000), rev’d on other grounds by St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002); see also Erwin S. Barbre, Annotation, What Land is Contiguous or Adjacent to Municipality so as to be Subject to Annexation, 49 A.L.R.3d 589, 599 (1973). “Our Supreme Court explained, ‘The statutory word “contiguous” must be afforded its ordinary meaning of “touching.”’” Id. at 325, 529 S.E.2d at 66, quoting Bryant v. City of Charleston, 295 S.C. 408, 410, 368 S.E.2d 899, 901 (1988).

Under the common law, an exception to physical touching between the annexing municipality and the annexed area has been condoned only when separated by certain features or types of land, such as roads, waterways and marshes: “To achieve contiguity, actual physical touching of the properties is not required.” St. Andrews Pub. Serv. Dist., 339 S.C. at 324, 529 S.E.2d at 66. “The Supreme Court has rejected an argument that the annexed parcels must have the additional qualifications of unity, substantial physical touching, or a common boundary.” Id. “However, the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous.” Id. (emphasis added).

Other South Carolina case law interpreting the common law meaning of “contiguous” emphasizes this principle. See Tovey v. Charleston, 237 S.C. 475, 484-85, 117 S.E.2d 872, 876 (1961) (“The plat of the annexed territory introduced in evidence shows area ‘A’ as extending to the eastern bank of the Ashley River. There is, therefore, no intervening space between the annexed areas and the former city boundaries. We do not think the fact that they are separated by a navigable stream breaks the contiguity.”); Bryant, 295 S.C. at 411, 368 S.E.2d at 901 (“We further hold that contiguity is not destroyed by water or marshland within either the annexing municipality’s existing boundaries or those of the property to be annexed merely because it separates the parcels of highland involved.”); Beaufort County v. Trask, 349 S.C. 522, 527, 563 S.E.2d 660, 662 (Ct. App. 2002) (“We interpret this argument to mean that the requirement of contiguity was not met because of the presence of the waters and marshes of the Beaufort River between the Trask property and the City. We agree with the trial court, however, that the separation between the City and the Trask property by the waters and marshes of the Beaufort River did not destroy contiguity.”).

Here, there is no dispute about the geographical relationship between the corporate limits of North Charleston and the Acre. All parties acknowledge the Acre does not touch or share a common border with North Charleston. All parties acknowledge the Acre is separated from North Charleston by land in Charleston, that being Highway 61 and the privately owned National Trust Property. Thus, under either case precedent or section 5-3-305, the Acre is not contiguous to North Charleston, rendering the Ordinance void. See Glaze v. Grooms, 324 S. C. 249, 254, 478 S.E.2d 841, 844 (1996) (“It defies the very concept of contiguity to suggest that one municipality may use an adjacent municipality’s annexed territory to establish contiguity.”); Kizer v. Clark, 360 S.C. 86, 91, 600 S.E.2d 529, 532 (2004) (“[In Glaze, we] agreed that marshlands and creeks do not destroy

contiguity; however, these marshlands and creeks had previously been annexed by other municipalities and therefore could not be used to establish Town's contiguity."); Sonoco Prods. Co. v. S.C. Dep't of Revenue, 378 S.C. 385, 396, 662 S.E.2d 599, 604 (2008) (referring to annexation cases to suggest that, even under broad interpretation of "contiguous," intervening landowner would destroy contiguity); Id. at 396, 662 S.E.2d at 605 ("Because Sonoco owns the fee simple interest in the property and there are no intervening landowners, the parcels on which the Office Buildings are located are 'touching' the plant site and, thus, are contiguous.").

The reasoning of the Supreme Court of Wyoming in Bd. of County Comm'rs v. City of Cheyenne, 85 P.3d 999 (Wyo. 2004) is instructive. There, in interpreting an annexation statute that required the annexed land to be "adjacent or contiguous," the Court held;

As we will explain further, we conclude that, by limiting annexation to lands that are either contiguous or adjacent, the legislature intended to limit annexation to lands sharing a common boundary with the municipality or touching at some point, with the exception of lands that are separated from the municipality only by those natural or artificial 'barriers' listed in Wyo. Stat. Ann. § 15-1-402(b) [providing that contiguity will not be adversely affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way, a lake, stream, reservoir or other natural or artificial waterway located between the annexing city or town and the land sought to be annexed]. This conclusion is consistent with what appears to be the majority rule, it is consistent with what this Court said in In re West Laramie, 457 P.2d 498, 501 (Wyo. 1969) ("under our statute the only requirement with respect to the scope and extent of the area to be annexed is that it must be contiguous to the annexing city or town"), it is consistent with the opinion of the Attorney General of the State of Wyoming, and it is consistent with reason and good sense.

Id. at 1006 (emphasis added).

As to the specific argument proffered by the City of Cheyenne that the property need only be "near" its borders to be adjacent, the Supreme Court of Wyoming held:

If the City's interpretation of the statute—that lands need only be “nearby”—is correct, there would be no reason for the exceptions that are spelled out in Wyo. Stat. Ann. § 15-1-402(b). If “nearby” lands that do not touch the municipal boundaries may be annexed, there is no reason specially to permit annexation of lands separated from the municipality by roads, rivers, and the like. In interpreting statutes, we are to read related laws together and we are to give effect to all the words used

....

There is no suggestion in the entire statutory scheme that the legislature intended to vest municipalities with the discretion to determine what land is “adjacent”—meaning “nearby”—on a case-by-case basis. The result of such an interpretation could be “crazy quilt” or “leap frog” annexation that would run counter to the concerns expressed in the statutory mandates.

Id. at 1007 (emphasis added).

If “adjacency” means something other than touching, as urged by North Charleston, there would have been no need for the General Assembly, like the Wyoming legislature, to call out specific types of lands that do not destroy or adversely affect contiguity, as it did in section 5-3-305, discussed *supra*. See Fuller v. S.C. Tax Com., 128 S.C. 14, 22, 121 S.E. 478, 481 (1924) (“[W]here the language incorporated into a statute is identical or substantially identical with that appearing in similar statutes of other States which have received judicial construction and interpretation prior to the adoption of the statute under consideration, in the absence of an expressed intention to the contrary it will be presumed that the subsequently enacted statute was intended to be understood and applied in accordance with the construction given it by the Courts of the states which had first adopted it.”).

III. The General Assembly did not abrogate the common law requirement for contiguity by enacting a statutory definition in 2000.

North Charleston argues that the term “adjacent” in section 5-3-100 must be defined solely by reference to the definition of “contiguous” in section 5-3-305 of the South Carolina Code, such

that the common law requirement for contiguity would be written out of section 5-3-100. This interpretation would result in a mistaken abrogation of the common law.

In 2000, the General Assembly enacted section 5-3-305, which provides:

For purposes of this chapter, “contiguous” means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

Absent clear legislative intent to the contrary, there is a presumption against a change to the common law by way of statutory construction. “Statutes will not be held in derogation of the common law unless the statute itself shows that such was the object and intention of the lawmakers, and the common law will not be changed by doubtful implication.” 16 Jade St., LLC v. R. Design Constr. Co., LLC, 398 S.C. 338, 347, 728 S.E.2d 448, 452-453 (2012), quoting 82 C.J.S. Statutes § 534. As explained by the Supreme Court in Nuckolls v. Great Atl. & Pac. Tea Co., 192 S.C. 156, 161, 5 S.E.2d 862, 864 (1939):

Regarding the presumption against change of the common law by a statute, it is stated in 25 R. C. L. 1054, that it is not presumed that the Legislature intended to abrogate or modify a rule of the common law by the enactment of a statute upon the same subject; that it is rather to be presumed that no change in the common law was intended unless the language employed clearly indicates such an intention; that the rules of the common law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.

This presumption has been applied by the Supreme Court to a change to an annexation statute. See Forest Acres v. Seigler, 224 S.C. 166, 179-80, 77 S.E.2d 900, 906 (1953).

The Court cannot discern any expressed intent on the part of the General Assembly, in enacting section 5-3-305, to alter the common law and imbue municipalities with new authority to annex in a manner inconsistent with the judicial construction of the annexation statutes as requiring contiguity or “touching.” Relevant to this issue is that, in, section 5-3-305, the General Assembly identifies specific types of lands that do not affect an area’s being contiguous, which coincide with the very types of lands the judiciary had theretofore (and since) construed as also not affecting an area’s being eligible for annexation. Rather than abrogate the common law requirement for contiguity, section 5-3-305 appears to have codified the judicial construction of what areas were subject to annexation.

A review of other annexation statutes is noteworthy on the issue. As to the geographic relationship of the annexed territory to the annexing municipality, some statutes require that the territory be “adjacent.” See S.C. Code Ann. § 5-3-100 (permitting annexation of certain lands owned by annexing municipality); S.C. Code Ann. § 5-3-140 (authorizing annexation of lands belonging entirely to state or federal governments). Others require that the territory be “adjoining.” See S.C. Code Ann. § 5-3-250 (applicable to cemeteries). Others require that the territory be “contiguous.” See S.C. Code Ann. § 5-3-150(1) (annexation by “75% petition method”); S.C. Code Ann. § 5-3-150(3) (annexation by “100% petition method”); S.C. Code Ann. § 5-3-260 (applicable to church property); S.C. Code Ann. § 5-3-300 (annexation by petition and election). And others appear to contain no geographic requirements at all. See S.C. Code Ann. § 5-3-120 (annexation if entire area belongs to a corporation only); S.C. Code Ann. § 5-3-130 (annexation if area proposed to be annexed belongs entirely to a school district).

Were the Court to adopt North Charleston’s interpretation of section 5-3-100 and its omission of the common law requirement for contiguity, such would lay the basis for a

municipality reaching across intervening properties to annex properties owned entirely by a school district or corporation under sections 5-3-120 and 5-3-130, without regard to geographic separation. Such a reading introduces an element of uncertainty, if not chaos, to the longstanding statutory scheme of annexation, and leads to a result that neither the General Assembly nor the Supreme Court could ever have intended. See Florence County v. Moore, 344 S.C. 596, 601, 545 S.E.2d 507, 509 (2001) (“Our goal in construing statutes is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”).

IV. As a matter of law, section 5-3-100 of the South Carolina Code does *not* authorize one municipality to “leap frog” the boundaries of another to establish adjacency or contiguity.

North Charleston’s interpretation of the term “adjacent” would open the door to “leap frog” annexations, which the Court holds are not allowed under any construction of section 5-3-100 because adjacency is destroyed when, as in the present case, there is intervening property within a separate municipality.

“The primary consideration in legislative construction is to ascertain the intent of the legislative body enacting the legislation.” Fairfield Ocean Ridge, Inc. v. Edisto Beach, 294 S.C. 475, 481, 366 S.E.2d 15, 19 (Ct. App. 1988). “When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.” Id.

Courts around the country hold that the term “adjacent” means that “there is nothing similar intervening.” Here, the intervening land within Charleston destroys contiguity. Once again, the reasoning of the Supreme Court of Wyoming in Bd. of County Comm’rs v. City of Cheyenne, 85 P.3d 999 (Wyo. 2004) is instructive. There, the Court explained:

We also note that the common dictionary definitions of both “contiguous” and “adjacent” incorporate the concept of there being nothing similar intervening. For example, buildings are neither

contiguous with nor adjacent to one another if there is another building between them. Similarly, land is neither contiguous with nor adjacent to a municipality where the land is separated from the municipal boundaries by anything other than a road, river, or the like.

Id. at 1007 (emphasis added).

Cases in other jurisdictions support the conclusion that adjacency is destroyed when, as in the present case, territory of the same kind intervenes. See St. Ann v. Spanos, 490 S.W.2d 653, 656 (Mo. Ct. App. 1973) (“We believe that the term adjacent in Section 79.020 clearly means that territory to be annexed must be either abutting and touching the annexing municipality or not have territory of the same kind intervening between it and the annexing municipality.”); In re Borough of Camp Hill, 21 A. 978, 979 (Pa. 1891) (“The word ‘adjacent,’ we think is used in its primary and obvious sense as adjoining or contiguous, for we cannot conceive that the legislature would annex to a borough a section of land or village wholly severed by the intervening lands of a township, so as to establish two entirely separate villages in one municipality.”); Grandview Lot Owners Ass’n v. Harmon, 754 N.E.2d 554, 559 (Ind. Ct. App. 2001) (“In order to be considered adjacent in cases where there is no touching, however, an object must be the nearest of its kind to the other object in question.”); In re Freeholders Petition, 316 N.W.2d 294, 298 (Neb. 1982) (recognizing that adjoin and adjacent are synonymous, concluding: “We hold that while the term adjoin, as used in § 79-403, ordinarily means touching or having a common boundary, it may also include a situation where the boundaries, although not touching, are separated only by a streambed which is not part of any school district.”).

In contradistinction to these well-settled principles, North Charleston’s attempted annexation “leaps” over intervening property, including a privately-owned parcel titled to the

National Trust lying within the municipal limits of Charleston. The General Assembly has never evinced an intent to authorize such “crazy-quilt” or “leap frog” annexations.

CONCLUSION

As a matter of law, adjacency under section 5-3-100 of the South Carolina Code is destroyed when, as in the present case, privately-owned property lying within another municipality’s corporate limits intervenes between the area to be annexed and the existing limits of the annexing municipality. This is true under the common law requirement for contiguity, the statutory definition of “contiguous,” or the commonly-applied definition of the term “adjacent” in the context of municipal annexations.

Consequently, North Charleston’s motion for partial summary judgment is denied, and Plaintiffs’ cross-motion for summary judgment is granted.

NOW THEREFORE, it is

ORDERED that the Ordinance be, and hereby is, declared to be invalid and of no force and effect; and it is

SO ORDERED.

_____, 2019
_____, South Carolina

Eugene C. Griffith, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

PLAINTIFFS,

v.

CITY OF NORTH CHARLESTON,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-0851

PLAINTIFF CITY OF
CHARLESTON'S NOTICE OF
MOTION AND MOTION TO
RECONSIDER, ALTER, OR
AMEND

FILED
2019 MAR 15 PM 1:05
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE HONORABLE EUGENE C. GRIFFITH, JR.; PLAINTIFF NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES; AND DEFENDANT CITY OF NORTH CHARLESTON

YOU WILL PLEASE TAKE NOTICE THAT Plaintiff City of Charleston (the "City" or "Charleston"), by and through its undersigned counsel, hereby moves the Court for an order reconsidering, altering, or amending the Court's order (the "Order") dismissing Charleston and Plaintiff National Trust for Historic Preservation in the United States (the "National Trust") on the basis of standing in the above-referenced case. The Order was originally filed on March 1, 2019, and re-filed on March 5, 2019. Charleston received written notice of the original entry of the Order on March 4, 2019, and notice of re-entry of the Order on March 6, 2019.

The within matter involves an action by Charleston and the National Trust (collectively, "Plaintiffs") challenging the annexation by Defendant City of North Charleston ("North Charleston") of an acre of land (the "Acre"), pursuant to Ordinance No. 2017-80 (R. pp. 130-132), ratified on December 21, 2017 (the "Contested Ordinance"). On December 10, 2018, this Court conducted a hearing on two motions *to wit*: (1) a motion filed by North Charleston to dismiss the

case on the basis of standing under Rules 12(b)(6) and 56, SCRPC; and (2) Plaintiffs' motion for summary judgment because the Contested Ordinance annexed property that was not adjacent to the municipal limits of North Charleston.

In the Order, this Court granted North Charleston's motion, and dismissed the case on the basis of standing. The Court further held, however, that should either Plaintiff have standing, then the annexation was void for failure to be adjacent to North Charleston, as required by the applicable statute and the annexation jurisprudence of this State. Charleston hereby moves the Court for an order reconsidering, altering, and/or amending its Order as it pertains to standing.

ARGUMENT

I. The Order should be reconsidered, altered, and/or amended because, on Page 5 of the Order (¶16), the Court mistakenly ruled that North Charleston did not claim ownership of any portion of the strip owned by the National Trust.

In the complaint, Plaintiffs assert that the National Trust owned a portion of the property shown on Plat S17/0224 (the "Acre Plat") (R. p.60), described in the deed to North Charleston (the "Acre Deed") (R. pp. 67-69), and designated as Charleston County TMS No. 301-00-00-797. (R. p. 6, ¶¶ 31-32). The complaint defines the Acre as "real property designated as TMS 301-00-00-797." (R. p. 2). Plaintiffs later submitted an expert affidavit creating at least a genuine issue of material fact that the National Trust owned a portion of the Acre, as defined in the Acre Plat, the Acre Deed, and by TMS No. 301-00-00-797. (R. pp. 26-29).

In its answer, North Charleston also defines the "Acre" by reference to Charleston County TMS No. 301-00-00-797. (R. p. 14, ¶ 4). North Charleston then denies, over and over again, that the National Trust owns any portion of the Acre:

- North Charleston "denies that North Charleston owns less than the entirety of the land described generally as 'the Acre,'" (R. p. 15, ¶ 4).

- “North Charleston does not admit to the Plaintiffs’ claimed property boundaries.” (R. p. 16, ¶ 15).
- North Charleston “denies that its title to the Acre, or its annexation of the Acre, includes any portion (62 square feet or otherwise) of the Shoestring parcel.” (R. p. 18, ¶ 28).
- “North Charleston denies any suggestion that it is not the sole owner of the Acre.” (R. p. 18, ¶ 31).

In its counterclaims, North Charleston also asserts title to the entire Acre, as defined by the Acre Deed, the Acre Plat, and TMS No. 301-00-00-797:

- “North Charleston owns property conveyed by Tim Whitfield Construction and Development, LLC to it and more fully described in [the Acre Deed] and more fully shown on plat recorded in Book S17, Page 0224, said deed and plat are incorporated hereto by reference.” (R. p. 22, ¶ 57).
- “Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston property encroaches into or upon the property of National Trust.” (R. p. 23, ¶ 59).
- “The Plaintiffs, in their Complaint, makes [sic] unconscionable claims and pretensions against North Charleston’s title, claiming that boundaries to North Charleston’s property were other than those established by survey or deed and encroaches onto National Trust’s property.” (R. p. 23, ¶ 61).
- “The claims of the Plaintiffs are without any right and the Plaintiffs have no right, title, estate, liens or interest in the property of North Charleston.” (R. p. 23, ¶ 62).
- “North Charleston seeks a determination of its fee simple title in this action and further, that the Plaintiffs are forever barred from claiming any right title or interest in North Charleston’s property.” (R. p. 23, ¶ 64).

While the Order (p. 8) states that “the question of fact of ownership of the four inches (or the location of the common boundary) is not a question that this Court is tasked to resolve since the issue was not requested as relief in the pleadings,” North Charleston’s prayer for relief clearly requests a determination as to ownership of this area:

- “North Charleston prays for judgment . . . That this Honorable Court inquire into the facts alleged and declare

- that North Charleston is the sole owner of ‘The Acre’ free and clear of any claims of the Plaintiffs . . .” (R. p. 24, ¶ b).
“North Charleston prays for judgment . . . That this Honorable Court declare and confirm that North Charleston’s property does not encroach onto or upon property of National Trust.” (R. p. 25, ¶ c).

These allegations not only establish that the issue of ownership of the Acre has been submitted to the Court for resolution, but also emphasize that, even at the time it filed its answer, North Charleston *believed* it owned the Acre, as shown on the Acre Plat, in the Acre Deed, and by reference to TMS No. 301-00-00-797. Thus, as discussed *infra*, it is clear that, when North Charleston City Council attempted to annex the Acre, it intended to annex the Acre as shown on the Acre Plat, as described in the Acre Deed, and by reference to TMS No. 301-00-00-797.

While the Court concludes that the “National Trust’s attempt to claim ‘property owner’ standing is legally insufficient because North Charleston claims to neither have annexed nor own any portion of the Trust’s land,” (Order, p. 6), this necessarily presupposes that the National Trust owns no portion of the Acre, especially in light of the pleadings and the National Trust’s request for judicial determination that the National Trust owns no portion of the Acre.

The National Trust produced evidence that it owns a portion of the Acre. The clear implication is that the Acre includes a portion of what North Charleston calls the “Shoestring” or “Strip.” North Charleston denies this allegation and requests judicial resolution of the issue. North Charleston has never accepted that any portion of the Acre includes the National Trust’s property. *A fortiori*, North Charleston continues to assert ownership over a portion of what the National Trust claims is its property, i.e. the Strip. Thus, to the extent the Order states that North Charleston does not claim any interest in the Strip, this statement would be incorrect, or, at the very least, purport to resolve issues of ownership—an issue the Court says is not before it.

The Order should be reconsidered, altered, or amended to address this issue.

II. The Order should be reconsidered, altered, or amended because the evidence establishes that the Contested Ordinance attempted to annex the entire Acre, contrary to the Court's conclusion that North Charleston City Council intended to annex only a portion of the Acre through the Contested Ordinance.

As discussed supra, North Charleston's own pleadings establish that, at the time it adopted the Contested Ordinance, North Charleston City Council believed it owned the entire Acre. This conclusion is supported by the language of the Contested Ordinance itself.

It is important to note that it was North Charleston's responsibility to ensure the sufficiency of the legal description of the property being annexed, not Charleston's. Cf. 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").

Legislation also must be construed in light of the conditions obtaining at the time the legislation was passed, not based on after-acquired knowledge of the governing body. 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).

In 1980, the National Trust acquired title to a strip of land containing approximately 26.53 acres from the Nature Conservancy (the "Trust Parcel"). (R. p. 45). The Trust Parcel is described as being 100 feet wide "immediately adjacent to the southern right-of-way of Highway 61," also

known as Ashley River Road. The Trust Parcel was annexed to Charleston in 2005. (R. pp. 44-45).

On September 12, 2017, North Charleston obtained a quit claim deed to the Acre by virtue of the Acre Deed, which described the property according to the Acre Plat. (R. p. 60, pp. 67-70). See S.C. Code Ann. § 30-5-250 (legal description in deed may incorporate plat to show boundaries, metes, bounds, courses, or distances of real property being conveyed). The Acre Plat shows two points on the eastern line of the Acre as being 99.70 feet and 99.69 feet from the right-of-way of Ashley River Road. (R. p. 60). Charleston County assigned a tax map number to the acre, that being TMS No. 301-00-00-797. (R. p. 28, ¶ 5).

On December 21, 2017, North Charleston adopted the Contested Ordinance, which describes, on its face, the land annexed as “52-P in Charleston County (TMS No. 301-00-00-797)” (R. p. 130). The operative language of the Contested Ordinance provides that “THE CORPORATE LIMITS OF THE CITY OF NORTH CHARLESTON SHALL HEREAFTER INCLUDE THE FOLLOWING DESCRIBED PROPERTY:

The area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797.

The property to be annexed, consisting of approximately 1.0 acres as shown on that certain map . . . dated October 4, 2017 . . . , a copy of same being attached hereto for purposed [sic] of this annexation, with the property being further described by reference to said map as follows. . . .”

(R. p. 131). The boundary description which follows uses points established by the corners and boundaries of TMS No. 301-00-00-797. (R. p. 131). The legend to the attached map shows the “Area to be Annexed Includes TMS # 301-00-00-797.” (R. p. 132).

As Plaintiffs’ expert witness explains in his affidavit, the property assigned TMS No. 301-00-00-797 was the parcel created by the Acre Plat. (R. p. 28, ¶ 5). The Affidavit further states that

“if North Charleston annexed the Acre described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property.” (R. p. 29, ¶ 9 (emphasis added)).

The Court’s ruling on Charleston’s standing should be reconsidered, altered and/or amended because evidence in the record establishes that North Charleston intended to annex the entire Acre. Thus, there is at least a genuine issue of material fact that the Contested Ordinance impinges on Charleston’s proprietary interests and statutory rights because it includes, whether inadvertently or not, land already annexed to Charleston.

III. The Order should be reconsidered, altered, or amended because the quit claim deed to North Charleston does not change North Charleston’s intent in adopting the Contested Ordinance.

In its Order (p.6), the Court places great weight on the legal ability of one to convey title to property it does not own, finding that such would be a nullity. While this accurately states the general rule, it says nothing about what the City of North Charleston intended to annex. See Charleston Cty. Parks & Rec. Comm’n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (“It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.”). If anything, the Acre Deed and the Acre Plat provide additional evidence of North Charleston’s affirmative intent to annex the Acre because this was the only evidence of what North Charleston thought it owned at the time it adopted the Contested Ordinance.

The Contested Ordinance and North Charleston’s pleadings could not be clearer: North Charleston asserts it owns the entire Acre, and that the annexation includes all of TMS No. 301-00-00-797. The record could not be clearer: per unrefuted expert testimony, TMS No. 301-00-00-797 includes a portion of the Trust Parcel, which Parcel has been within the municipal limits of

Charleston since 2005. The use of a quit claim deed also does not impact the analysis. A general warranty deed would not convey any greater title than a quit claim deed; however, the grantee under a general warranty deed would have remedies against his grantor, whereas the grantee under a quit claim deed would not. See Seaboard A. L. R. Co. v. Jones, 120 S.C. 354, 360, 113 S.E. 142, 144 (1922) (“If it had been the intention of the defendant to covenant to execute and deliver a deed without warranty, he should not have used the words ‘good and sufficient’ in describing the deed, as the covenant would have been sufficient to provide for a quitclaim deed without the use of the words ‘good and sufficient.’”); Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) (“A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.”). That issue is in no way related to what land was encompassed in the description of the land annexed by the Contested Ordinance.

A party with statutory standing to challenge a 100% annexation is one who makes a credible claim that his proprietary interests or statutory rights have been infringed. Charleston has made such a claim here, and the record, at the very least, creates a genuine issue of material fact that the property annexed by the Contested Ordinance includes property within its municipal limits, thus impinging on its proprietary interests and statutory rights.

IV. The Order (p. 5) should be reconsidered, altered, or amended because the Court misinterpreted case law limiting “statutory” standing to property owners of the annexed land.

Generally, the statutory test for challenging an annexation, other than an annexation under section 5-3-150(1), is whether the party asserts an infringement of its proprietary interests or statutory rights. 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.’”).

While it is clear that an owner of real property in the area being annexed has standing to challenge an annexation under the general framework, the Supreme Court of South Carolina has not limited standing to just property owners. To the contrary, the Supreme Court has continued to recognize the important statutory and proprietary rights of municipalities, including their ability to challenge an annexation of property already within their municipal limits. 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); Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953) (recognizing the “substantial right recognized in plaintiff as a corporate entity, to and over its corporate territory” conferred under detachment statutes and permitting challenge to annexation of property within municipality’s existing limits); 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”).

V. Charleston has standing to challenge the Contested Ordinance for the additional reason that the Contested Ordinance leapfrogs Charleston’s boundaries, triggering an issue of substantial public importance.

The issues posed by this annexation contest are novel and unique. North Charleston, under the auspices of section 5-3-100 of the South Carolina Code, attempted to annex the Acre, which it admits does not touch its borders and which it admits is separated from its borders by lands in

Charleston. Section 5-3-100 is a method of annexation available to municipalities when the land that is subject to the annexation “belongs entirely” to the municipality and is “adjacent” thereto.

North Charleston contends the Acre qualifies for annexation because it is adjacent, or near, its municipal borders, such that the Acre need not be contiguous, or share a common border, with North Charleston. The Court has rejected this argument. There is no case interpreting section 5-3-100 or any State precedent authorizing one municipality to “leap frog” another municipality’s boundaries, absent affirmative legislative authority.

In the absence of an adjudication of these issues, municipalities will be given no guidance as to when section 5-3-100 applies. It is also easy to see how a municipal “turf war” could ensue if the term “adjacent” is left undefined.

The public importance exception has been relaxed under discreet, limited circumstances when future guidance is paramount. The facts of this case qualify as such a circumstance.

The case of Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13), filed on December 19, 2018, is instructive, if not directly on point. In Vicary, the Court applied the test for relaxing traditional standing rules to annexation cases: “For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.” See ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

While the “nefarious conduct” alleged against the Town of Awendaw in Vicary is not at all present here, this case, like Vicary, involves novel issues, inextricably connected to the public need for court resolution for future guidance. These issues will also escape judicial review, absent standing being conferred under the “public importance” exception to the general standing framework, and the factual scenario posed by this case is subject to being repeated in other locales

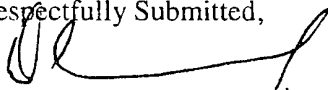
across the State. Therefore, it appears imperative, of significant public importance, and in furtherance of maintaining sound public policy, that standing be accorded to challenge this annexation. See ATC, 380 S.C. at 199, 669 S.E.2d at 341 (“The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.”).

Here, the public importance of orderly and predictable municipal growth, in the context of this case, is directly tied to the need by the public for reliable ground rules and requires court resolution for future guidance to the municipalities in this suit, as well to other across the State. This ground exists independently of the public importance grounds raised by the National Trust, and the Order fails to address this issue. The Order should be reconsidered, altered and/or amended to do so.

CONCLUSION

For any or all of the grounds set forth, the Order of the Court should be reconsidered, altered and amended to find and hold that Charleston has standing to challenge the Contested Ordinance.

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

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A No.: 2018-CP-10-851

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED
STATES AND THE CITY OF
CHARLESTON,

Plaintiffs,

v.

CITY OF NORTH CHARLESTON,

Defendants.

**PLAINTIFF NATIONAL TRUST'S
MOTION TO RECONSIDER, ALTER,
OR AMEND**

FILED
2019 MAR 15 PM 3:32
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rules 52 and 59, SCRPC, Plaintiff National Trust for Historic Preservation in the United States through its undersigned counsel, hereby moves this Court to reconsider, alter, or amend its Order of March 1, 2019,¹ for the reasons set forth below.

ARGUMENT

I. The Court misapprehended the standard of review.

Although the Court ruled on cross-motions for summary judgment, the standing issue was before the Court on Defendant City of North Charleston's motion for summary judgment. As set forth in our briefing,² the standard of review requires that all evidence must be viewed by the Court in favor of the National Trust as the non-moving party. *Smith v. Jones*, 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016). Moreover, all reasonable inferences must be drawn in the non-moving party's favor. The Court must deny summary judgment if there is a "scintilla of evidence" in the record of a genuine issue of material fact. *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 554, 757 S.E.2d 695, 699 (2014).

¹ The attorneys for the National Trust received notice of entry of the Order on March 4, 2019.

² Plaintiffs' Consolidated Memorandum on Summary Judgment Motions (Contiguity/Adjacency).

Here, North Charleston did not provide any evidence to contradict the National Trust's Affidavit of Daniel C. Forsberg,³ a licensed civil engineer and land surveyor, thus creating a genuine issue of material fact as to the National Trust's standing. For example, in demonstration that the North Charleston's annexation affected the National Trust's proprietary rights, Mr. Forsberg determined, among other things, that:

The deed to the National Trust for the National Trust Property was made subject to the right of [Georgia Pacific] to create 18 easements for access from S.C. Highway 61 across the National Trust Property. Plats L09/0225-0229 lay out these access easements. Plat S17/0225 also shows Access Easement #3, as shown on Plat L-09/0225, running from Highway 61 across the National Trust's property to [North Charleston's] Acre. The purported width of the National Trust's property is shown as 99.69 feet on the north side and 99.7 feet on the south side. As a result, 62 square feet of the National Trust Property appears to have been included in [North Charleston's] Acre.⁴

Moreover, in light of these uncontroverted facts, Mr. Forsberg concluded:

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that [North Charleston's] Acre overlaps the National Trust Property, *encroaching on 62 square feet of the National Trust Property* (emphasis added).⁵

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then *the land that was annexed included a small portion of the National Trust Property* (emphasis added).⁶

Viewing the evidence in the light most favorable to the non-moving party, the National Trust presented at least a scintilla of evidence to withstand the motion for summary judgment. *Lord*, 407 S.C. at 558, 757 S.E.2d at 702. At a minimum, because summary judgment is a drastic

³ Plaintiffs' Record at 26 to 29.

⁴ Plaintiffs' Record at 28.

⁵ Plaintiffs' Record at 29.

⁶ Plaintiffs' Record at 29.

remedy, and where—as here—discovery was not complete—summary judgment is never appropriate where further inquiry into the facts of the case would have been helpful to clarify application of the law. *Id.* at 553, 757 S.E.2d at 699.

North Charleston’s mere allegation that “it did not claim any ownership of the strip owned by the National Trust” is irrelevant. Order at 5-6. This mere allegation, therefore, does not contradict the National Trust’s uncontroverted Affidavit of Daniel Forsberg, which determined that North Charleston’s annexation of the Acre did encroach on the National Trust Property and the National Trust’s proprietary rights. Finally, the Court’s reliance on what it considered to be a relatively minor encroachment of four inches⁷ contradicts the Court’s earlier finding on page 5 of its Order that no encroachment occurred. This reliance, however, is proof of the National Trust’s proprietary rights and standing. The Court’s overlooking this encroachment in its standing analysis provides another reason why the Court misapplied the standard of review, which required that all evidence be viewed in the National Trust’s favor. Therefore, the Court should have ruled in favor of the National Trust and denied North Charleston’s Motion for Summary Judgment.

II. The Court incorrectly determined that the area annexed depended on title, rather than the description of the area, and incorrectly considered the intent of North Charleston.

In its analysis of proprietary standing, the Court reasoned that North Charleston, the party seeking annexation of the One Acre, could not annex property that was not owned by it. The Court recognized the discrepancy in the 2009 plat locating the access easements and the 2017 plat creating the One Acre that indicated that a small portion of the National Trust’s 100’ strip was included in the platted description of the One Acre, but found that discrepancy did not make a

⁷ Order at 9.

difference because North Charleston did not own it (if Plaintiffs' contentions are true) and did not intend to annex land it did not own.

The statutes governing annexation focus on the area to be annexed. These statutes have no provisions that the areas proposed to be annexed can only be property owned by the petitioners for annexation. They also make no reference to the intent of the annexation petitioner. Their focus is entirely on the territory or area to be annexed. Section 5-3-100 looks at the "territory proposed to be annexed."⁸ This is akin to S.C. Code Ann. § 5-3-100(3) governing annexation under the 100% rule that refers to "a petition signed by all persons owning real estate in the *area requesting annexation*" and to "the agreement of the governing body to accept the petition and annex *the area....*" S.C. Code Ann. § 5-3-100(3)(double emphasis added).

For example, in Ex parte State ex rel. Wilson, 391 S.C. 565, 707 S.E.2d 402 (2011) cited by the parties and the Court in this case, much of the Supreme Court's opinion there dealt with who had standing to contest the annexation of public trust tidelands that were described in the area annexed. The Supreme Court noted as follows:

The State, which is the presumptive owner of the annexed marshlands, did not sign the petition. Notwithstanding the absence of the State's consent to the annexation, the annexation ordinance recites that the Town received a petition signed 'by all persons owning real estate' in the annexed area....

....Where the State holds title to real property in the area to be annexed, it is a 'person[] owning real estate' within the meaning of section 5-3-150(3) and its signature is required to accomplish an annexation by 100% petition....

By its plain language, section 5-3-150(3) requires the signatures of 'all persons owning real estate in the area requesting annexation.'...

⁸ "If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete." S.C. Code §5-3-100.

This annexation did not comply with the requirements of the 100% petition method. The State was the presumptive owner of the annexed marshlands and the Town did not provide the State with prior notice of the annexation or obtain the State's signature on the petition.⁶ Nevertheless, the State's challenge to the annexation is time-barred.

Id. at 569-78, 707 S.E.2d at 404-409.

The Supreme Court did not hold that the parties to the annexation petition and the governmental body approving the annexation had no ability to annex property the petitioners did not own. To the contrary, the Supreme Court found that the annexation petitioners had indeed annexed the tidelands they did not own under the 100% method but that the Attorney General, the sole party with standing to challenge the annexation of the public trust tidelands, did not assert its objection in a timely manner under the controlling statutes.

Similarly, in this case, the question of proprietary standing turns on whether the National Trust presented a genuine issue of material fact that it owned a portion of the area annexed. The area annexed was described in the Resolution approving the annexation. North Charleston referred to the area annexed as "TMS 301-00-00-797" and "as shown on a map prepared by the GIS Department for purposes of this annexation, dated October 4, 2017, bearing the legend 'Area Proposed For Annexation By The City Of North Charleston Section 52-P.'" The Annexation Resolution goes on to specifically describe the area annexed as the property in the precise survey that includes a portion of the National Trust Parcel:

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 southeasterlymost 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 TMS parcel reference includes a portion of the National Trust Parcel. Forsberg avers in his affidavit, earlier referenced, that: "The tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat. The legal description for the Acre references Plat S 17 /0224. As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797." Forsberg Affidavit ¶ 5.

Because, at a minimum, there is a genuine issue of material fact that the territory annexed included property owned by the National Trust, North Charleston was not entitled to summary judgment on the question of the National Trust's proprietary standing. Whether North Charleston was mistaken about the plat for the One Acre or only intended to annex the property it owned is entirely irrelevant.

Although not determinative of its proprietary standing, the National Trust would point out that the Court apparently overlooked that the question of title has in fact been raised in this litigation. North Charleston has counterclaimed against the National Trust in 2018-CP-10-00851 for a declaration that it has title to all portions of the One Acre. Answer and Counterclaim of North Charleston ¶¶ 59-60 ("Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston property encroaches into or upon the property of National Trust. North Charleston owns its property free and clear of the claims of any third parties, including the Plaintiffs.").

III. The Court misapprehended the law governing public interest standing.

Although the National Trust has proprietary standing based on North Charleston's encroachment of the National Trust's proprietary rights, the Court also misapprehended the state of the law, namely *Vicary v. Town of Awendaw*, 425 S.C. 350, 822 S.E.2d 600 (2018), and *Vicary's* application to the National Trust in ruling that the National Trust lacks public importance standing.

First of all, unlike the parties seeking to invoke public importance in the cases cited by the Court, the National Trust is clearly invested with advancing the recognized national interest in historic preservation. The National Trust was chartered by the Congress in 1949 to advocate on behalf of historic preservation, including places like the Ashley River Historic District that is listed in the National Register of Historic Places and Drayton Hall, a National Historic Landmark owned by the National Trust in close proximity to the National Trust Property that was partially annexed by North Charleston.⁹

The Court's statement that the National Trust only articulated "good deeds" in support of its public importance standing overlooks that these actions were listed as examples of similar advocacy to demonstrate the National Trust's vigilant advancement of the declared national interest in historic preservation that is its charge from the United States Congress. The Court's characterization is especially ironic in light of the fact that the National Trust Property was acquired in 1980 in fee simple ownership for the express purpose of protecting the historic context of the entire Historic District in perpetuity, including the portion of the natural Historic District North Charleston wishes now to convert to sprawling subdivisions, far beyond what Charleston County's zoning would have allowed. The Court also ignored the National Trust's long history of

⁹ Memorandum of Plaintiff National Trust for Historic Preservation in the United States in Opposition to Defendant's Motion to Dismiss for Lack of Standing at 10-11.

legal engagement in pursuit of historic preservation and of historic property ownership in the immediate area.¹⁰

Second, the South Carolina Attorney General's interest is far different from the public interests promoted by the National Trust. The South Carolina Attorney General does not have a statutory charter from the United States Congress, which determined that nationally significant historic places should be preserved by the National Trust. There is nothing in the statutes of this state or case law that instills the Attorney General with protecting the public interest in historic preservation. Historic preservation is outside the Attorney General's "job description." The National Trust submits the Court erred in holding that the inaction of the Attorney General is determinative of whether this case involves a matter of public importance. The Court's error is compounded in this case where there is utterly nothing in the record to demonstrate the Attorney General was fully apprised of all the material facts associated with these annexations and made a deliberate decision not to intercede. Thus, there is a genuine issue of material fact as to the National Trust's standing based on the public interest versus the different interests served by the Attorney General.

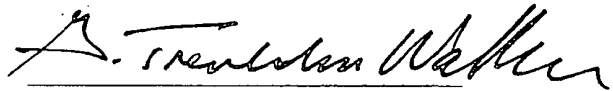
Third, the Court also misapprehended the need for "future guidance," which is inextricably connected to the public need. *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The fact that North Charleston, by the Court's own admission, leapfrogged illegally over the City of Charleston's municipal wall—created by the National Trust Property that was previously annexed by the City of Charleston in 2005—and attempted an annexation by the 100% method with a legally flawed definition of contiguity creates an undisputed incentive for other municipalities to follow North Charleston's lead. North Charleston's conduct, therefore, creates a

¹⁰ Memorandum of Plaintiff National Trust for Historic Preservation in the United States in Opposition to Defendant's Motion to Dismiss for Lack of Standing at 10-11.

dangerous incentive for a messy patchwork of annexations statewide, as well as harm to the private property and statutory rights of South Carolina residents everywhere. Respectfully, these are the type of “unique facts” Justice Hearn suggested in *Vicary* merited recognition of public importance standing and that the Court commented on in its Order. Therefore, the unusual facts of this case provide a second basis for finding that the National Trust has public importance standing.

CONCLUSION

For the reasons stated above, the Court should reconsider, alter, or amend its Order and hold that the National Trust has standing as a matter of law.



G. TRENHOLM WALKER

SC Bar # 5777

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

Post Office Box 22167

T: 843-727-2200

walker@wgflaw.com

AMY H. WOOTEN

NC Bar # 39762 / SC Bar # 100128

BROWN LAW LLP

555 Fayetteville Street – Suite 420

Raleigh, North Carolina 27601

T: 919.719.0854

F: 919.719.0858

amy@brownlawllp.com

WILLIAM J. COOK

SC Bar # 12183

NATIONAL TRUST FOR HISTORIC PRESERVATION

2600 Virginia Avenue, NW

Suite 1100

Washington, DC 20037

T: 202.588.6283

wcook@savingplaces.org

Attorneys for Plaintiff National Trust for Historic Preservation

March 14, 2019
Charleston, South Carolina

State of South Carolina
County of Charleston

Court of Common Pleas

City of Charleston)
)
Plaintiff,)
v.)
)
City of North Charleston)
and Millbrook Plantation,)
LLC)
)
Defendant.)

Transcript of Record
2018-CP-10-0846
2018-CP-10-2539

Millbrook Plantation, LLC)
)
Plaintiff,)
v.)
)
City of North Charleston)
)
Defendant.)

Transcript of Record
2018-CP-10-2131

December 10, 2018
Lexington, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Judge.

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

Daniel S. McQueeney, Jr., Esquire
Attorney for Appellant City of Charleston
Frances Cantwell, Esquire
Attorney for Appellant City of Charleston

Derk Van Raalte, Esquire
Attorney for City of North Charleston

Bruce E. Miller, Esquire
Attorney for Millbrook Plantation, LLC

Bethanie K. Creppon
Circuit Court Reporter

1 National Trust for)
 Historic Preservation)
 2 in the United States)
 and City of Charleston)
 3)
 Plaintiffs,) Transcript of Record
 4 v.) 2018-CP-10-00851
)
 5 City of North Charleston)
)
 6 Defendant.)

7

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

9

10 Daniel S. McQueeney, Jr., Esquire
 Attorney for Appellant City of Charleston
 G. Trenholm Walker, Esquire
 11 Attorney for National Historic Trust
 for Historic Preservation in the United States

12

13 Derk Van Raalte, Esquire
 Attorney for City of North Charleston

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P R O C E E D I N G S

* * *

THE COURT: We have a new court reporter today. Bethanie is with me today. So y'all need to identify yourselves and who your clients are so that she has a good, clean record. Whole different situation than the fight we were dealing with this morning, attempted murder case.

All right. What do we need to deal with first, folks? I've read most everything that y'all have sent me now, which was really nice. I have a little more familiarity with the case.

MR. VAN RAALTE: Derk Van Raalte on behalf of the City of Charleston. I suggest that the first thing we take up is the City's motion to dismiss based on standings and standings and threshold issue.

THE COURT: Y'all agree with that? All right. Good enough.

MR. VAN RAALTE: Thank you. Your Honor, if may have just a moment to put up a couple of exhibits that will help us.

THE COURT: All right.

MR. VAN RAALTE: We'll start with these three. Your Honor, we come before you today for this

1 motion based on standing. And I think, really, the
2 best way to start is really to look at the geography
3 and get an idea about the lay of the land and where
4 everything lies. Obviously, you've got the City of
5 Charleston down here on the peninsula; the main body
6 of the City of North Charleston lies above it to the
7 north. Not known to most people is the fact that
8 the city also has about 5,000 acres over here, west
9 of the Ashley River, that it had got over a decade
10 ago.

11 More recently, in 2017, the City of North
12 Charleston Annexed Runnymede Plantation. And that
13 annexation, also west of Ashley, was not challenged.
14 After that annexation was complete, the City of
15 North Charleston obtained title ownership to
16 approximately one acre just across the street,
17 across Highway 61. And that one acre is the subject
18 of the dispute for today's case. Now it's
19 important --

20 THE COURT: All right. That one acre was cut
21 from a larger tract owned by a 2,200-acre tract --

22 MR. VAN RAALTE: Yes, sir. And --

23 THE COURT: -- one acre out of it.

24 MR. VAN RAALTE: Right. This is a picture of
25 the acre tract. The Whitfield Construction Company

1 owned all of this over here, which is huge. It's
2 about 2,200 acres. From that, a quitclaim deed to
3 the City of North Charleston came for this one acre.
4 And that ultimately becomes significant to the
5 standing issues today because under Vickery vs. The
6 Town of Hallandale, we are told that there are
7 basically two parties that have standing to
8 challenge an annexation. One of those is the South
9 Carolina Attorney General. He didn't file a
10 challenge. The other is, in layman's terms, the
11 property owner. That would be the City of North
12 Charleston.

13 Now, how do you get around that? Well, the
14 plaintiffs have claimed that -- there was a
15 four-inch boundary dispute along this property line.
16 We don't believe that that gets them in the door
17 because, frankly, as a matter of the law, it's not
18 possible that it convey property of the National
19 Trust to the City of North Charleston and it's not
20 possible with the City Annex property owned by
21 National Trust.

22 We touched on it just a moment ago. The City
23 got this property by way of a quitclaim deed. One
24 of the most blackletter elements of property law is
25 that a quitclaim deed can convey only that property

1 that the grantor has to give. The Whitfield company
2 could have given us a quitclaim deed to the Cooper
3 River Bridge. We wouldn't know it.

4 If they gave us a title that dealt with the
5 National Trust property, they could tell us wherever
6 they want, but it wouldn't change what we own. We
7 wouldn't own it. The only thing the City can take
8 is from what -- and that's what we did. We took
9 this end. In fact, we know there's a couple of
10 things in the deed; most significantly is that it is
11 described as being the property coming from the
12 property of Whitfield Construction.

13 So we know if it's not Whitfield Construction,
14 the City doesn't own it. We're told that it's a
15 portion of TMS3010000005, which, again, is this
16 tract right here by Whitfield Construction, not the
17 National Trust tract.

18 Now, what the National Trust wants to say is
19 that there is an error in the survey of the
20 easements that go across its own property. You see,
21 in the 1980s, when the Trust and the Nature
22 Conservancy got this land, there was not plat
23 recorded at that time. Instead, the deed generally
24 describes this as 100 foot by, I think,
25 11,000-foot-long strip.

1 A number of years went by and, eventually, I
2 think it was in 2009, there was a plat recorded that
3 set forth various access easements across this,
4 because in 1980, when that hundred-foot deed was set
5 forth, they said, later on, in future years, access
6 easements, because you didn't want to land-lock the
7 2,200 acres, they would go ahead and place these.

8 When that happened, the surveyor did a survey
9 that, of course, had to show the main body of the
10 trust parcel, because that's what we were cutting
11 across with each access. And it was what you
12 generally call a hundred-foot-long strip.

13 Now, if you put anything under enough of a
14 microscope, nothing is ever exact. And that's the
15 case here. I mean, you put it under an electronic
16 microscope, a hundred foot wide became 100.1 in one
17 spot, 100.2 in another, 99.9 in someplace else. As
18 it turned out, in front of the acre owned by the
19 City of North Charleston, the plat showed that it
20 was, I think, 99.7 for one leg and 99.69 for the
21 other. So we're talking a four-inch discrepancy,
22 basically.

23 This plat went into the record and, for years,
24 was not challenged by anybody; not by the Trust,
25 whose property it was, not by Whitfield, not by

1 anybody. And so, not surprisingly, when the
2 subsequent surveyors came along through their lines,
3 they relied on what was in the record that were not
4 followed up on that. So the description for this
5 acre, the metes and bounds said that it was 99.7 off
6 of Ashley River Road. That's where they get their
7 four-inch claim of standing.

8 Regardless of what these metes and bounds say
9 though, the fact that it's a quitclaim deed makes
10 the kind of error that they're talking about, this
11 four-inch issue, irrelevant, because even if that
12 metes and bounds mistakenly said it was four inches
13 too close to the road, it doesn't matter. We got
14 the property from Whitfield; it was owned by
15 Whitfield. And if that metes and bounds that was in
16 the public record is four inches off, so be it. We
17 got .999 of an acre instead of a perfect one. Or
18 maybe Whitfield was left with a residual tract that
19 was ever so infinitely smaller than what he planned.

20 But in no event did you have a circumstance
21 where the National Trust parcel was actually reduced
22 in acreage. What that tells us is that City of
23 North Charleston was the sole and exclusive owner of
24 this tract record.

25 Now, that becomes pretty significant when you

1 you move on to the annexation, because there's a
2 couple of references here. But, obviously, this
3 acre is the center of dispute. So ordinance
4 2017-80, the City of North Charleston, annexed this
5 acre. And, you know, really, while we were talking
6 about the quitclaim at the first part, the dispute
7 in this case is about what the City annexed. What
8 did he take into the jurisdictional limits of North
9 Charleston? Well, counsel told us.

10 They told us that they were annexing parcel
11 797, this parcel right here, which the quitclaim
12 lets us know is solely owned by us, it can't have
13 involved any of the Trust. They told us here that
14 it was a municipal-owned area. So if there's any
15 doubt about what counsel has taken, they tell us,
16 we're taking what we own, and that's it.

17 They say it again down here: The property to
18 be annexed belongs entirely to the City of North
19 Charleston. So if there's some question or dispute,
20 how do you resolve that dispute? Counsel told us,
21 we're taking what's ours. You look at the legal
22 description and you end up at the same conclusion.
23 And I actually thought this was pretty interesting.

24 So how do they describe it? They do reference
25 this parcel 797. But they go on to say that this

1 first line that they draw, this line of eight of
2 these, is the northeasternmost property line of the
3 parcel.

4 Now, what they didn't say is we want to cross
5 over by four inches onto the land of somebody else
6 and take that. What they're saying is, we're going
7 to respect the parcel boundary line. And that means
8 that there's no way that they took in the land from
9 the National Trust.

10 They also told us that it's approximately one
11 acre. So if it ends up being, again, you know, 999
12 one-thousand of an acre instead of a perfect acre,
13 so be it; that's where we end up, and that's what we
14 annex.

15 I think it's also important to think for a
16 second about why all this makes sense. Why is it
17 that it might be appropriate to jump over and to
18 annex this? And I think it makes complete sense.
19 We'll talk about it in a few moments on adjacency.
20 But to plant in your mind the idea that when you
21 have municipal facilities and municipal property, it
22 makes sense for the municipality to govern its own
23 property rather than run into the county.

24 So when counsel is doing its ordinance, when
25 they're taking it in, when they're saying we're

1 taking what's ours, we're not trying to take what
2 other people have, that's theirs, but we're going to
3 control what's ours, and that's entirely
4 appropriate.

5 In conclusion, there's only two parties that
6 can challenge an annexation: The South Carolina
7 Attorney General and, in layman's terms, the
8 property owner, somebody with a proprietary image.
9 The attorney general isn't here. And the only
10 person with a proprietary interest in the land that
11 was actually annexed here is the City of North
12 Charleston.

13 We're not objecting to ourselves. The
14 four-inch boundary dispute in the National Trust in
15 the City of Charleston claim, maybe it changes the
16 amount of acreage annexed ever so slightly, but we
17 didn't annex a bit of their hundred-foot strip.

18 THE COURT: All right.

19 Who's going first, the Trust or the City of
20 Charleston?

21 MR. WALKER: Ms. Cantwell is here for the City
22 of Charleston. And I'm Trenholm Walker here for the
23 Trust. I was going to go first.

24 THE COURT: Okay. However you want to present
25 it is fine. You weren't here at the last hearing,

1 were you?

2 MR. WALKER: I was not.

3 THE COURT: It was the other --

4 MR. WALKER: Ms. Wooten. And I'm here with Amy
5 Wooten and Will Cooke from the National Trust who is
6 also admitted in South Carolina and Anne Nelson.

7 THE COURT: Mr. Walker, let me hear from you.

8 MR. WALKER: Thank you, Your Honor.

9 As I said, I'm here today on behalf of the
10 National Trust For Historic Preservation. The
11 National Trust For Historic Preservation was created
12 by the United States Congress. The purpose of the
13 National Trust is to preserve significant historical
14 buildings and historical sites. It is an entity
15 that doesn't, not just for local areas, but the
16 sites have to be of national significance.

17 The area we're talking about here today, Your
18 Honor, Ashley River Road, Highway 61, is of
19 tremendous national significance. Many years ago,
20 Ashley River Road was put on the national register,
21 which is a list or a -- basically, an honor of a
22 place that is deemed to have national significance
23 and worthy of preservation.

24 In our brief, which you've taken a look at, we
25 actually had a little snapshot of the Corridor of

1 Oaks to give you a feel for it. But that road has
2 been either a path or a road for over three
3 centuries.

4 Along that road on the riverside were some of
5 the most historic plantations -- although that word
6 is not en vogue now, but they were plantations
7 then -- in the region of Magnolia, Milligan, and
8 others, and another Trust property which is called
9 Drayton Hall.

10 Drayton Hall was built in 1749. It's
11 considered one of the best examples of Palladian
12 architecture in the entire United States. Its run
13 as a historic house. It's never been up-fitted.
14 It's the same way it was 250 years ago. And that
15 Drayton Hall is right across, kind of diagonally
16 behind, on the other side of the highway, from this
17 other strip of property that we're talking about
18 today.

19 Now, the National Trust -- I've got my own
20 blowups. The National Trust received this property
21 in 1980. And the National Trust received it in what
22 was basically a simultaneous closing or close to it.
23 Georgia Pacific then had all this property on the
24 west side of Highway 61, away from the river, that
25 was productive timberlands. And as a result of a

1 bunch of negotiations -- this was about the time the
2 road was put on the National Register -- Georgia
3 Pacific conveyed to TNC, The Nature Conservancy, a
4 strip of land by deed that was deemed to be 100 feet
5 wide, no more, no less. And this is very
6 significant, and we'll look at it in just a second.

7 Within about two or three weeks after that, the
8 Nature Conservancy conveyed by deed the same exact
9 portion of property, the same strip of land, 100
10 feet wide and approximately 1,100 feet long. And
11 this is the property description that is recited by
12 the parties in their briefs. And you'll see that
13 it's described here, that certain tract or parcel of
14 land and fee situate, and that then say -- says that
15 it's along the southern right-of-way line of Highway
16 61. So that's the western side. When it's talking
17 about the southern right-of-way, it's talking about
18 going into Charleston. So the land to the immediate
19 right, which was conveyed, would be to the west of
20 it.

21 Then you come down to the specific property
22 description. Those certain strips or parcels of
23 land being 100 feet in width -- that's important --
24 and immediately -- immediately adjacent to the
25 southern right-of-way line of Highway 61, parallel

1 with the highway. That's important because, as you
2 saw, in this later deed, there was a description --
3 and we'll talk about that in a minute or two -- that
4 showed our strip as something less than 100 feet.

5 So this was conveyed to our client. It was not
6 conveyed as a spite strip. In some of the filings
7 that have been made with this Court, there was some
8 suggestion that this was a spite strip. No, it's
9 not a spite strip. This was conveyed 38 years ago
10 for the purpose of historic preservation, because
11 this highway, in this general area, has such
12 historic significance.

13 And I think you've seen from our brief, near
14 the end we talk about all the steps that the
15 National Trust has taken over the last 25 years to
16 preserve this area, all the fights it's been in, all
17 the steps it's taken to keep Ashley River Road the
18 way it is.

19 Now we come to the disputed acre, which -- one
20 more very important fact, and that is that in 2005,
21 the National Trust annexed its two-mile,
22 hundred-foot-wide strip into the city of Charleston.
23 So we come forward to 2009. You heard some
24 discussion about an easement plat. That was a plat
25 that purported to locate approximately 18 easements

1 across the National Trust property. The Whitfield
2 property of 2,200 acres was separated from Highway
3 61 by that 100 feet. So when GP, which then owned
4 it, granted it to the National Trust, it reserved
5 the right for 18 easements.

6 But when that plat was recorded, no notice was
7 given to the National Trust. The National Trust
8 didn't even know about it until --

9 THE COURT: And who conveyed these easements?

10 MR. WALKER: The easements were not conveyed.
11 They were reserved, but not in a specific location.

12 THE COURT: The land development --

13 MR. WALKER: Exactly. Exactly. But they could
14 have up to 18.

15 THE COURT: Right.

16 MR. WALKER: So Mr. Whitfield's company takes
17 the property in the late '80s. And then later in --

18 THE COURT: GP says, we reserved some
19 easements, if you ever need them.

20 MR. WALKER: Exactly.

21 THE COURT: Okay.

22 MR. WALKER: So he had the right, basically, to
23 put the easements where he wanted them. So
24 without -- when -- there are some legal limitations
25 on that. But he went ahead and exercised his right,

1 had a surveyor go out. And he recorded this plat,
2 which is in, I think, our, quote, record that
3 Mr. McQueeney has given the Court. And they located
4 these easements where they wanted them. And one of
5 them, Easement No. 3, is shown right up here on the
6 plat of the one-acre parcel.

7 The significance, from our standpoint, is that
8 there's some suggestion that there was an
9 acquiescence by the National Trust of the City.
10 There was no acquiescence. We didn't even know
11 about it. It was never --

12 THE COURT: But you did.

13 MR. WALKER: We knew they had a right. But we
14 didn't --

15 THE COURT: They reserved their rights. You
16 knew they were going to be there.

17 MR. WALKER: We knew they were going to be
18 there. But with respect to the plat, yeah, we knew
19 they had a right to do it. But nobody said, we're
20 going to plat these in these particular locations
21 and nobody said --

22 THE COURT: But they were recorded.

23 MR. WALKER: They were recorded on our
24 property, but they're not in our chain of title.

25 THE COURT: Okay. But they are reservations.

1 MR. WALKER: They were reservations, which is
2 correct.

3 THE COURT: Yeah. GP is doing all this to you.

4 MR. WALKER: Well, it was fine. We have no
5 problem with the easements. The significance is the
6 plat itself. So the plat --

7 THE COURT: Let me ask you this: I mean, I've
8 read your brief and I understand it. Whitfield
9 didn't who-do-you on the width of the easement.
10 Nobody really did. It's just an inaccuracy; is that
11 fair enough?

12 MR. WALKER: No, it's not, because in this
13 instance, the grant was 20 years beforehand --
14 actually, 29 years. And a later plat can't change
15 the grant to my client. That deed -- and we have
16 the affidavit of Daniel Forsberg, which is in the
17 record, in opposition of these motions.

18 And Mr. Forsberg, a licensed surveyor, says, to
19 a reasonable degree of surveying certainty, that
20 that plat, which we're looking at, of the one acre,
21 includes a small portion of our property. And we're
22 not talking about --

23 THE COURT: Wait a minute. Don't keep saying
24 that. I've read the briefs. But Whitfield didn't
25 convey that to themselves. They got it from

1 somebody else too, just like you. Y'all both were
2 recipients of property from a larger tract.

3 MR. WALKER: Exactly.

4 THE COURT: Right. So Whitfield didn't doo-doo
5 the trust. GP is the one doing the out-conveyances
6 to you and to them, different times. So if there
7 was a mistake made, it wasn't National Trust, but
8 not necessarily -- it was also not a mistake of
9 Whitfield.

10 MR. WALKER: Well, there was no plat of the
11 100-foot strip at the time of the conveyance to --

12 THE COURT: Because who was saving that money?
13 GP.

14 MR. WALKER: I guess they really needed it,
15 Your Honor.

16 THE COURT: Maybe they would. That's who made
17 the original mistake, was it wasn't platted. And
18 that's done all the time. I mean--

19 MR. WALKER: You can't do it now, but it was
20 done then. You now you can't convey anything
21 except -- because of questions like this, you can't
22 convey except by recorded plat.

23 THE COURT: And surveyors also are very
24 specific and always are convinced of their right.

25 MR. WALKER: Right. But these posts, these

1 pins, were placed well after the conveyance. To the
2 extent that pins were placed in 2009, they were
3 placed 29 years after the conveyance to my client
4 and can't diminish my client's parcel. The City
5 keeps saying that Whitfield cannot convey to the
6 City the National Trust property. We agree with
7 that. We agree they couldn't do that.

8 THE COURT: Everybody agrees with that.

9 MR. WALKER: Right. But the question for this
10 case is not whether the Whitfield company conveyed
11 title through a quitclaim deed to a portion of our
12 property, but whether or not the description that
13 was used for the annexation included 62 square feet
14 of our property.

15 And we say, first of all, based on the
16 allegations of the complaint, that certainly did;
17 based on the affidavit of Forsberg, in fact, if you
18 look at the record, it did include that 62 feet.
19 I'd argue, as did Ms. Cantwell who was on the other
20 side of me in that case, ex parte'd Wilson in the
21 supreme court, which was a shoestring annexation for
22 Yemassee that both sides have cited.

23 And under a rule that requires a hundred
24 percent property owner, the Supreme Court has said,
25 as Mr. Van Raalte said, the only people who have

1 standing are the attorney general or someone who
2 owns property in the area annexed. So it's not
3 whether they have legal title to our property; it's
4 whether a portion of our property was included in
5 the description, in the annexation petition. And
6 that refers to the TMS number which is derived from
7 this plat right over here, which shows something
8 less than a hundred feet.

9 THE COURT: I thought it was on the right side.

10 MR. WALKER: You're correct.

11 THE COURT: I did read this stuff.

12 MR. WALKER: You're on it.

13 THE COURT: Yeah. I'm on it today. I've
14 studied a little bit.

15 MR. WALKER: So here is the exhibit which is
16 attached or was attached to the annexation
17 ordinance. And this kind of sets it out very well.
18 This blue line, as you can see --

19 THE COURT: All right. How are you going to
20 win this argument? How are you going to win this?
21 I mean, I understand where you're coming from. But
22 the City of North Charleston tried to annex the
23 square you've got highlighted in red and the square
24 over here. And part of their description is the
25 common boundary with your client.

1 The common boundary, wherever it is, not where
2 the surveyor says it is, but wherever it is, if
3 that's what they did, how did they annex your
4 property?

5 MR. WALKER: Well, we say that the description
6 was not that. The description referred to the TMS
7 number which incorporates that plat over there. So
8 we do not say that the only description is we
9 annexed up to the line. They said we annexed what
10 was described in that plat. That's what we're
11 saying. And if you look at it in the light most
12 favorable to the Trust, that is taken as true.

13 THE COURT: Okay. Keep going.

14 MR. WALKER: So, as you know, here's our
15 parcel, the 17. And that was annexed -- and I'm
16 going to put it in red -- into the city of
17 Charleston in 2005. So in doing this annexation --
18 and this is not a map I did; this is the map that
19 North Charleston attached to the ordinance for
20 annexation. The river is over here -- maybe this is
21 a better way to do it.

22 The river is over here. Here's Ashley River
23 Road -- no. I got it backwards again. Here's the
24 river up here. This is the city of North Charleston
25 right here. Here's the acre. So the acre is

1 separated from the city of North Charleston by both
2 Ashley River Road, which has been annexed into the
3 city of Charleston, as well as our hundred feet.

4 We say that we have standing. The law supports
5 us both for proprietary standing, which is that a
6 portion of our property, be it ever so small, was
7 included in the description of the properties
8 annexed. Again, we're not saying that they took
9 title to them; we're saying it was included in the
10 description.

11 We also have statutory standing, as we talked
12 about in our brief, because a portion of our
13 property was taken. But we also have a proprietary
14 and statutory interest in the city of Charleston and
15 also in seeing that this property is not annexed in
16 to the city of North Charleston because we have
17 learned, after the fact, that this property was
18 being annexed in order to be a toehold for this
19 entire larger parcel. This is the 2,200 acres to be
20 annexed in to the city of North Charleston.

21 And since you've read the briefs, I won't go
22 into those in great detail again, except to
23 distinguish that Vickery case that here, under our
24 position, there was a portion of our property
25 included in the description within the annexation

1 petition.

2 The final basis, Your Honor, is for the public
3 importance exception. Here -- and we aren't just a
4 single property owner who is complaining,
5 bellyaching about an annexation. We are the
6 National Trust of the United States with a specific
7 mission of protecting historic places. Our
8 organization itself is of public importance.

9 And if you look at our brief and go to the end
10 of our brief where we talk about the projects that
11 we have undertaken to protect this area, you will
12 see that, again and again, the National Trust has
13 stepped forward to protect the area around Drayton
14 Hall and to protect this national --

15 THE COURT: Where is Drayton Hall on that map?

16 MR. WALKER: It would be right about here.
17 Right there. I think this is where it ends. And
18 it's right there, that little triangle. Not
19 directly across the street, but --

20 THE COURT: You said nearby. Just getting my
21 bearings.

22 MR. WALKER: And we believe still that all the
23 efforts that we've taken, if there's ever been an
24 entity that's charged with a mission of
25 preservation, it's this entity, because that's not

1 just a single 501(c)(3) charter, but a charter that
2 was granted by the United States Congress. And we'd
3 submit this is a tremendous issue of public
4 importance because it also involves the question of,
5 one, municipality leapfrogging over the property and
6 another municipality in order to annex the land on
7 the far side of the municipality, which is
8 unprecedented in South Carolina. And, as we've
9 talked about in our brief, on the summary judgment
10 motion, which I'm not going to get to right now, has
11 very dire consequences and would be, essentially,
12 overturning the law of South Carolina, the unbroken
13 string of precedent.

14 So, Your Honor, that's our position. If you
15 have any more questions, I'd be delighted to answer
16 them. I'm going to turn it over to Mr. McQueeney
17 and Ms. Cantwell.

18 THE COURT: Okay.

19 MS. CANTWELL: Thank you, Your Honor. I'm
20 Frances Cantwell for the City of Charleston. Also
21 with me is Daniel Chip McQueeney. He's also with
22 the City of Charleston.

23 Your Honor, I can't improve much on what
24 Mr. Walker said. The City would adopt those
25 arguments in total. A couple things I would like to

1 point out is that I differ a little bit on who has
2 standing to challenge an annexation when it's a
3 hundred-percent annexation. I do believe someone
4 who can demonstrate an infringement in their
5 statutory and proprietary rights has that standing,
6 which Charleston does by virtue of the fact that the
7 one acre that was annexed in to North Charleston
8 included the 60 -- or included the overlapping area
9 that has been in Charleston that we have a statutory
10 right of protection to and proprietary rights as far
11 as services for.

12 I think what is important is not what kind of
13 deed or quality of title that North Charleston got.
14 The issue is, what did it annex? And it annexed,
15 not by the old TMS number, it annexed by the new TMS
16 number which is 30100000797. The property said in
17 this -- this TMS number is based on the plat at
18 S17224 which is the one-acre plat here. And what it
19 says is that beginning at point A, which is the
20 easternmost corner of 301797A --

21 THE COURT: It's the bottom right, I think.

22 MS. CANTWELL: I'm sorry.

23 THE COURT: Right here.

24 MS. CANTWELL: The point is, it starts with --
25 it describes the metes and bounds -- so it describes

1 the easternmost point is here, which is not a
2 hundred feet from the right-of-way, but 99.7 feet.
3 And then it continues to point B and then around the
4 corner. So what was annexed was the parcel that is
5 described on this plat. It even says it includes
6 this TMS number.

7 And this plat, from what's in the record,
8 has -- overlaps -- ever so slightly, but overlaps
9 with National Trust property which would accord the
10 National Trust, obviously, standing to challenge the
11 annexation based upon its proprietary rights, if
12 nothing else, and the City the right to -- or
13 according to the City's standing, by virtue of the
14 fact that that property -- the overlapping area is
15 already in Charleston and it was unlawfully annexed.

16 So I would reiterate everything Mr. Walker
17 said, just -- I wanted to point that out to you that
18 the annexation was by this plat, not by -- not
19 something less than that. They annexed -- they
20 describe the property on this plat. They refer to
21 the TMS number that this -- that was assigned to
22 this property by --

23 THE COURT: The TMS number and the tax map
24 drawings have got nothing to do with the acreage of
25 the plat. The tax map photographer draws things on

1 the computer. He doesn't survey anything.

2 MS. CANTWELL: He doesn't survey, but what he
3 does is he uses the description that is in the deed.
4 And in this case, as shown in the deed, the deed to
5 North Charleston describes the property as shown in
6 plat S17224 and it's from this plat that the TMS
7 number of --

8 THE COURT: Was generated.

9 MS. CANTWELL: -- 301797 was generated.

10 THE COURT: Okay. I understand that.

11 MR. VAN RAALTE: Your Honor, if I can respond
12 briefly.

13 THE COURT: Yes, sir.

14 MR. VAN RAALTE: First, it's ironic that you've
15 got the City of Charleston and the Trust arguing to
16 have been included in this annexation that they
17 oppose. You'd think it would normally be the other
18 way around, that they would not want to be in it.

19 THE COURT: I noticed that.

20 MR. VAN RAALTE: Let's start with a couple
21 things: First, you got to understand the nature of
22 the human measurement. Is a second a second? Is it
23 accurate to a tenth of a second? To a hundredth?
24 To a thousandth? I mean, at some point, if you look
25 close enough, you'll always find there's always some

1 inherent deviation of any measurement made by man.
2 And four inches on -- you know, I think it works out
3 to be 62 square feet out of 43,560. I mean, it's
4 literally like a thousandth here that we're talking
5 about.

6 Ms. Cantwell mentioned to you a moment ago that
7 the annexation is by the plat. I got to disagree.
8 The annexation is by the ordinance. And does the
9 ordinance measure the plat? Absolutely. But the
10 ordinance does a lot more than that to clarify. The
11 ordinance mentions the plat; it mentions that it's
12 respecting the property line; it mentions that the
13 acre may be approximate; it mentions multiple times
14 that the property to be annexed belongs entirely to
15 the City. So if there's some kind of confusion,
16 it's already been satisfied by counsel which way it
17 ought to fall out.

18 I'd also point out, you -- Your Honor was
19 asking about whether there was hoodwinking going on
20 in the easements and such. No. I mean, the access
21 easements were drawn and that plat recorded, I
22 think, eight years before we ever got this thing.
23 Again, it comes down to a deviation.

24 When you look at this annexation map -- this is
25 the one that was used for the ordinance -- I think

1 it's important to look at this A-to-B boundary in
2 relation to parcel 117, because what you see is,
3 that's a straight line on parcel 117 and it goes all
4 the way down. And our drawn boundary of annexation
5 is right on that major boundary. We're not saying
6 it's a straight line through here, but go over four
7 inches to take in a bit of their property there.
8 It's a straight line. We're trying to respect the
9 parcel. We didn't try to change --

10 THE COURT: Wasn't that ordinance considered
11 after the Trust property was already annexed to the
12 City of Charleston?

13 MR. VAN RAALTE: It was.

14 THE COURT: Okay. That's what I thought.

15 MR. VAN RAALTE: It was. So we were trying to
16 not take that. We respected the boundary of parcel
17 117. We said multiple times in here that we're
18 taking property that's entirely ours.

19 Mr. Walker mentioned for a moment the public
20 interest exception. There is a party who can bring
21 those public interests to this court to be heard.
22 That's the South Carolina Attorney General. It's
23 not the City of Charleston; it's not the National
24 Trust. And the attorney general is not here, so
25 that argument is simply over.

1 We'd ask, Your Honor, that you recognize what
2 counsel said, pretty straightforward, that it is
3 annexing property only owned by the City of North
4 Charleston. And that's the beginning and the end of
5 it. We did not encroach on the National Trust
6 strip.

7 THE COURT: Was there any action filed by
8 anyone to clear the cloud on title to delineate the
9 property boundary line as opposed to challenging the
10 annexation? I mean, is there a title of property
11 claim?

12 MR. WALKER: Your Honor, Mr. Walker again. The
13 City counterclaimed in this case to clear its title.

14 THE COURT: Okay.

15 MR. WALKER: City of North Charleston
16 counterclaimed to clear this title --

17 THE COURT: So Charleston didn't and you
18 didn't. You're the property owner. But you --

19 MR. WALKER: We've asserted that the annexation
20 infringed on our property rights because the
21 property described in the annexation of the TMS
22 parcel through the plat included the 62 square feet.

23 THE COURT: So you're not challenging a
24 property dispute, just an annexation line dispute?

25 MR. WALKER: Correct. We do not think that it

1 can -- that it got our title, because it couldn't
2 get our title.

3 THE COURT: Okay.

4 MR. WALKER: But it has counterclaimed to clear
5 our title. So, in essence, it has responded to our
6 assertion by counterclaim for a DJ to clear the
7 title to the one acre which we think, presumptively,
8 admits there's an issue, describes part of our
9 property.

10 THE COURT: But they're denying that.

11 MR. WALKER: They say the annexation didn't.
12 And we deny it because it says that it's a parcel
13 designated as TMS3010000797.

14 THE COURT: I got it. I'm with you.

15 MR. WALKER: And the whole thing you've heard
16 four times. We say they annexed the parcel. And
17 when they say solely owned by the City of North
18 Charleston, they're trying to say that that's what
19 they intended. But really what they were doing is
20 referring to and what they're cutting and pasting
21 the language from the statute which was 100 --
22 section 100 in the annexation statutes that says
23 that the property has to belong a hundred percent,
24 but they described it as something else.

25 THE COURT: All right. So we got the standing

1 issue to deal with. What would be the next issue to
2 decide after that?

3 MR. WALKER: Your Honor, the City has also
4 moved for partial summary judgment asking for Your
5 Honor to interpret the word adjacent as used in
6 5-3-100 that Mr. Walker just mentioned, because we
7 believe, essentially, it's a fork in the road in
8 this case that both sides need to have a ruling on.
9 I'd be happy to address that.

10 THE COURT: That's where I was wanting y'all to
11 get to. That's what I thought was the issue. So if
12 we define adjacent as a synonym for continuous or
13 otherwise, that's y'all's biggest issue.

14 MR. VAN RAALTE: If adjacency means contiguity,
15 this case is over.

16 THE COURT: Yeah.

17 MR. VAN RAALTE: I mean, absolutely.

18 THE COURT: And either way I rule, y'all got to
19 appeal it.

20 MR. VAN RAALTE: You are correct.

21 THE COURT: I'm with you. Okay. Last night I
22 had supper with a friend. She had to go to church
23 for her children. After she left, I don't know, a
24 quarter to five, I went outside, had a fire, really
25 nice. I got it all together last night for being

1 ready for y'all. So the weather helped y'all.

2 MR. VAN RAALTE: Your Honor, with respect to
3 contiguity, as I mentioned, it's a fork in the road.
4 Either 5-3-100 allows for the annexation of a
5 noncontiguous parcel in certain circumstances or it
6 doesn't. If you don't allow the annexation or
7 contiguity, the case is over. If you do, that's a
8 significant watershed moment and both sides need to
9 know that as well.

10 Now, normal annexations, virtually all I've
11 ever experienced or seen, have been pursuant to the
12 75-to-100-percent method, generally under this
13 5-3-150, which says prominently that the area of the
14 property has to be contiguous to the existing city
15 limit lines. And all the case law, essentially in
16 the last couple decades, has been around. The City
17 of North Charleston did not use that statute.
18 Instead, the City used 5-3-100. And it does not use
19 the word contiguous.

20 Instead, it says that if the territory being
21 annexed belongs entirely to a municipality and is
22 adjacent thereto, that that is sufficient. In other
23 words, contiguity is not mentioned anywhere.

24 Now, the plaintiffs here want to conflate
25 contiguous and adjacent to say that they mean the

1 same thing. They want to point to case law that
2 goes back a number of years, much of which predates
3 this statute 5-3-305. And it's important because it
4 defines contiguous. The Legislature told us it
5 means a two-part test, adjacent, and shares a
6 continuous path. And the City's point is pretty
7 straightforward: If contiguous requires both of
8 those elements can be met, then you can't say that
9 one of the elements by itself means the same thing
10 as both elements. If you do that, you're
11 essentially reading out the second half of the
12 statute.

13 So, you know, when you get to the point where
14 you've gone through contiguous and it requires both,
15 and when you read back up here at 5-3-100 and you
16 see adjacent, it can't require sharing a common
17 border.

18 Let's talk for a second about whether or not
19 this one-acre tract meets the standard of being
20 adjacent, because after you determine that
21 contiguity isn't required, there's still a second
22 issue you've got to go through in the analysis,
23 which is, is this close enough to be considered
24 adjacent?

25 This is not a situation where the City of North

1 Charleston is running miles up the side of the
2 interstate to get to Columbiana Mall. This is a
3 case where the City of North Charleston annexed,
4 without challenge, this parcel, and we're crossing
5 over the National Trust parcel, admittedly. But
6 we're not even talking a stone's throw; we're
7 talking a pebble toss. It's a 100-foot parcel that
8 we're crossing over in order to reach it.

9 Now, we're separated by only that single TMS
10 number. And if you're going to not have a
11 continuous border, then you got to be separated by
12 something, and one the very fewest number of parcels
13 that you can separate and not be contiguous. So we
14 think that this is really the ideal case, the poster
15 child for adjacency in terms of the number of
16 parcels that are there.

17 We think, as far as distance, it's another
18 ideal situation: A hundred feet, not several miles.
19 On top of that, it isn't even as if the City of
20 Charleston or the National Trust have the ability to
21 exclude us from this hundred feet at all. I mean,
22 we don't have to hop over it or leapfrog, in a
23 sense; we've got an easement that lets us drop
24 across it any time we want. I mean, as far as
25 adjacent goes, this is as close as you're ever going

1 to get. And so we would submit to you that it is in
2 the heartland of 5-3-100.

3 Touched a few moments ago also on the whole
4 idea of, why would this make sense? Is it
5 reasonable? And we think the answer is yes. The
6 City of North Charleston has its property. We've
7 also taken steps to annex the surrounding property.
8 So what happens if we put a municipal facility
9 there, a substation? We clearly have jurisdiction
10 to go out and service those properties. Are we
11 going to be calling the County to provide, you know,
12 basic municipal services to our own facility? That
13 seems unreasonable --

14 THE COURT: Isn't there a statute out there
15 that allows municipalities to provide their own
16 selves with their own services?

17 MR. WALKER: I think it does, although it
18 doesn't necessarily include police services, I
19 wouldn't think. But that would be my concern. It
20 would be are we going to call the sheriff's office
21 to --

22 THE COURT: Well, if you had a utility service
23 out there and it needed electricity, you could run
24 electric service out there, provided you weren't
25 violating some of the other -- you could condemn --

1 MR. WALKER: We certainly have condemnation
2 rights.

3 THE COURT: Okay.

4 MR. WALKER: We do. But, Your Honor, we think
5 it's entirely reasonable, in a limited situation
6 like this where properties are closely bounded to
7 one another and they're adjacent, to allow the
8 municipality to govern property that it, itself,
9 owns.

10 THE COURT: Where is the easement to that one
11 acre across from the National Trust?

12 MR. WALKER: Right about a -- here it is on the
13 same map, Your Honor. There's the easement right
14 there.

15 THE COURT: Okay. I think I want to hear from
16 Charleston.

17 MS. CANTWELL: Thank you, Your Honor. Just a
18 little bit of historic perspective: The requirement
19 for contiguity between an area being annexed and the
20 city that's annexing it has been part of annexation
21 juris prudence since the 1950s. In fact, this
22 statute that North Charleston is relying on,
23 5-3-100, which says that when a property belongs
24 entirely to a municipality and is adjacent, being
25 annexed upon petition or resolution of ordinance,

1 that statute has also been part of the political
2 landscape of annexation since the 1950s.

3 In 1961, the supreme court of this state held
4 that even when a statute does not require
5 contiguity, if it's silent on it, it would be
6 imposed and would be required for any annexation.
7 So the common law of the state is that for an
8 annexed area to be eligible, to be incorporated into
9 a city or a town, it has to be continuous.

10 THE COURT: Did the County say grace over this?

11 MS. CANTWELL: Excuse me?

12 THE COURT: Did the County say grace over this?

13 MS. CANTWELL: The county of --

14 THE COURT: Charleston.

15 MS. CANTWELL: Say grace over?

16 THE COURT: The annexation that North
17 Charleston is described to do.

18 MS. CANTWELL: I don't think they objected to
19 it.

20 THE COURT: Were they notified of it?

21 MS. CANTWELL: I would assume they were
22 notified. I don't know what they -- I assume that
23 they --

24 THE COURT: The statute says: And the
25 governing body of the county.

1 MS. CANTWELL: Well, the second part says if
2 it's -- when a territory is supposed to be annexed
3 by the municipality. And there's another part that
4 says if it's owned entirely by the County, then the
5 County can petition, and if it's adjacent, it can be
6 annexed.

7 THE COURT: Oh, I gotcha. So the County can
8 annex its property into the city limits.

9 MS. CANTWELL: That's right.

10 THE COURT: Well, that would never happen
11 around here.

12 MS. CANTWELL: It actually happens from time to
13 time. So the point being is that we have the common
14 law that says you have to be contiguous. Now, how
15 has the Supreme Court interpreted that over the
16 years? They have used the terms contiguous,
17 adjacent, adjoining interchangeably. St. Andrews
18 Public Service District vs. The City, five years --
19 decided five years after 5-33-05 comes into play,
20 which I'll get to in a minute, essentially said
21 that. That's what it means.

22 North Charleston's petition would require the
23 Court to find, as a matter of law, that when the
24 General Assembly enacted 5-3-305, which says what
25 contiguous means, that it intended to change the

1 common law. Well, we know the presumption is just
2 the opposite: Absent a clear indication of
3 legislative intent, you are to construe a statute as
4 consistent with the common law. And that has
5 particular poignancy here, because if you look at
6 what the General Assembly did over the years as
7 annexation has grown up, if you will, the courts
8 have said, look, we're going to let you annex a
9 property. If it's separated from your community by
10 water or by a marsh or by easements or by a railroad
11 track, we don't think that defeats contiguity.
12 That's part of the common law as well.

13 If you look at what 5-3-305 says, it says
14 exactly that. What this statute did was essentially
15 codify how the courts have interpreted contiguity
16 for a long time, longer than I've been alive; not
17 much, but longer. So the point being, Your Honor,
18 is that there is no legislative intent, expressed or
19 even that you could imply, that 5-3-305 intended to
20 repeal the common law. North Charleston doesn't
21 dispute that there -- that the acre doesn't touch
22 its boundaries; they don't dispute that if there's
23 no common border there -- they agree that it's
24 separated. It's separated, but they're saying it's
25 close enough. And we don't have to be contiguous,

1 we just need to be adjacent.

2 So if you would accept that premise, you'd have
3 to find that, number one, the Legislature intended
4 to change a common law. And secondly, and I would
5 ask the Court to be careful here or take pause to
6 consider what the results would be, because if you
7 look at other annexation statutes, some of them say
8 adjoining; some of them say contiguous; some of them
9 don't say anything.

10 And so if -- so that would mean if North
11 Charleston only has to be -- can take a piece of
12 property and it's adjacent and it doesn't have to
13 touch, but since the school district has no
14 geographic requirement, property owned by a school
15 district could be almost anywhere. If somebody
16 wanted to bring it in, there would be no geographic
17 plotting. That's an absurd result that we try to
18 avoid when we're interpreting statutes. So I think
19 that's another point that needs to be stressed.

20 If you go down this road with 5-3-100, you have
21 to consider what happens with the other annexation
22 statutes and you're going to hop in public policies
23 that relates to annexation and create other chaos
24 and mischief.

25 The second thing that is important to remember

1 as well is that it's not just a railroad track or a
2 marshland or a waterway that separates the one acre
3 from the other boundaries of the city of North
4 Charleston, it is separated by the city of
5 Charleston itself because the National Trust
6 property designated as 301-1-17, nobody disputes it,
7 it's in the city, it's been in the city. To condone
8 this type of annexation requires that you leapfrog.
9 And the term has been, well, you know, in this
10 limited situation. But who knows? So what is it?
11 Now it's 150, 160, 170 feet. This next time is it
12 going to be 500 feet? The time after that, is it
13 going to be a mile? What is the check, if you will?

14 And the Supreme Court has put a check on the
15 extent of an annexation. They said, we don't care
16 how big it is, we don't care the extent of it, we
17 don't care what it's shaped like, but you have to be
18 contiguous, but we're going to let you, which means
19 touching, but if you're separated by these certain
20 types of property, that does not defeat contiguity.
21 And that's all that section 5-3-305 does.

22 But this acre is not separated from Charleston
23 by the types of properties that the Legislature
24 describes in the statute. It is separated not only
25 by Highway 61, which is already in Charleston, but

1 it's also separated by privately owned property.

2 THE COURT: Which is also in the city of
3 Charleston.

4 MS. CANTWELL: Which is also in the city of
5 Charleston. And there is parallel precedent in the
6 state in the area of incorporation where in Glaze
7 vs. Grooms and in Kaiser vs. Clarke where the Town
8 of James Island attempted to form a city using or
9 jumping over boundaries on James Island. They were
10 already in the city of Charleston. The Court struck
11 it down and said you can't do that.

12 So there is no precedent in this state for
13 leapfrogging, even if you were to accept the fact
14 that the acre is adjacent and doesn't have to touch.
15 Even if you accept that, the fact that it's
16 separated by privately owned property in the city of
17 Charleston defeats the concept of adjacency on its
18 face.

19 There's a case that we cited in our brief which
20 I think would be helpful to the Court. It's from
21 the city of Cheyenne. And they were interpreting a
22 statute that was -- I always get this wrong. It was
23 the "or." You see, the property had to be adjacent
24 or contiguous, much like Mr. Van Raalte keeps
25 pointing out, that it has to be adjacent to and

1 share a border. And the court in the Cheyenne case
2 said, look, it has to be either adjacent or
3 contiguous. So what does that mean? And we think
4 it means to have touching, unless you're separated
5 by specific property that has specific features as
6 described in the statute; a la, 5-3-305.

7 And there's -- I don't know the term for the
8 statutory construction bill, but if you have a
9 statute passed in this state that is similar to a
10 statute that another state has passed and has been
11 interpreted by that state to mean or to be
12 interpreted in a certain way, it's not conclusive on
13 you, but it certainly is to be given consideration.

14 So our point, Your Honor, would be that 5-3-305
15 did not abrogate the common law. Common law
16 requires some degree of touching, unless you are
17 separated by certain types of land. The acre is not
18 separated by those types of land. The acre is
19 separated by privately owned property, all of which
20 is in the city of Charleston. And we would
21 respectfully ask the Court to hold that contiguity
22 is a factor and, on its face, this acre is not
23 contiguous. Thank you.

24 THE COURT: Thank you, ma'am.

25 Mr. Walker?

1 MR. WALKER: Your Honor, I will be brief,
2 because it's hard to add to Ms. Cantwell.

3 THE COURT: She said the same thing about you.

4 MR. WALKER: I can say it from experience
5 because this is the first time I've been on the same
6 side as her in a case like this. And I've gotten
7 whooped every time, including in that case that we
8 were talking about.

9 So I don't have anything that can supplement
10 what she said except to say that the City of North
11 Charleston has not come forward with a single
12 decision from the Appellate Courts of South Carolina
13 that has upheld annexation where the properties have
14 not touched.

15 I'll also refer to another rule of statutory
16 construction, the last legislative expression on the
17 subject. And, here, statutes within a particular
18 title, as Ms. Cantwell said, should be construed in
19 harmony and that this would be the last legislative
20 expression which requires that there be contiguity.

21 The other thing I'll point out is, within 305,
22 there's a second use of adjacent which actually uses
23 it synonymously with contiguity. After talking
24 about what continuous means, the statute goes on to
25 describe what intervening land or water will not be

1 considered, and then comes back to say intervenes
2 between the two properties which, but for the
3 intervening connector, would be adjacent. In other
4 words, they would be touching but for the
5 intervening land. So in the second use of adjacent
6 in this statute, it's treating it the same,
7 basically, as contiguous. One moment, Your Honor.

8 The last thing, and Ms. Cantwell pointed it
9 out, is that we cited in our brief an attorney
10 general opinion that is straight down the line with
11 the position of the City of Charleston and the
12 National Trust on adjacency. It's not synonymous
13 with contiguity; contiguity is always required.
14 Thank you.

15 THE COURT: Okay.

16 MR. VAN RAALTE: Your Honor, if I can respond
17 briefly. Regarding the South Carolina Attorney
18 General *lis pendens*, he's a statutorily entitled
19 party that can step in and channel. He's not here,
20 so he obviously didn't feel that strongly about it
21 in this case.

22 Let me respond to a couple of these particular
23 items. They mentioned that we have not cited prior
24 appellate opinions dealing with this issue. That's
25 true. I wasn't able to find one with 5-3-100, the

1 very statute that we used. I wasn't able to find a
2 recorded opinion one way or the other. I think this
3 is a novel question for Your Honor.

4 In terms of all of the discussion about the
5 common law, the common law is very important in this
6 state, but it yields when the Legislature puts down
7 a particular expression. And in 2000, they did
8 exactly that: They passed 5-3-305 and they told us.

9 Going back to that same statute, Mr. Walker was
10 talking about using the word, again, you know, but
11 for would be adjacent. It's not used synonymously
12 there. I disagree with him. In fact, what they do
13 is they say, basically, adjacent and shares a
14 continuous border. So, in other words, they're
15 putting in the words it would be continuous because
16 they're using the two-part test right there. It's
17 absolutely consistent with the City of North
18 Charleston's position.

19 Ms. Cantwell talked a bit about the fact that
20 we were leaping over property previously annexed by
21 the City of Charleston as if that had some special
22 significance here of more than just being adjacent,
23 more than just crossing the road.

24 In St. Andrews Public Service District vs. The
25 City Counsel of the City of Charleston, the 2002

1 opinion, I think, was cited in their brief, the
2 Court says in footnote 2: Respondent fundamentally
3 misreads Glaze. In that case, the City had standing
4 to challenge James Island's annexations, not because
5 James Island crossed the City's property, but
6 because that municipality purported the annexed
7 property already within City's borders. Respondent
8 has no standing under Glaze. That's exactly the
9 opposite of the situation we're dealing with here.
10 We are crossing it, but we have not claimed to annex
11 their property.

12 Finally, I guess I close by bringing us back to
13 standing. The City of Charleston simply does not
14 have standing to challenge this. They raise a
15 number of public interest arguments. They want you
16 to think about other statutes, other places in the
17 state, which are all proper considerations. But
18 there's a party that's set up specifically to
19 advocate those kind of concerns, and it's not the
20 City of Charleston. It's the attorney general. The
21 City of Charleston has got to make its arguments
22 based upon its own standard, based on our
23 infringement on their proprietary interest, and
24 there hasn't been any here.

25 THE COURT: Question for y'all: How many other

1 examples can y'all think where city limits are
2 divided by other city limits or separated like this
3 would be if this came in? I can think of one: The
4 City of North Myrtle Beach. It straddles Atlantic
5 Beach, which is municipality. You leave Windy Hill,
6 go through Atlantic Beach, around Atlantic Beach,
7 and that's where all the lesser-than-reputable
8 establishments are in Atlantic Beach. And then if
9 you left it, you can see North Myrtle Beach, which
10 is in Crescent Beach, Ocean Drive, and Cherry Grove
11 are the four beaches. So you kind of go in and out.
12 But I don't know whether they annexed the city of
13 North Myrtle Beach.

14 MR. VAN RAALTE: I don't know about that one,
15 Judge. But I can tell you a very interesting other
16 one. Right down in our neck of the woods, you got
17 to drive through -- drive through the city of North
18 Charleston to get from the city of Charleston's
19 Daniel Island to the city of Charleston proper. You
20 don't drive from one to the other. They crossed
21 over water to get there, but --

22 THE COURT: This -- I don't know. I can't
23 think of any other examples. But that would be one
24 of them, obviously. This easement for this one acre
25 was recorded where one acre was cut out?

1 MR. VAN RAALTE: Yes, sir.

2 THE COURT: But after the property was titled
3 to the National Trust --

4 MR. VAN RAALTE: Yes, sir.

5 THE COURT: -- it was just reserved to be
6 placed at some place in the future.

7 MR. VAN RAALTE: I might have the dates wrong.
8 But approximately -- the deed to the trust was in
9 the early 1980s. I think that the deed that -- or
10 the plat that would set forth the easements was
11 about 2009. And the City got its plat and title
12 ownership in 2017.

13 THE COURT: And the City of Charleston annexed
14 the 100-acre strip about when?

15 MR. WALKER: 2005, Your Honor.

16 THE COURT: So before.

17 MR. WALKER: Yes, sir.

18 THE COURT: So it was National Trust and the
19 city of Charleston before the easement was put on
20 the property. It was reserved, not placed.

21 MR. WALKER: It was reserved, that's correct.
22 They had a right to put it, but it didn't say that
23 it had the right to put it -- it didn't say the
24 locations where they had a right to put it. They
25 had a certain number that they could place.

1 THE COURT: What happens if I grant both if
2 y'all's motions? Where does that put you? Y'all
3 don't have standing, y'all don't have adjacency or
4 contiguity. Where does that put y'all? If that
5 were to happen, does that mean y'all are both dead
6 in the water?

7 MR. VAN RAALTE: I suppose it would. But, with
8 respect, I don't think that can happen because of
9 the order that's required. With standing being a
10 threshold issue, that's got to be the first thing
11 determined. And at least in this particular case,
12 if they don't have standing, then we don't reach --

13 THE COURT: Summary judgment.

14 MR. VAN RAALTE: -- the next one. You could
15 deny our motion for summary judgment, I guess, on
16 that, but you'd never reach it. I mean, once you
17 determine standing, the analysis ends for case 851.

18 THE COURT: Okay. Is this not a clever riddle?
19 All right. Do y'all want to put anything else on
20 the record about these two motions, the standing and
21 the -- yes, sir?

22 MR. MCQUEENEY: One issue about --

23 THE COURT: Mr. McQueeney?

24 MR. MCQUEENEY: Yes, sir. Sorry. Chip
25 McQueeney, City of Charleston. I just wanted to

1 point out one other thing about the easements. I
2 don't know if anybody has a copy of the 2009 plats.
3 But what you'll notice in reading the plats, this is
4 the -- I believe this is a copy of S170224, the 2017
5 plat. When you read that plat, you'll see that the
6 rebar there were actually based on rebar found by
7 the surveyor in 2017. That's based on the 2009
8 plat.

9 The 2009 plat, I think it's L090225, will show
10 these being set at the time at the 99.7 and the
11 99.69 places. The reason that's important is
12 because the 2009 plat -- and there's -- it's under
13 the surveying regulations, but it's in the state
14 law. Let me grab -- there's a difference between a
15 right-of-way survey and a boundary survey under
16 state law.

17 And the 2017 plat, read the case law about what
18 surveyors will do; they will look for monuments and
19 they'll try to tie the monuments together. They
20 won't do -- they won't find the beginning point and
21 then go from point A to point B, running the
22 courses. And natural monuments will prevail over
23 artificial monuments.

24 What the surveyor did in 2017 was locate the
25 rebar and run it based on that. And again, the

1 problem is, under the definitions of the different
2 types of surveys under -- this is the South Carolina
3 regs 49-430(c)(14) defines what a boundary survey is
4 and (18) defines what a right-of-way survey is. The
5 2009 plat says this not a boundary survey.

6 So those monuments that are on the 2009 plat
7 and the 2017 plat are not intended to show the
8 boundaries of the National Trust parcel, even though
9 they were used in 2017 and the annexation to do so.
10 That's what has created sort of the, quote, error
11 that we're talking about.

12 And that was in the time that Whitfield owned
13 the property, not GPIC. I just wanted to point that
14 out for the Court and don't think anyone sort of
15 discussed that issue. But --

16 THE COURT: So if that's the case, then the
17 right-of-way is four inches too short, so y'all
18 can't get to the one-acre tract. That's what your
19 point is -- I follow you completely -- the surveyor
20 screwed it up? I've always found that surveyors are
21 always right when you're talking to them, whichever
22 one.

23 MR. WALKER: I'm not making an argument, but
24 just want to refer the Court. The plat that
25 Mr. McQueeney referred to, he submitted something

1 called the record, and it's at page 148.

2 THE COURT: Okay. Now, what's Mr. Whitfield
3 going to do with this 2,200 acres? He wants to make
4 some larger -- subdivide it, to some degree?

5 MR. VAN RAALTE: I'm sure he's annexed that
6 2,200 into the City of North Charleston. And it
7 will eventually go through the normal planning
8 process. And I guess that's one thing to note. If
9 he's in the county, it goes through a planning
10 process and, essentially, zoning. If he's in the
11 city of Charleston, he goes through the planning
12 process and it's applied. If he goes through North
13 Charleston, he goes through a public statutory
14 zoning process.

15 MR. BABCOCK: And, Your Honor, last time --
16 Keith Babcock for the Whitfield Company and
17 Whitfield Construction.

18 Last time, Your Honor, we were with you, I made
19 reference to a contract that was to develop 500
20 acres for a residential subdivision and different
21 phases for --

22 THE COURT: Right. It's going to come in in
23 parts. I've got a very interesting conundrum.
24 Well, if this -- we can go off the record.

25 (Off-the-record discussion.)

1 THE COURT: All right. Mr. McQueeney?

2 MR. MCQUEENEY: I just wanted to respond to the
3 Charleston thing because I know that that's an easy
4 issue to point out. But this really hadn't been
5 developed because we're not at that stage yet. As a
6 practical matter, this land can be very beneficial
7 to North Charleston as far as tax base.

8 As far as the City of Charleston is concerned,
9 we're not against development of it; we're against
10 the overdevelopment of it. As far as the City of
11 Charleston is concerned, the people that will be
12 living on that land, which, under Mr. Whitfield's, I
13 think, allegations and his pleadings, would be two
14 per acre on that site versus what it's currently
15 zoned for, the county, the city, and the city of
16 North Charleston, which is, I think, one for every
17 eight acres.

18 But those people are going to be driving down
19 Ashley River Road, sharing the roads with the city
20 of Charleston residents. They're at the head of
21 what's called the Church Creek drainage basin which
22 runs in the city of Charleston properties and floods
23 a lot. Federal government is giving us money to buy
24 properties within the Church Creek drainage basin
25 because they keep flooding and tearing down houses.

1 And, again, it's not really about North
2 Charleston being a better governor of property than
3 the city of Charleston; it's about the incentives
4 for the city of North Charleston versus the
5 incentives of the city of Charleston to prevent
6 overdevelopment of this property.

7 MR. BABCOCK: Your Honor, these are -- really
8 are issues for another day. We have great concerns
9 about some of the things that they mentioned here
10 and will be coming to you at a later date.

11 THE COURT: So, first things first, I've got to
12 decide whether the issue of the Trust -- and either
13 the Trust has standing and the City of Charleston
14 has standing or neither has standing. They're not
15 exclusive. Y'all have got the same standard to
16 object to the annexation.

17 MR. WALKER: I do think that the City has a
18 large -- a different interest, to some extent, in
19 that there's a public interest, not as used in
20 standing, but there's an important statutory
21 interest that the City has with the annexation over
22 its own city limits that the Trust cannot raise. We
23 can raise it as a legal objection, but the City
24 itself has been -- is the entity that has been
25 directly violated. We think the Trust has standing,

1 but we believe that the City has its own very strong
2 case because of what's trying to be accomplished
3 here.

4 MR. VAN RAALTE: It's the same four inches for
5 both of them, Judge.

6 MR. MILLER: Bruce Miller from Millbrook
7 Plantation. We also have a motion to dismiss on the
8 standing, the very same thing that's in here.

9 THE COURT: And the same facts?

10 MR. MILLBROOK: The same hundred-foot strip --

11 THE COURT: Three tenths of a foot?

12 MS. CANTWELL: Your Honor, we've argued that
13 case. That's the case we argued --

14 THE COURT: Right, in October.

15 MR. WALKER: It's not this strip.

16 MS. CANTWELL: It's a different strip.

17 THE COURT: Okay. Knowing that y'all are going
18 to appeal whichever way I go, what would be the most
19 efficient use of your time? Proposed orders or not?
20 Or do you just want me to say, this is how I rule,
21 please prepare me a proposed order, and we exchange
22 them? I'll go either way. Sometimes I think it
23 helps me to see the proposed orders from each side.
24 But I understand I'm going to call it a ball or a
25 strike and y'all are going to go back and review it

1 under different scrutiny.

2 MR. WALKER: The plaintiffs would like to do
3 proposed orders.

4 THE COURT: Y'all agree with that?

5 MR. VAN RAALTE: Yes, Your Honor, we'd agree
6 with that and suggest that they be a separate order
7 on each issue.

8 MR. WALKER: Fine with that.

9 THE COURT: Now, likewise, on the first one we
10 heard on Millbrook --

11 MR. MILLER: Right.

12 MS. CANTWELL: We'll do that.

13 THE COURT: Okay. How long do y'all want?
14 It's y'all's case. I'm going from general
15 sessions -- I got two more weeks and then we're down
16 til Christmas. And then I'm back in 8th Circuit
17 doing civil chief administration stuff. Off the
18 record.

19 (Off-the-record discussion.)

20 THE COURT: Does anyone object to me asking
21 Mr. McQueeney to get this filed?

22 MR. BABCOCK: Your Honor, would it also be
23 helpful for us to submit a proposed order for the
24 motion the Trust had and Whitfield had before you?

25 THE COURT: Sure. Same time limit.

-- END OF TRANSCRIPT OF RECORD --

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R. p. 238

APP-238

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Charleston County, South Carolina, on the 10th of December, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 23, 2019

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
	)	
National Trust for Historic	)	Case No. 2018-CP-10-851
Preservation in the United States	)	
And the City of Charleston,	)	Affidavit of Adam MacConnell
	)	
Plaintiffs,	)	
	)	
v	)	
	)	
City of North Charleston	)	(1 Acre Case)
	)	
Defendant.	)	

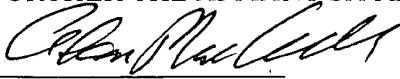
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JULIE J. ANDERSON
CLERK OF COURT

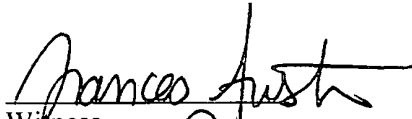
PERSONALLY appeared before the undersigned Notary Public, Adam MacConnell, who, having first been duly sworn, deposes on oath and states as follows:

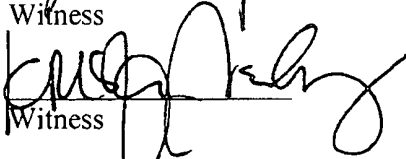
- 1) That I am a project manager with the City of North Charleston. As such I have personally assembled the records of the City contained herein. Additionally, I have personally reviewed the official records of the Charleston County RMC's office that are presented herein. As such, I have first hand knowledge of the authenticity of the documents presented.'
- 2) The City of North Charleston annexed TMS 201-00-00-797 by way of Annexation Ordinance 2017-080 and Resolution 2017-67. Certified copies of those public records are attached hereto.
- 3) A certified copy of the minutes of the council meetings at which these items appeared before Council are also attached hereto
- 4) I have reviewed the records of the Charleston County RMC office and obtained certified copies of the following official records:
 - a. Deed from Whitfield to North Charleston for TMS 301-00-00-797 (1 acre), Charleston County RMC Book 0673, Page 028
 - b. Deed into Nature Conservancy, Charleston County RMC Book 0121, page 206
 - c. Deed from Nature Conservancy to Trust, Charleston County RMC, Book 0121, Page 209
 - d. Plat to TMS 301-00-00-797
 - e. Deed from Charleston County RMC Book S17-224

- f. Plats showing easements across 100' strip. Five (5) plat sheets recorded at Charleston County RMC Book L09, Page 0225- 229

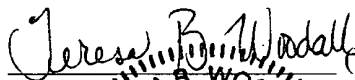
FURTHER THE AFFIANT SAYETH NAUGHT.


Adam MacConnell


Witness


Witness

Sworn to before me this
3rd day of October, 2018.


(Notary)
North Charleston, South Carolina
My commission expires 11-24-2024


2018-CP-10-851

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF DANIEL C. FORSBERG

2018 DEC 10 PM 3:43
JULY 2018
BY 2

PERSONALLY appeared before me, Daniel C. Forsberg, who being duly sworn, deposes

and says:

1. My name is Daniel C. Forsberg. I am a 1976 graduate of The Citadel with a Bachelor of Science degree in Civil Engineering. I am licensed by the State of South Carolina as a Professional Engineer and Land Surveyor.
2. I have over 39 years of experience in engineering and surveying and have been President/Principal in Charge of Forsberg Engineering & Surveying, Inc. since 1983. I have been qualified as an expert in the State and Federal Courts of South Carolina on numerous occasions.
3. At the request of counsel for the Plaintiffs in the matter designated as Case No. 2018-CP-10-0851, National Trust for Historic Preservation in the United States and the City of Charleston v. City of North Charleston, I have reviewed various public documents pertaining to certain lands owned by the National Trust for Historic Preservation in the United States (the "National Trust"), the City of North Charleston ("North Charleston"), and Whitfield Construction Company and its affiliates ("Whitfield") located along or in the general area of South Carolina Highway 61 known as the Plantation District.
4. I have specifically reviewed the following public records:
 - a. A deed dated October 23, 1967, and recorded in Deed Book E89 at Page 131 in the RMC Office (now the Register of Deeds Office) for Charleston County, South Carolina (the "ROD Office"), a copy of which is attached as Exhibit 1 to this affidavit, under which Georgia-Pacific Corporation conveyed 12,293 acres of real property to Georgia-Pacific Investment Company ("GPIC").
 - b. The 1974 tax map for Charleston County tax map parcels beginning with TMS No. 301-00-00, a copy of which is attached as Exhibit 2 to this affidavit.

- c. A deed dated January 2, 1980, and recorded in Deed Book O121 at Page 206 in the ROD Office, a copy of which is attached as Exhibit 3 to this affidavit, under which GPIC conveyed 26.53 acres of the property conveyed to it in Deed E89/131 to The Nature Conservancy (the "Conservancy"), said property, which I refer to herein as the "National Trust Property," measuring 100 feet in width along the right-of-way for South Carolina Highway 61.
- d. A deed dated January 28, 1980, and recorded in Deed Book O121 at Page 209 in the ROD Office, a copy of which is attached hereto as Exhibit 4, under which the Conservancy conveyed the National Trust Property to the National Trust.
- e. A plat entitled, "PLAT of 2,294.17 ACRES OWNED BY GEORGIA PACIFIC INVESTMENT COMPANY LOCATED NEAR MAGNOLIA GARDENS WEST ST. ANDREWS, CHARLESTON Co., So. CAROLINA," prepared by William C. Boineau (S.C.R.L.S. No. 4173), dated September 19, 1987, and recorded on November 24, 1987 in Plat Book BP at Page 129 in the ROD Office ("Plat BP/129"), a copy of which is attached hereto as Exhibit 5.
- f. A deed dated July 14, 1989, and recorded in Deed Book A186 at Page 320 in the ROD Office, a copy of which is attached hereto as Exhibit 6, under which GPIC conveyed the property shown on Plat BP/129 to Whitfield Construction Company.
- g. Those certain plats entitled, "PLAT SHOWING THE LOCATION OF 18 SEPARATE ACCESS EASEMENTS 60' IN WIDTH LOCATED THRU PROPERTY OF NATIONAL TRUST OF HISTORIC PRESERVATION, LANDS OF WHITFIELD CONSTRUCTION COMPANY, HIGHWAY No. 61, ST ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by A.H. Schwacke, III (S.C.R.L.S. No. 13855), dated May 15, 2008, last revised March 24, 2009, and recorded on May 15, 2009 in Plat Book L09 at Pages 0225 through 0229 in the ROD Office, copies of which are attached hereto as Exhibit 7 ("Plats L09/0225-0229").
- h. That certain plat entitled, "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," prepared by Timothy D. Elmer (S.C.P.L.S. No. 17566), dated October 17, 2016, updated August 8, 2017, and recorded on September 22, 2017, in Plat Book S17 at Page 0224 in the ROD Office, a copy of which is attached hereto as Exhibit 8 ("Plat S17/0224"). I will hereinafter refer to the property described in Plat S17/0224 as the "Acre."

- i. A deed dated August 29, 2017, and recorded in Deed Book 0667 at Page 666 in the ROD Office, a copy of which is attached hereto as Exhibit 9, under which Whitfield Construction Company purportedly conveyed the property shown on Plat S17/0224 to Tim Whitfield Construction and Development LLC.
 - j. A deed dated September 12, 2017, and recorded in Deed Book 0673 at Page 028 in the ROD Office, a copy of which is attached hereto as Exhibit 10, under which Tim Whitfield Construct and Development LLC purportedly conveyed the property shown on Plat S17/0224 to the City of North Charleston.
5. Charleston County maintains a tax mapping system whereby parcels of land are assigned a number for purposes of tracking ownership and assessment values. The tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat. The legal description for the Acre references Plat S17/0224. As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797.
6. The deed to the National Trust for the National Trust Property was made subject to the right of GPIC to create 18 easements for access from S.C. Highway 61 across the National Trust Property. Plats L09/0225-0229 lay out these access easements. Plat S17/0224 also shows Access Easement #3, as shown on Plat L09/0225, running from Highway 61 across the National Trust's property to the Acre. The purported width of the National Trust's property is shown as 99.69 feet on the north side and 99.7 feet on the south side. As a result, 62 square feet of the National Trust Property appears to have been included in the Acre.
7. According to Deed O121/206 and Deed O121/209, the National Trust Property is 100 feet in width, extending from the southern right-of-way line of South Carolina Highway 61. Plat S17/0224 shows the Acre as being less than 100 feet from the southern right-of-way line for South Carolina Highway 61.

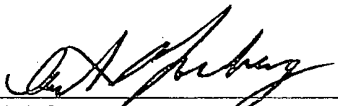
8. Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property.

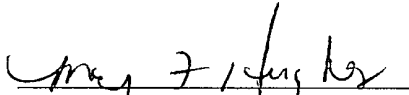
9. Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property.

10. Further your deponent saith not.

SWORN TO BEFORE ME THIS

6th day of Dec., 2018


Daniel C. Forsberg, PE, PLS


Notary Public for South Carolina

My Commission Expires: ~~My Commission Expires~~ October 14, 2024

BOOK E 89 PAGE 131

STATE OF SOUTH CAROLINA

KNOW ALL MEN BY THESE PRESENTS, That Georgia-Pacific Corporation, a Georgia corporation, (successor by merger to Williams Furniture Corporation), for and in consideration of the sum of Ten (\$10.00) Dollars and other valuable considerations to it paid by Georgia-Pacific Investment Company, an Oregon corporation, has granted, bargained, sold and released, and subject to the exceptions and reservations hereinafter set forth, by these presents does grant, bargain, sell and release unto the said Georgia-Pacific Investment Company, its successors and assigns, those certain tracts or parcels of land situate, lying and being in Charleston and Dorchester Counties, South Carolina, and more fully described as follows:

PARCEL NO. 1:

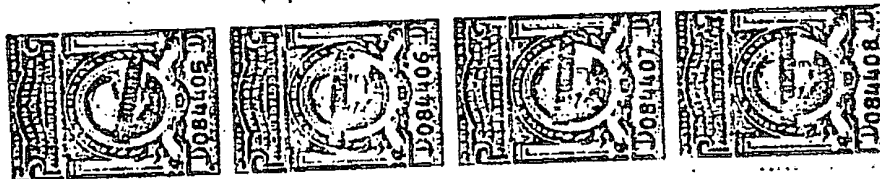
All those several tracts of land situate, lying and being on both sides of the Ashley River in the County of Charleston, State of South Carolina, being known as the Charleston Mining & Manufacturing Company Tract of Williams Furniture Corporation containing 12,293 acres, more or less, and being the unsold portion of those tracts of land originally containing 15,925 acres, more or less, as more fully described in a deed of Donald D. Shepard to Williams Furniture Corporation dated December 26, 1945, and recorded in the R.M.C. office for Charleston County in Book C-46, page 58. This conveyance to include all unsold lots wherever situate, including those in Camps Subdivision, Fetteressa Subdivision and Green Grove Subdivision.

PARCEL NO. 2:

All that plantation or tract of land situate, lying and being in St. George's Parish, Dorchester County, State of South Carolina, known as Archdale Hall Plantation, containing 770 acres, more or less, and being more particularly described in a deed from Glen Drayton Grimke to Williams Furniture Corporation dated March 27, 1962, and recorded in the office of the Clerk of Court for Dorchester County in Deed Book 128, page 327.

PARCEL NO. 3:

All those tracts or parcels of land situate, lying and being partly in Charleston County and partly in Dorchester County, State of South Carolina, containing 1761.2 acres, more or less, known as the Hertz Tract of Williams Furniture Corporation, and being more particularly described in the



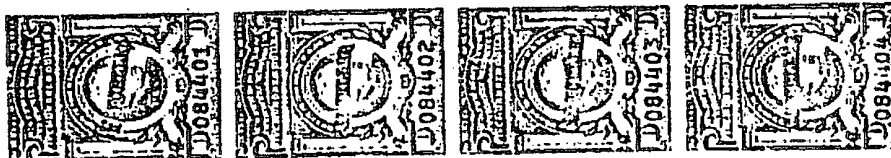
deed of Jennie T. Cason and Lilly R. McLeod, as Executrices and as Trustees under the Last Will and Testament of Adele Blandine Herts to Williams Furniture Corporation dated December 21, 1953, and recorded in the R. M. C. office for Charleston County in Book B-58, page 617, and in the office of the Clerk of Court for Dorchester County in Book 106, page 791.

PARCEL NO. 4:

All that tract or parcel of land, situate, lying and being in Christ Church Parish, Charleston County, South Carolina, containing 2277 acres of highland and 1172 acres of marsh, which said tract is shown on a Timber Inventory Map of Robert F. Knott & Company dated April-May, 1964, which shows the tract to be bounded, generally: On the North, in part, by the Wando River and, in part, by Dock Landing Creek; on the East, in part, by said Dock Landing Creek, in part, by a road known as the Egypt Road and, in part, by a road known as Woodlawn Road; on the South mostly by Hobcaw Creek but, in part, by lands of others; and on the West by the Wando River, said property being more particularly described in the Deeds to Gulf Oil Corporation as set forth below, which descriptions are incorporated by reference as if fully set forth herein:

Date	Grantor	Recorded in Register of Mesne Conveyance, Charleston Co., S. C.
Feb. 21, 1957	John C. Sheridan, Jr. & Mary Edwards Sheridan	Book D 64, Page 306
Feb. 28, 1957	John C. Sheridan, III & Charlotte L. Sheridan	Book D 64, Page 310
Feb. 28, 1957	Henry C. Cheves, III	Book D 64, Page 313
Mar. 9, 1957	Hattie Pinckney	Book D 64, Page 661
Mar. 9, 1957	William Heyward	Book D 64, Page 663
Mar. 15, 1957	Newman D. Buck & Helen Louise Buck	Book E 64, Page 140
Mar. 15, 1957	Ray M. Buck and Laureta Buck	Book E 64, Page 143
Mar. 28, 1957	Beverly DuBose Stoney	Book E 64, Page 500
Oct. 9, 1957	William W. Humphreys, Anna H. Humphreys, & The Citizens & Southern National Bank of South Carolina, Trustees	Book Q 64, Page 409
Mar. 18, 1961	Virginia S. Barnwell	Book T 72, Page 329

Being the same property conveyed to Williams Furniture Corporation by Cox Woodlands Company by deed dated the 10th day of July, 1967, and recorded in Book E-88, page 383, in the R. M. C. office for Charleston County, South Carolina.



1901 E 80 PAGE 131

This conveyance is subject to all recorded conveyances, covenants, contracts, agreements, rights of way and easements affecting any of said properties.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

There is excepted and reserved unto Georgia-Pacific Corporation, its successors or assigns, and not hereby conveyed, all of the timber and trees of every kind and species, which at the time of cutting measure ten inches (10") and over in diameter, outside the bark, wide diameter, stump high, standing, lying and being on the tracts or parcels of land hereinabove described, together with the full, complete and unqualified right and privilege, for a period of ten (10) years from the date hereof to enter in, upon, through and over all parts of the above described lands for the purpose of cutting, manufacturing, removing and transporting through and over the same the said trees and timber herein excepted and reserved, or any other trees, timber, freight and traffic now owned or hereafter acquired by said Georgia-Pacific Corporation, its successors or assigns, and which it or they may desire to transport through and over said lands, and for these or any other purposes to construct, operate and maintain any and all needful roads, tram roads, chutes, slides, railroads, hoists, skidders, engines, skidways and any other improvements and fixtures of whatsoever nature or kind, which the said Georgia-Pacific Corporation, its successors or assigns, may desire to erect and maintain on said lands with the right to remove any and all improvements and fixtures at will; together, also, for the purposes aforesaid, and for the construction, operation, maintenance, repair and removal of all said improvements and fixtures, which may be erected by said Georgia-Pacific Corporation, its successors or assigns, on said lands, the right to take

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R. p. 248

and use, free of charge, from said lands any sand, rock or water found thereon. It is understood and agreed that said Georgia-Pacific Corporation, its successors or assigns, shall have the period of ten (10) years from the date hereof in which to cut and remove the timber and trees herein excepted and reserved unto it, and any such timber and trees remaining on said lands at the expiration of said ten year period shall be and become the property of said Georgia-Pacific Investment Company, its successors or assigns.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said Georgia-Pacific Investment Company, a corporation, its successors and assigns, forever.

And Georgia-Pacific Corporation does hereby bind itself, and its successors, to warrant and forever defend, all and singular, that portion of the within described premises (except burial places and existing easements) which lies above the mean highwater mark of tidal navigable waters unto the said Georgia-Pacific Investment Company, its successors and assigns, against itself, and its successors and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof; and the said Georgia-Pacific Corporation does hereby bind itself, and its successors, to warrant and forever defend, all and singular, that portion of said premises which lies between the mean highwater mark and the mean low water mark of tidal navigable waters unto the said Georgia-Pacific Investment Company, its successors and assigns, against itself, and its successors and assigns, lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, Georgia-Pacific Corporation has caused these presents to be executed in its name by its Vice President,

BOOK E 80 PAGE 131

duly attested by its Assistant Secretary, and its corporate seal to be
hereunto affixed, on this the 23rd day of October,
in the year of our Lord, one thousand nine hundred and sixty-seven, and
in the one hundred and ninety-first year of the Sovereignty and Indepen-
dence of the United States of America.

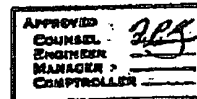
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GEORGIA-PACIFIC CORPORATION

Frederick P. Kopp
Jessie E. Mersereau

By H. S. Mersereau
Vice President

ATTEST: B. F. Cheatham
Assistant Secretary



STATE OF GEORGIA
COUNTY OF RICHMOND

PERSONALLY APPEARED before me Frederick P. Kopp
who, on oath, says that he saw the within named Georgia-Pacific Corporation,
by H. S. Mersereau, its Vice President, and B. F. Cheatham, its Assistant
Secretary, sign the within Deed, and the said Corporation, by said officers,
seal said Deed, and, as its act and deed, deliver the same, and that he with
Jessie E. Mersereau witnessed the execution thereof.

Frederick P. Kopp

SWORN to before me this 20
day of November, 1967

J. M. Watkins
Notary Public, Richmond County,
Georgia

My Commission expires: Aug. 3, 1969



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0121-206

STATE OF SOUTH CAROLINA,
COUNTY OF CHARLESTON.

KNOW ALL MEN BY THESE PRESENTS, THAT the undersigned
GEORGIA-PACIFIC INVESTMENT COMPANY, an Oregon corporation, with
offices at 801 Broad Street, P. O. Box 1808, City of Augusta,
County of Richmond, State of Georgia, and hereinafter referred to
as "Grantor", for and in consideration of the sum of Ten Dollars
(\$10.00) to it in hand paid at and before the sealing of these
presents, by THE NATURE CONSERVANCY, a non-profit corporation,
organized and existing under the laws of the District of Columbia,
hereinafter referred to as "Grantee", the receipt whereof is
hereby acknowledged, has donated, granted and released, and by
these presents does donate, grant and release, unto said Grantee,
its successors and assigns, that certain tract or parcel of land,
in fee, situate, lying and being along the southern right of way
line of Highway 61, County of Charleston, State of South Carolina,
containing Twenty Six and Fifty Three Hundredths (26.53) acres,
more or less, and more particularly described as follows:

Those certain strips or parcels of land,
being 100 feet in width and immediately adja-
cent to the southern right-of-way line of
Highway 61, and parallel with said Highway;
and being a total of approximately 11,556
feet in length, composed of three strips of
land, and being along the northern boundary
line of all of the property owned by Grantor
along the southern right-of-way line of High-
way 61.

TMS No 301-00-00-017

Being a part or portion of the property conveyed to
Williams Furniture Corporation from Donald R. Shepard by Deed
dated December 26, 1945, recorded in Book C-46, Page 58, in the
R. M. C. Office for Charleston County, South Carolina, and to
Georgia-Pacific Investment Company from Georgia-Pacific Corporation

(successor by merger to Williams Furniture Corporation) by Deed dated the 23rd day of October, 1967, and recorded in Book E-89, Page 131, in the aforesaid R. M. C. Office.

However, the foregoing conveyance is subject to the reservation by Grantor of certain easements over and across the foregoing real property, said easements being hereby reserved by Grantor, its successors and assigns, and being subject to the following conditions and specifications; which as covenants running with the land shall be binding upon the successors and assigns of the parties hereto:

1. Said easements shall be limited to eighteen (18) in number, and each separate easement shall be limited to a total of sixty feet (60') in width, or the minimum widths required by law or regulation, if wider.

2. At the time that the location of each easement is determined by Grantor, its successors or assigns, it shall record, in the office where this instrument is recorded, an instrument which as a matter of record specifically and reasonably identifies the location of each such easement. The selection of each such easement may be made separately by Grantor pursuant to the provisions of this instrument.

3. Said easements are for the purpose of permitting Grantor, and its successors and assigns, vehicular and pedestrian access from its real property to Highway 61, over and across the above described real property, and for installation of utility lines or facilities.

4. Should Grantor, its successors or assigns, abandon any easement previously selected or should any governmental authority take any action which results in inability to use any easement, Grantor, its successors or assigns, shall have the right to substitute another easement for the easement which is abandoned or which cannot be used, provided that Grantor, its successors

0121 206

or assigns, if 't can legally do so, shall plant the former cager
port area in trees.

TOGETHER with all and singular the rights, members,
hereditaments, and appurtenances to said premises belonging or in
anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises
before mentioned unto Grantee, its successors and assigns, forever,
in fee simple.

IN WITNESS WHEREOF, GEORGIA-PACIFIC INVESTMENT COMPANY
has caused this instrument to be executed in its corporate name
by its Vice President and Assistant Secretary, this the 2nd day of
January, in the year of our Lord One Thousand Nine Hundred and
Eighty, and in the Two Hundred and Fourth Year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
in the presence of:

Elizabeth M. Dingle
J. Henry Wright

GEORGIA-PACIFIC INVESTMENT
COMPANY

By: H. S. Mersereau
Vice President

ATTEST:

By: Vance W. Yoakum
Assistant Secretary
(CORPORATE SEAL)

STATE OF GEORGIA,
COUNTY OF RICHMOND.

PERSONALLY appeared before me: Elizabeth M. Dingle
who, on oath says that 5 he saw the within named GEORGIA-PACIFIC
INVESTMENT COMPANY, by H. S. Mersereau, its Vice President, and
Vance W. Yoakum, its Assistant Secretary, sign the within Deed,
and the said corporation by said officers, seal said Deed, and as
its act and deed, deliver the same, and that 5 he with J. Henry
Wright, witnessed the execution thereof.

Elizabeth M. Dingle

QUIT-CLAIM DEED

BOOK 0121 PAGE 209

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

KNOW ALL MEN BY THESE PRESENTS, THAT the undersigned THE NATURE CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia, with offices at 1800 North Kent Street, Arlington, Virginia 22209, and hereinafter referred to as "Grantor," for and in consideration of the the sum of Ten Dollars (\$10.00) to it in hand paid at and before the sealing of these presents, by the NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES, a charitable, educational and non-profit corporation chartered by act of Congress, and having its principal office at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036, hereinafter referred to as "Grantee," the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto said Grantee, its successor and assigns, that certain tract or parcel of land, in fee, situate, lying and being along the southern right of way line of Highway 61, County of Charleston, State of South Carolina, containing Twenty Six and Fifty Three Hundredths (26.53) acres, more or less, and more particularly described as follows:

Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the property owned by Grantor along the southern right-of-way line of Highway 61. *TM No. 301-00-05-017*

Being the same real property granted and released unto Grantee by Deed of Georgia-Pacific Investment Company, an Oregon corporation, dated January 2, 1989, recorded in R.M.C. Office for Charleston, South Carolina, immediately prior to the recordation of this Quit-Claim Deed.

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to said premises belonging or in anywise incident or appertaining.

BOOK 0121 PAGE 209

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto Grantee, its successors and assigns, forever, in fee simple.

IN WITNESS WHEREOF, THE NATURE CONSERVANCY has caused this instrument to be executed in its corporate name by its President and its Assistant Secretary, this the 28th day of January, in the year of our Lord One Thousand Nine Hundred and Eighty, and in the Two Hundred and Fourth Year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
in the presence of:

June S. Goode

Elana Khanna

THE NATURE CONSERVANCY

By: Patrick F. Noonan
President

ATTEST:

By: William C. Gudal
Assistant Secretary

(CORPORATE SEAL)

STATE OF VIRGINIA

COUNTY OF ARLINGTON:

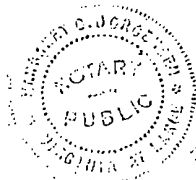
PERSONALLY appeared before me June S. Goode, who, on oath says that she saw the within named THE NATURE CONSERVANCY, by Patrick F. Noonan, its President and William C. Gudal, its Assistant Secretary, sign the within Quit-Claim Deed, and the said corporation by said officers, seal said Quit-Claim Deed, and as its act and deed, deliver the same, and that she with Elana Khanna, witnessed the execution thereof.

June S. Goode
SWORN to before me this 28th day of January, 1980.

Margaret C. Ferguson
Notary Public

My Commission expires: July 18, 1983.

(NOTARIAL SEAL)



41.7
212
Thomas A. Caughlin, III
1785 Massachusetts Ave. NW
Washington, D.C. 20536

4.00
post .20

300 0121 PAGE 209

Filed, Indexed and Recorded
DATE 1980 TIME 4:00
Book 0121 Page 209

TWS VERIFIED
BAC 2H
OTD 2-6-80
201-49-00-017

Roberta
Register Mesne Conveyance
Charleston County, S. C.

Recorded this 15th day of February 1980
On Property Record Card

Pauline S. Hoyer

Auditor Charleston County

CERTIFIED TRUE COPY
ELAINE H. BOZMAN
REGISTER OF DEEDS
CHARLESTON COUNTY, SC

DATE: Oct 2, 2018
BY: Nancy P. Wagner

BK A186PG320

SC-1-10-5(1)-228

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that GEORGIA-PACIFIC INVESTMENT COMPANY ("Grantor") in consideration of the sum of Two Million Seven Hundred Fifty Thousand and No/100 Dollars (\$2,750,000.00), to it in hand paid at and before the sealing of these presents by WHITFIELD CONSTRUCTION COMPANY, whose address is 6520 Dorchester Road, Charleston, South Carolina 29405 ("Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described property:

All that certain piece, parcel or tract of land lying, being and situated near Magnolia Gardens in West St. Andrews, Charleston County, South Carolina, containing 2,294.17 acres, more or less, being shown on a plat made by William C. Boineau, dated September 19, 1987 and revised October 15, 1987, recorded in the R.M.C. Office for Charleston County in Plat Book B.P. at page 129, and being more particularly described according to said plat as follows:

BEGINNING at the northwest corner of the tract herein described, being an iron pin referenced N 27°35'51" E 167.57 feet to a concrete monument north of the centerline of South Carolina Highway No. 61 (Ashley River Road); thence S 58°46'45" E 144.11 feet to an iron pin; thence S 60°12'41" E 100.03 feet to an iron pin; thence S 58°46'45" E 200.00 feet to an iron pin; thence S 55°55'00" E 100.13 feet to an iron pin; thence S 58°46'45" E 100.00

BK A186PG321

feet to an iron pin; thence S 60°12'41" E 114.69 feet to an iron pin; thence S 60°56'40" E 87.03 feet to an iron pin; thence N 30°29'15" E 2.50 feet to an iron pin; thence S 59°30'45" E 850.00 feet to an iron pin; thence S 30°29'15" W 2.50 feet to an iron pin; thence S 59°30'45" E 450.00 feet to an iron pin; thence S 60°56'41" E 100.03 feet to an iron pin; thence S 59°30'45" E 400.00 feet to an iron pin; thence S 58°04'49" E 100.03 feet to an iron pin; thence S 59°30'45" E 660.90 feet to an iron pin at the beginning of a curve; thence a chord bearing S 56°51'02" E a chord distance of 121.22 feet; thence a chord bearing S 50°37'00" E, a chord distance of 91.07 feet; thence a chord bearing S 47°11'20" E, a chord distance of 136.35 feet; thence N 45°48'41" E 5.00 feet to an iron pin; thence a chord bearing S 43°02'48" E, a chord distance of 51.34 feet; thence S 41°54'45" E 1493.10 feet to an iron pin; thence S 42°06'41" E 900.00 feet to an iron pin; thence S 47°53'19" W 5.60 feet to an iron pin; thence S 42°06'41" E 700.00 feet to an iron pin; thence S 41°51'23" E 50.00 feet to an iron pin; thence N 48°10'34" E 5.00 feet to an iron pin; thence S 41°51'23" E 2977.69 feet to an iron pin; thence S 48°02'15" W 578.19 feet to an iron pin; thence S 35°06'03" W 2410.13 feet to an iron pin; thence S 46°33'49" W 666.10 feet to an iron pin; thence S 51°52'50" E 825.68 feet to an iron pin; thence N 52°54'47" E 606.08 feet to an iron pin; thence N 58°51'01" E 305.71 feet to an iron pin; thence S 47°30'11" E 2591.49 feet to a railroad iron; thence S 67°06'18" W 5894.70 feet to a stone; thence N 44°08'47" W 1684.99 feet to a railroad iron; thence N 03°25'29" W 770.42 feet to a stone; thence N 83°52'45" W 328.43 feet to a stone; thence S 41°01'59" W 683.73 feet to a stone; thence N 83°28'45" W 5912.06 feet to an iron pin; thence N 06°07'57" E 2204.26 feet to an iron pin; thence N 27°35'51" E 10,186.88 feet to the Point of BEGINNING.

Being a portion of the property conveyed to Williams Furniture Corporation (predecessor by merger to Georgia-Pacific Corporation) from Donald R. Shepard by deed dated the 26th day of December, 1945, and recorded the 14th day of January, 1946 in the aforesaid R.H.C. Office in Deed Book C-46 at page 58, and to Georgia-Pacific Investment Company from

-2-

BK A186P6322

Georgia-Pacific Corporation by deed dated the 23rd day of October, 1967, and recorded the 24th day of November, 1967 in the aforesaid R.M.C. Office in Deed Book E-89 at page 131.

TOGETHER with all of Grantor's right, title and interest in and to the remaining sixteen (16) easements as reserved and described in the conveyance from Grantor to The Nature Conservancy, dated the 2nd day of January, 1980 and recorded in the aforesaid R.M.C. Office in Deed Book O-121 at page 206. Said easements are sixty (60) feet in width and are for the purpose of access to the above-described tract from South Carolina Highway No. 61.

SUBJECT, HOWEVER, to any and all easements, restrictions, covenants or other matters of record or otherwise existing, including, without limitation, any of the foregoing disclosed by the plat referenced above.

TOGETHER with all and singular the rights, privileges, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD unto the said Grantee, its successors and assigns, forever.

And the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name by its Vice President and Assistant Secretary, and its corporate seal to be hereto affixed this 14th day of July, in the year of our Lord One Thousand Nine Hundred and Eighty-Nine and in the Two Hundred and

-3-

BK A186PG323

Fourteenth year of the Sovereignty and Independence of the
United States of America.

Signed, Sealed and Delivered
in the Presence of:

Elizabeth Fee
Dalisa M. Dent

GEORGIA-PACIFIC INVESTMENT COMPANY

By: [Signature]
Vice President

Attest:

By: [Signature]
Assistant Secretary

(CORPORATE SEAL)

STATE OF GEORGIA
COUNTY OF FULTON

PROBATE

Personally appeared before me Elizabeth Fee who,
on oath says that she saw the within named GEORGIA-PACIFIC
INVESTMENT COMPANY by John F. Razor, its Vice President, and Joe
K. Bridgforth, its Assistant Secretary, sign the within Deed, and
the said corporation by said officers, seal said Deed, and as its
act and deed, deliver the same, and that she
with Dalisa M. Dent, witnessed the execution thereof.

Elizabeth Fee

Sworn to before me on this 14th day
of July, 1989.

[Signature]
Notary Public

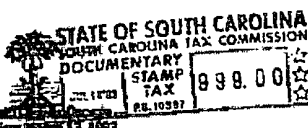
My commission expires: Notary Public, Commission Expires 12, 1993

(NOTARIAL SEAL)

-4-

TMS# 301-00-00-005

6518 Dunbar Rd
N. CHAR. SC 29118



C. J. Mays
Sh

EX-186-324

FILED, INDEXED & RECORDED
A186-320
89 JUL 18 AM 11:45
ROBERT N. KING
REGISTER MESSE CONVEYANCE
CHARLESTON COUNTY S.C.

6050-0
3025-0
90790

Recorded this 18 day of July 1989
On Property Record Card

Pauline S. Koger
Auditor Charleston County

REFERENCE:

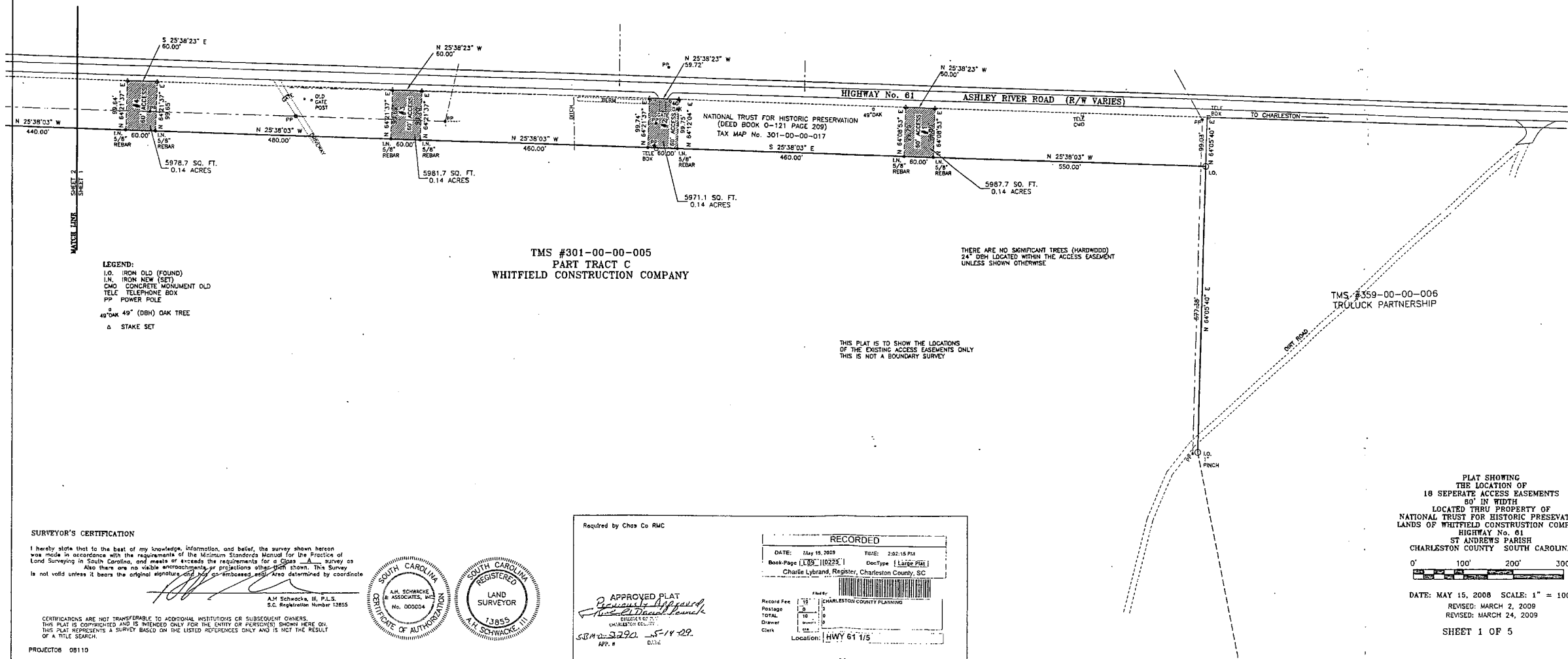
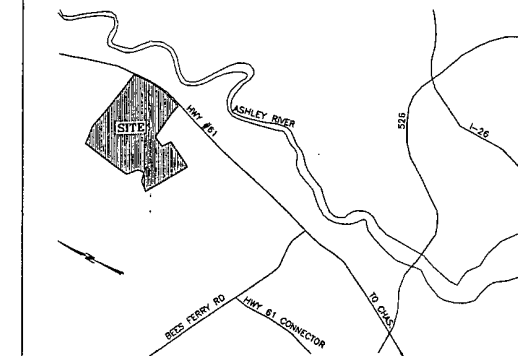
1. PLAT BY WILLIAM C. BONEAU
DATED SEPTEMBER 19, 1987
BOOK BP PAGE 129
RMC CHAS. CO.
2. PLAT BY H. EDO HILTON
DATED JULY 1981
BOOK AV PAGE 156
RMC CHAS. CO.
3. PLAT BY RICHARD A. ALDRIDGE
DATED MAY 18, 2008
BOOK EJ PAGE 922
RMC CHAS. CO.

NOTES:

BEARINGS SHOWN ARE MAGNETIC
AND AS SUCH ARE SUBJECT TO LOCAL
ATTRACTION
AREA DETERMINED BY COORDINATE METHOD
THE PUBLIC RECORDS REFERENCED ON THIS PLAT
ARE ONLY THOSE USED AND/OR NECESSARY TO THE
ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY.
THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH.
ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS
PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS
OF ENGINEERS JURISDICTIONAL WETLANDS IS
UNDETERMINED AS OF THE DATE OF THIS SURVEY.
PARCEL OWNED BY THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
PARALLEL TO THE R/W OF SC HWY No. 61
DEED BOOK O-121 PAGE 209 DATED FEBRUARY 1980
THIS PARCEL HAS ACCESS TO SC HWY No. 61 BY VIRTUE
OF A DEED BETWEEN GEORGIA PACIFIC INVESTMENT CO. AND
NATURE CONSERVANCY RECORDED IN DEED BOOK O-121
PAGE 208. A PORTION OF WHICH READS AS FOLLOWS:
SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN
NUMBER AND EACH SEPARATE EASEMENT SHALL BE LIMITED
TO A TOTAL OF SIXTY FEET (60') IN WIDTH.
NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR
SURVEYS WERE PERFORMED FOR THIS PLAT. THEREFORE
THIS PLAT DOES NOT REFLECT THE EXISTENCE OR
NONEXISTENCE OF WETLANDS CONTAMINATION OR OTHER
NONVISIBLE CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN NUMBER,
AND EACH SEPARATE EASEMENT SHALL BE LIMITED TO A TOTAL
OF SIXTY FEET (60') IN WIDTH

TOTAL AREA OF ACCESS EASEMENTS
18 ACCESS EASEMENTS = 108041.1 sq.ft. (2.48 AC)



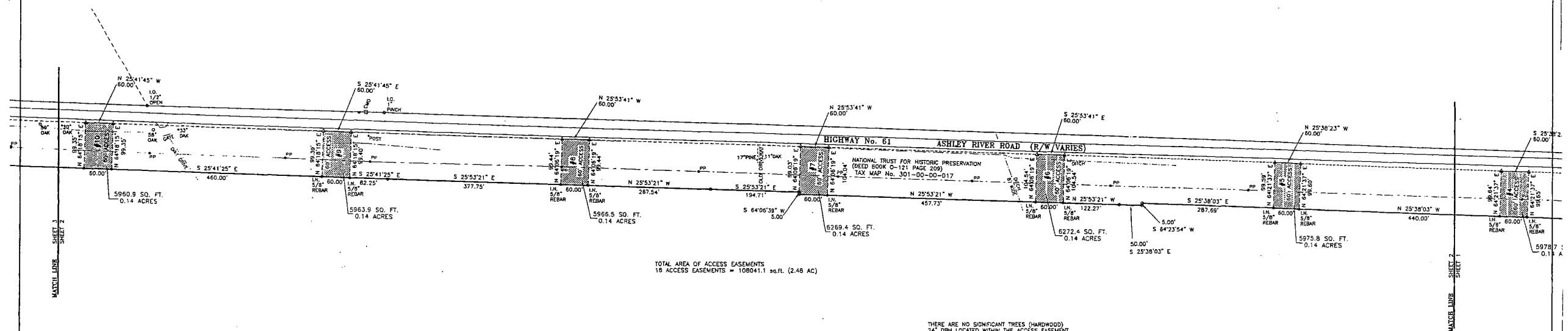
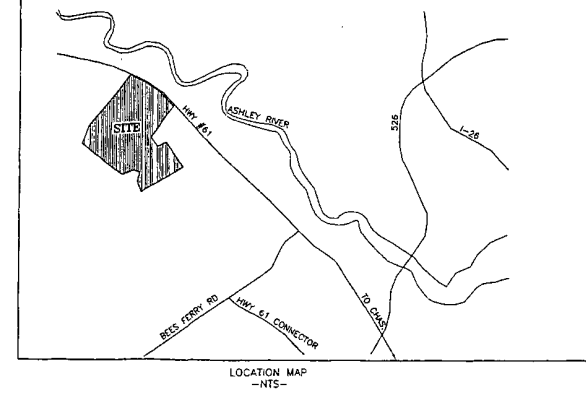
REFERENCE:

- 1) PLAT BY WILLIAM C. BOINEAU
DATED SEPTEMBER 19, 1987
BOOK BP PAGE 129
RMC CHAS. CO.
- 2) PLAT BY H. C. HILTON
DATED JULY 1991
BOOK AV PAGE 156
RMC CHAS. CO.
- 3) PLAT BY RICHARD A. ALDRIDGE
DATED MAY 18, 2008
BOOK LJ PAGE 922
RMC CHAS. CO.

NOTES:

BEARINGS SHOWN ARE MAGNETIC
AND AS SUCH ARE SUBJECT TO LOCAL
ATTRACTION
AREA DETERMINED BY COORDINATE METHOD
THE PUBLIC RECORDS REFERENCED ON THIS PLAT
ARE ONLY THOSE USED AND/OR NECESSARY TO THE
ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY.
THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH
ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS
PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS
OF ENGINEERS JURISDICTIONAL WETLANDS IS
UNDETERMINED AS OF THE DATE OF THIS SURVEY
PARCEL OWNED BY THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
PARALLEL TO THE R/W OF SC HWY No. 61
DEED BOOK O-121 PAGE 209 DATED FEBRUARY 1980
THIS PARCEL HAS ACCESS TO SC HWY No. 61 BY VIRTUE
OF A DEED BETWEEN GEORGIA PACIFIC INVESTMENT CO. AND
NATURE CONSERVANCY RECORDED IN DEED BOOK O-121
PAGE 209. A PORTION OF WHICH READS AS FOLLOWS:
SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN
NUMBER, AND EACH SEPARATE EASEMENT SHALL BE LIMITED
TO A TOTAL OF SIXTY FEET (60') IN WIDTH
NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR
SURVEYS WERE PERFORMED FOR THIS PLAT. THEREFORE
THIS PLAT DOES NOT REFLECT THE EXISTENCE OR
NONEXISTENCE OF WETLANDS CONTAMINATION OR OTHER
HARMFUL CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN NUMBER,
AND EACH SEPARATE EASEMENT SHALL BE LIMITED TO A TOTAL
OF SIXTY FEET (60') IN WIDTH



- LEGEND:
- I.O. IRON OLD (FOUND)
 - I.N. IRON NEW (SET)
 - CMD CONCRETE MONUMENT OLD
 - TELE TELEPHONE BOX
 - PP POWER POLE
 - 48" DBH OAK TREE
 - STAKE SET

TMS #301-00-00-005
PART TRACT C
WHITFIELD CONSTRUCTION COMPANY

THERE ARE NO SIGNIFICANT TREES (HARDWOOD)
24" DBH LOCATED WITHIN THE ACCESS EASEMENT
UNLESS SHOWN OTHERWISE

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

SURVEYOR'S CERTIFICATION

I hereby state that 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. Also there are no visible encroachments or projections other than shown. This survey
is not valid unless it bears the original signature and is not an embossed seal. Area determined by coordinate
method.

[Signature]

A.H. Schwacke, III, P.L.S.
S.C. Registration Number 13855

CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
THIS PLAT IS COPYRIGHTED AND IS INTENDED ONLY FOR THE ENTRY OR PERSON(S) SHOWN HERE ON.
THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT
OF A TITLE SEARCH.

PROJECT08 08110



Required by Ches Co RMC

RECORDED	
DATE: May 15, 2008	TIME: 2:53:27 PM
Book Page: L09, 116226	Deed Type: (L) 1st Reg. Mkt
Charle Lybrand, Register, Charleston County, SC	
Record Fee: 1.10	Charleston County Planning
Passage: 0.10	
TOTAL: 1.20	
Drawn: 0.00	
Check: 0.00	
Location: HWY 61 2/5	

PLAT SHOWING
THE LOCATION OF
18 SEPARATE ACCESS EASEMENTS
60' IN WIDTH
LOCATED THRU PROPERTY OF
NATIONAL TRUST FOR HISTORIC PRESEVATION
LANDS OF WHITFIELD CONSTRUCTION COMPANY
ST ANDREWS PARISH
CHARLESTON COUNTY SOUTH CAROLINA
0' 100' 200' 300'
DATE: MAY 15, 2008 SCALE: 1" = 100'
REVISED: MARCH 2, 2009
REVISED: MARCH 24, 2009
SHEET 2 OF 5

REFERENCE:

1. PLAT BY WILLIAM C. BOINEAU
DATED SEPTEMBER 19, 1987
BOOK BP PAGE 129
RMC CHAS. CO.
2. PLAT BY H. DOD HILTON
DATED JULY 1981
BOOK AV PAGE 156
RMC CHAS. CO.
3. PLAT BY RICHARD A. ALDRIDGE
DATED MAY 18, 2006
BOOK CJ PAGE 222
RMC CHAS. CO.

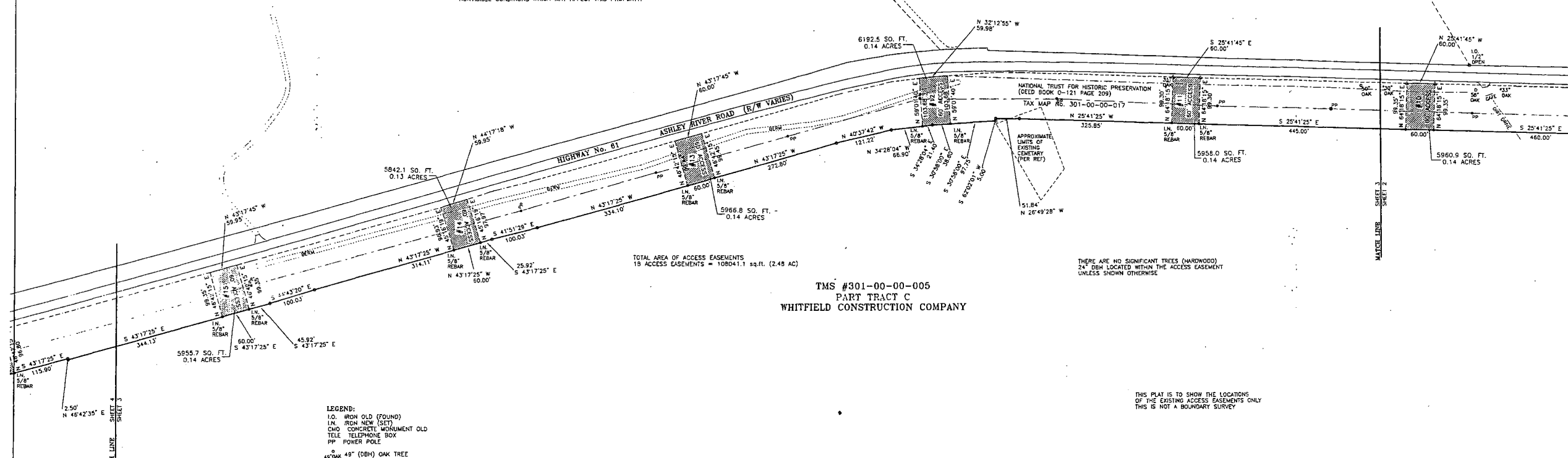
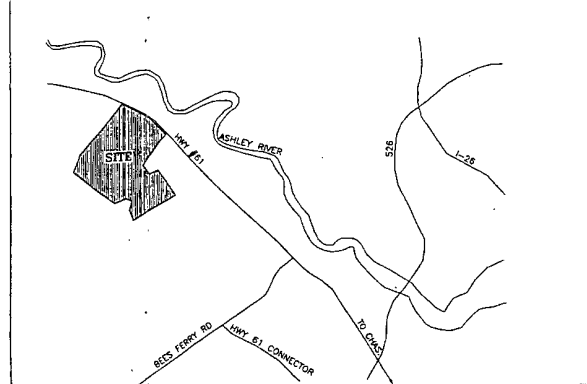
NOTES:

BEARINGS SHOWN ARE MAGNETIC
AND AS SUCH ARE SUBJECT TO LOCAL
ATTRACTION
AREA DETERMINED BY COORDINATE METHOD
THE PUBLIC RECORDS REFERENCED ON THIS PLAT
ARE ONLY THOSE USED AND/OR NECESSARY TO THE
ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY.
THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH
ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS
PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS
OF ENGINEERS JURISDICTIONAL WETLANDS IS
UNDETERMINED AS OF THE DATE OF THIS SURVEY
PARCEL OWNED BY THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
PARALLEL TO THE R/W OF SC HWY No. 61
DEED BOOK 0-121 PAGE 209 DATED FEBRUARY 1980

THIS PARCEL HAS ACCESS TO SC HWY No. 61 BY VIRTUE
OF A DEED BETWEEN GEORGIA PACIFIC INVESTMENT CO. AND
NATURE CONSERVANCY RECORDED IN DEED BOOK 0-121
PAGE 208. A PORTION OF WHICH READS AS FOLLOWS:
SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN
NUMBER AND EACH SEPARATE EASEMENT SHALL BE LIMITED
TO A TOTAL OF SIXTY FEET (60') IN WIDTH

NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR
SURVEYS WERE PERFORMED FOR THIS PLAT. THEREFORE
THIS PLAT DOES NOT REFLECT THE EXISTENCE OR
NONEXISTENCE OF WETLANDS CONTAMINATION OR OTHER
NONVISIBLE CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN NUMBER,
AND EACH SEPARATE EASEMENT SHALL BE LIMITED TO A TOTAL
OF SIXTY FEET (60') IN WIDTH



TOTAL AREA OF ACCESS EASEMENTS
18 ACCESS EASEMENTS = 108041.1 sq.ft. (2.48 AC)

TMS #301-00-00-005
PART TRACT C
WHITFIELD CONSTRUCTION COMPANY

THERE ARE NO SIGNIFICANT TREES (HARDWOOD)
24" DBH LOCATED WITHIN THE ACCESS EASEMENT
UNLESS SHOWN OTHERWISE

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

LEGEND:

- 1.O. IRON OLD (FOUND)
- 1.N. IRON NEW (SET)
- CMD CONCRETE MONUMENT OLD
- TEL TELEPHONE BOX
- PP POWER POLE
- 45" OAK 49" (DBH) OAK TREE
- Δ STAKE SET

SURVEYOR'S CERTIFICATION

I hereby state that 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. Also there are no visible encroachments or projections as shown. This Survey
is not valid unless it bears the original signature and seal of the surveyor and area determined by coordinate
method.

A.H. Schwacke, II, P.L.S.
S.C. Registration Number 12855



PROJECTOR 08110

Required by Chas Co RUC

RECORDED	
DATE: May 15, 2008	TIME: 2:44:19 PM
Book/Page: 1008-110222	DocType: (Large Plat)
Charlie Liveland, Register, Charleston County, SC	
File No: CHARLESTON COUNTY PLANNING	
Record Fee: 10	Postage: 5
TOTAL: 15	Drawn: 1
Click: 1	Location: HWY 61 3/5

Previously Approved
SBM 0-3290 5-14-09
DATE

R.p. 266

PLAT SHOWING
THE LOCATION OF
18 SEPARATE ACCESS EASEMENTS
60' IN WIDTH
LOCATED THRU PROPERTY OF
NATIONAL TRUST FOR HISTORIC PRESERVATION
LANDS OF WHITFIELD CONSTRUCTION COMPANY
HIGHWAY No. 61
ST ANDREW'S PARISH
CHARLESTON COUNTY SOUTH CAROLINA

0' 100' 200' 300'

DATE: MAY 15, 2008 SCALE: 1" = 100'
REVISED: MARCH 24, 2009

SHEET 3 OF 5



- 1.) PLAT BY WILLIAM C. BOINEAU
DATED SEPTEMBER 19, 1987
BOOK BP PAGE 129
RMC CHAS. CO.
- 2.) PLAT BY H EXO HILTON
DATED JULY 1981
BOOK AV PAGE 156
RMC CHAS. CO.
- 3.) PLAT BY RICHARD A ALDRIDGE
DATED MAY 18, 2006
BOOK EJ PAGE 522
RMC CHAS. CO.

SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN NUMBER, AND EACH SEPARATE EASEMENT SHALL BE LIMITED TO A TOTAL OF SIXTY FEET (60) IN WIDTH

TOTAL AREA OF ACCESS EASEMENTS
18 ACCESS EASEMENTS = 108041.1 sq.ft. (2.48 AC)

LEGEND:
I.O. IRON OLD (FOUND)
I.N. IRON NEW (SET)
CMO CONCRETE MONUMENT OLD
TELE TELEPHONE BOX
PP POWER POLE
49" OAK 49" (DBH) OAK TREE
Δ STAKE SET

NOTES:

BEARINGS SHOWN ARE MAGNETIC
AND AS SUCH ARE SUBJECT TO LOCAL
ATTRACTION

AREA DETERMINED BY COORDINATE METHOD

THE PUBLIC RECORDS REFERENCED ON THIS PLAT
ARE ONLY THOSE USED AND NECESSARY TO
THE ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY.
THEY ARE NOT AND ARE NOT INTENDED TO
CONSTITUTE ANY TITLE OR EVIDENCE OF ANY TITLE
ANYTHING SHOWING OUTSIDE THE DEFINED BOUNDARY OF THIS
PLAT IS FOR DESCRIPTIVE PURPOSES

THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS
OF ENGINEERS JURISDICTIONAL WETLANDS IS
UNDERTAKEN AS OF THE DATE OF SURVEY

PARCEL OWNED BY THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
PARALLEL TO THE RIVER. THE DEED COPY ON
DEED BOOK NO-121 PAGE 205 DATED FEBRUARY 1980

THIS PARCEL HAS ACCESS TO SC HWY NO. 61 BY VIRTUE
OF A DEED BETWEEN GEORGIA PACIFIC VENTURE CO. AND
NATURE CONSERVATION SOCIETY OF GEORGIA DATED 03-21
PAGE 208. A PORTION OF WHICH READS AS FOLLOWS:
"Said easements shall be subject to the following (18)
(NUMBER) AND EACH SEPARATE EASEMENT SHALL BE LIMITED
TO A TOTAL OF SIXTY FEET (60') IN WIDTH

NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR
SURVEY'S WERE PERFORMED OR REQUIRED THEREFORE
THIS PLAT DOES NOT REFLECT THE EXISTENCE OR
NONEXISTENCE OF WETLANDS CONTAMINATION OR OTHER
NONMISABLE CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

I hereby state that 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. Also there are no visible encroachments or projections other than shown. This Survey is not valid unless it bears the original signature and has an embossed seal. Area determined by coordinate method.

CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS. THIS FLAT IS COPYRIGHTED AND IS INTENDED ONLY FOR THE ENTITY OR PERSON(S) SHOWN HERE ON. THIS FLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT OF A TITLE SEARCH.

PROJECT08 09:10



TMS #301-00-00-005
PART TRACT C
FIELD CONSTRUCTION COMPANY

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

Required by Chas Co RMC

RECORDED

DATE: May 15, 2009 TIME: 7:05:56 PM
Book Page: 109 10228 DocType: Large Print
Charles Lybrand, Register, Charleston County, SC

Record Fee: 12 CHARLESTON COUNTY PLANNING
Postage 10
10788
Drawn: 0
Unit: 0
Click

Location: HWY 614/5

*Previously Approved
Firearm Donation Receipt*

SERIAL 03290 5-14-09
APP. B DATE

PLAT SHOWING
THE LOCATION OF
18 SEPERATE ACCESS EASEMENTS
60' IN WIDTH
LOCATED THRU PROPERTY OF
NATIONAL TRUST FOR HISTORIC PRESEVATION
LANDS OF WHITFIELD CONSTRUTION COMPANY
HIGHWAY No. 81
ST ANDREWS PARISH
CHARLESTON COUNTY SOUTH CAROLINA

DATE: MAY 15, 2008 SCALE: 1" = 100'
REVISED: MARCH 24, 2009

SHEET 4 OF 5

REFERENCE:

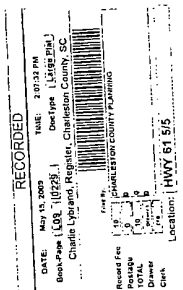
- 1.) PLAT BY WILLIAM C. BOINEAU
DATED SEPTEMBER 19, 1987
BOOK BP PAGE 123
RMC CHAS. CO.
- 2.) PLAT BY H. EXO HILTON
DATED JULY 1981
BOOK AV PAGE 155
RMC CHAS. CO.
- 3.) PLAT BY RICHARD A. ALDRIDGE
DATED MAY 18, 2006
BOOK EJ PAGE 922
RMC CHAS. CO.

NOTES:

BEARINGS SHOWN ARE MAGNETIC
AND AS SUCH ARE SUBJECT TO LOCAL
ATTRACTION
AREA DETERMINED BY COORDINATE METHOD
THE PUBLIC RECORDS REFERENCED ON THIS PLAT
ARE ONLY THOSE USED AND/OR NECESSARY TO THE
ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY.
THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH
ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS
PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS
OF ENGINEERS JURISDICTIONAL WETLANDS IS
UNDETERMINED AS OF THE DATE OF THIS SURVEY
PARCEL OWNED BY THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
PARALLEL TO THE R/W OF SC HWY No. 61
DEED BOOK O-121 PAGE 209 DATED FEBRUARY 1980
THIS PARCEL HAS ACCESS TO SC HWY No. 61 BY VIRTUE
OF A DEED BETWEEN GEORGIA PACIFIC INVESTMENT CO. AND
NATURE CONSERVANCY RECORDED IN DEED BOOK O-121
PAGE 206. A PORTION OF WHICH READS AS FOLLOWS:
SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN
NUMBER, AND EACH SEPARATE EASEMENT SHALL BE LIMITED
TO A TOTAL OF SIXTY FEET (60') IN WIDTH.

NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR
SURVEYS WERE PERFORMED FOR THIS PLAT. THEREFORE
THIS PLAT DOES NOT REFLECT THE EXISTENCE OR
NONEXISTENCE OF WETLANDS CONTAMINATION OR OTHER
NONVISIBLE CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

Required by Chas Co RMC
Previously Approved
SBM-0-3290 5-14-09
DATE

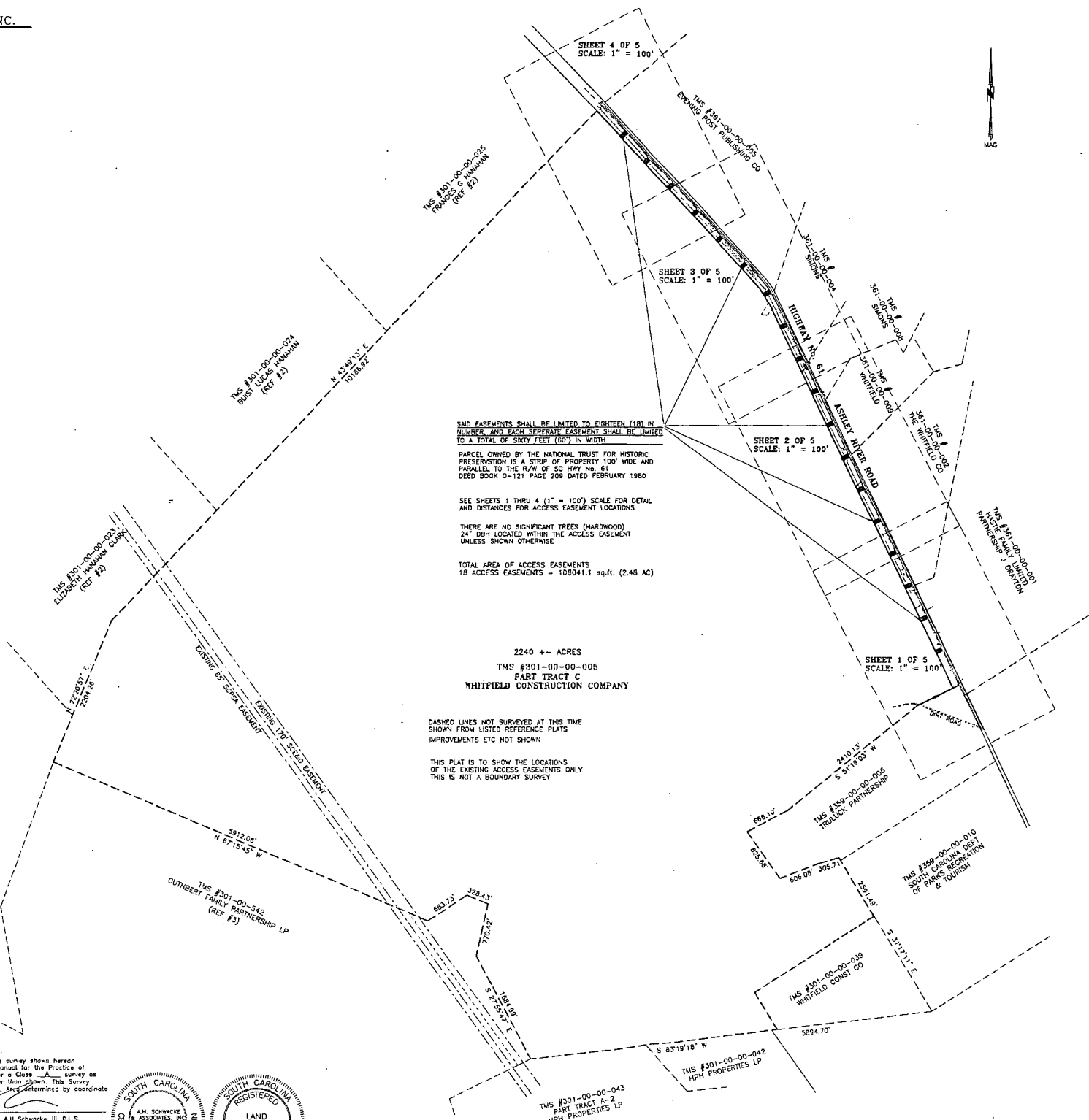


SURVEYOR'S CERTIFICATION

I hereby state that 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. Also there are no visible encroachments or projections other than shown. This survey
is not valid unless it bears the original signature and seal, and is determined by coordinate
method.

CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUCCESSOR OWNERS.
THIS PLAT IS COPYRIGHTED AND IS INTENDED ONLY FOR THE ENTITY OR PERSON(S) SHOWN HERE ON.
THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT
OF A TITLE SEARCH.

PROJECT# 08110

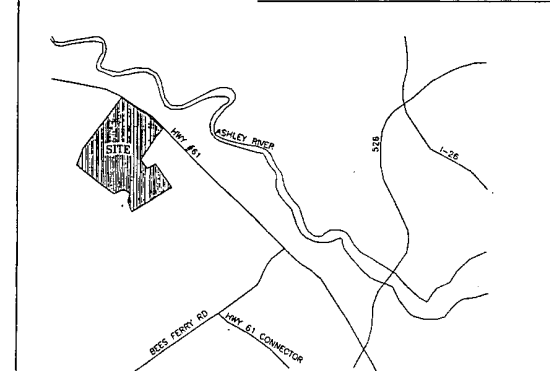
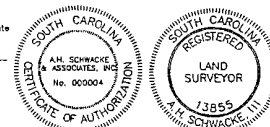


SAID EASEMENTS SHALL BE LIMITED TO EIGHTEEN (18) IN
NUMBER, AND EACH SEPARATE EASEMENT SHALL BE LIMITED
TO A TOTAL OF SIXTY FEET (60') IN WIDTH.
PARCEL OWNED BY THE NATIONAL TRUST FOR HISTORIC
PRESERVATION IS A STRIP OF PROPERTY 100' WIDE AND
PARALLEL TO THE R/W OF SC HWY No. 61
DEED BOOK O-121 PAGE 209 DATED FEBRUARY 1980
SEE SHEETS 1 THRU 4 (1" = 100') SCALE FOR DETAIL
AND DISTANCES FOR ACCESS EASEMENT LOCATIONS
THERE ARE NO SIGNIFICANT TREES (HARDWOOD)
24" DBH LOCATED WITHIN THE ACCESS EASEMENT
UNLESS SHOWN OTHERWISE
TOTAL AREA OF ACCESS EASEMENTS
18 ACCESS EASEMENTS = 108041.1 sq.ft. (2.48 AC)

2240 +- ACRES
TMS #301-00-00-005
PART TRACT C
WHITFIELD CONSTRUCTION COMPANY

DASHED LINES NOT SURVEYED AT THIS TIME
SHOWN FROM LISTED REFERENCE PLATS
IMPROVEMENTS ETC NOT SHOWN

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



LOCATION MAP
-NTS-

LEGEND:
I.O. IRON OLD (FOUND)
I.N. IRON NEW (SET)
C.M. CONCRETE MONUMENT OLD

PLAT SHOWING
THE LOCATION OF
18 SEPARATE ACCESS EASEMENTS
60' IN WIDTH
LOCATED THRU PROPERTY OF
NATIONAL TRUST FOR HISTORIC PRESERVATION
LANDS OF WHITFIELD CONSTRUCTION COMPANY
HIGHWAY No. 61
ST ANDREWS PARISH
CHARLESTON COUNTY SOUTH CAROLINA

0' 800' 1600' 2400'

DATE: MAY 15, 2008 SCALE: 1" = 800'

REVISED MARCH 2, 2009

REVISED MARCH 2009

SHEET 5 OF 5

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/THOSE 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/THOSE PROPERTIES PRIOR TO THE ISSUANCE OF ZONING PERMITS FOR LAND DEVELOPMENT ACTIVITIES.
8. THERE ARE NO SIGNIFICANT, HARDWOOD TREES 24"DBH OR GREATER

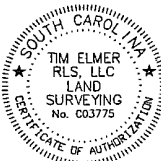
REFERENCES:

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 AG8: ONE DWELLING UNIT PER 8 ACRES; MINIMUM LOT AREA: 1 ACRE; SEE CHARLESTON COUNTY ARTICLE 4.6 FOR FULL STANDARDS

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 TO CLASS A SURVEY AS SPECIFIED THEREIN.

TIMOTHY D. ELMER
TIMOTHY D. ELMER
SCPLS No. 17566

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

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

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

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

R. 269

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

"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 *Walter Whitfield*
Date *8-18-2017*



LOCATION MAP
(NOT TO SCALE)

PLANNING AND R.M.C. USE ONLY

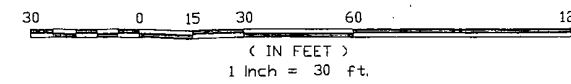
APPROVED PLAT
Joe H. Evans
Director of Planning
Charleston County Planning Commission
SBE 00518 091417
Appl# Date

DATE:	9/22/2017	TIME:	2:44:45 PM
Book Page	517 0224	Doc Type	Small Plat
Charlie Lybrand, Register, Charleston County, SC			
Record Fee	\$10.00	CHARLESTON COUNTY PLANNING	
Passage	\$0.00		
TOTAL	\$10.00		
Drawn	0		
Check	0		
Location:	SC HWY 61		

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
UPDATED: AUGUST 8, 2017

SCALE: 1" = 30'



16-DO HWY61-WHITFIELD TDE



BP0667666

PGS:

4

STATE OF SOUTH CAROLINA)

QUIT CLAIM DEED

COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, that **Whitfield Construction Company**, a South Carolina corporation ("Grantor") for and in consideration of the sum of Five and 00/100ths Dollars (\$5.00) true consideration, the receipt and sufficiency of which is hereby acknowledged, to it in hand paid by **Tim Whitfield Construction and Development LLC**. ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, released and quit claimed and by these Presents does grant, bargain, sell, release and quit claim, unto the Grantee, its successors and assigns forever, the following described property, to wit:

ALL that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, being shown and designated as "**New Parcel 1, 43,559.59 sq. ft., 1.000 acres**", on that certain plat entitled "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" prepared by Tim Elmer RLS, LLC, dated October 17, 2016, and recorded on September 22, 2017 in the Charleston County R.M.C. Office in Plat Book \$17, Page 0224. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

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 deed, or the plat referenced above, 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 on-site 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.

Grantee's Address: 6518 C Dorchester Rd, North Charleston, SC 29418

TMS No: p/o 301-00-00-005

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Property before mentioned, unto the said Grantee, its successors and assigns forever, so that neither Grantor nor its successors and assigns, nor any person or persons claiming under Grantor shall at any time hereafter by any way or means, have claim, or demand any right or title to the aforesaid Property or appurtenances, or any part or parcel thereof.

IN WITNESS WHEREOF, the Grantor has executed this deed as of the 29th day of August, 2017.

Signed, sealed and delivered
in the presence of:

Whitfield Construction Company*, a
South Carolina corporation

Jamie Drebumire
Patrice Williams

By: C David Whitfield
Name: C D WHITFIELD
Title: AGENT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Linda Squires Moulder, the undersigned Notary Public, do hereby
certify that Whitfield Construction Company, a South Carolina corporation, by C David Whitfield, its
Agent, personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

Witness my hand and seal this 29th day of August, 2017.

Linda Squires Moulder
Notary Public for South Carolina
My commission expires: 9/4/2018

STATE OF SOUTH CAROLINA) **AFFIDAVIT**

COUNTY OF CHARLESTON) Closing Date: September 19, 2017

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The Property is being transferred by Whitfield Construction Company to Tim Whitfield Construction and Development LLC as of the referenced Closing Date.
3. Check one of the following: The DEED is:
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) **XXXX** EXEMPT from the deed recording fee because of **Exemption #8**. Explanation, if required: **Transfer of realty to a LLC**. (If exempt, please skip to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO **X** to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The Deed recording fee is computed as follows:
 - (a) \$ _____ the amount listed in item 4 above.
 - (b) \$ _____ the amount listed in Item 5 above (no amount place zero).
 - (c) \$ _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with this transaction as: Legal representative Grantor or Grantee
8. Check if Property other than Real Property is being transferred on this Deed:
 - (a) _____ Mobile Home
 - (b) _____ Other

DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased, CASE NUMBER: _____. Personally appeared before me the undersigned attorney who, being duly sworn, certifies that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in this Estate and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to me this 19th day of September, 2017.

Andre Aguires Montalvo
Notary Public for South Carolina
My Commission Expires: 9/14/2018

Whitfield Construction Company

By: [Signature]
Name: CD WHITFIELD
Its: AGENT

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:

CHARLESTON COUNTY PLANNING

RECORDED

Date: September 22, 2017

Time: 2:49:13 PM

Book

Page

DocType

0667

666

Q/Claim

Charlie Lybrand, Register
Charleston County, SC

MAKER:

WHITFIELD CONST CO

of Pages: 4

RECIPIENT:

TIM WHITFIELD CONST ETC

Note:

Recording Fee \$ 10.00

State Fee <EXEMPT>

County Fee <EXEMPT>

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

Original Book:

Original Page:

AUDITOR STAMP HERE

RECEIVED From RMC

Sep 28, 2017

Peter J. Tecklenburg

Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP MKD

DATE 10/02/2017

31

3010000797

DRAWER

Drawer 1

CLERK

KLH



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09/22/2017

Recorded Date



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Original Book



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14:49:13

Recorded Time



BP0673028

PGS:

4

STATE OF SOUTH CAROLINA)

QUIT CLAIM DEED

COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, that **Tim Whitfield Construction and Development LLC.**, a South Carolina LLC ("Grantor") for and in consideration of the sum of Five and 00/100ths Dollars (\$5.00) true consideration, the receipt and sufficiency of which is hereby acknowledged, to it in hand paid by **City of North Charleston** ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, released and quit claimed and by these Presents does grant, bargain, sell, release and quit claim, unto the Grantee, its successors and assigns forever, the following described property, to wit:

ALL that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, being shown and designated as "**New Parcel 1, 43,559.59 sq. ft., 1.000 acres**", on that certain plat entitled "SUBDIVISION PLAT SHOWING A NEW PARCEL 1 (1.000 ACRE) BEING A PORTION OF TMS 301-00-00-005, PROPERTY OF TIM WHITFIELD CONSTRUCTION AND DEVELOPMENT LLC., LOCATED NEAR WEST ASHLEY, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Tim Elmer RLS, LLC, dated October 17, 2016, and recorded on September 22, 2017 in the Charleston County R.M.C. Office in Plat Book S17, Page 0224. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

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 deed, or the plat referenced above, 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 on-site 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.

Grantee's Address: PO Box 190016, North Charleston, SC 29419

TMS No: p/o 301-00-00-005

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Property before mentioned, unto the said Grantee, its successors and assigns forever, so that neither Grantor nor its successors and assigns, nor any person or persons claiming under Grantor shall at any time hereafter by any way or means, have claim, or demand any right or title to the aforesaid Property or appurtenances, or any part or parcel thereof.

Being the same property conveyed to the Grantor herein by deed of Whitfield Construction Company dated 8/29/17 and recorded 9/22/17 in the RMC Office for Charleston County in Book 0667, at Page 666.

IN WITNESS WHEREOF, the Grantor has executed this deed as of the 12 day of Sept, 2017.

Signed, sealed and delivered
in the presence of:

**Tim Whitfield Construction and
Development LLC.**

[Signature]
[Signature]

By: Tim Whitfield
Name: TIM WHITFIELD
Title: PRESIDENT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Linda Squires Moulder, the undersigned Notary Public, do hereby
certify that Tim Whitfield Construction and Development LLC, by Tim Wh. Field its
Pres, personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

Witness my hand and seal this 12 day of Sept., 2017.

Linda Squires Moulder
Notary Public for South Carolina
My commission expires: 9/4/2018

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF CHARLESTON)

Closing Date: September 12, 2017

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The Property is being transferred by Whitfield Construction Company to City of North Charleston as of the referenced Closing Date.
3. Check one of the following: The DEED is:
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) **XXXX** EXEMPT from the deed recording fee because of **Exemption #2**. Explanation, if required: **Transfer of realty to a state or its political subdivision** (If exempt, please skip to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO **X** to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The Deed recording fee is computed as follows:
 - (a) \$ _____ the amount listed in item 4 above.
 - (b) \$ _____ the amount listed in Item 5 above (no amount place zero).
 - (c) \$ _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with this transaction as: Legal representative, Grantor, or Grantee
8. Check if Property other than Real Property is being transferred on this Deed:
 - (a) _____ Mobile Home
 - (b) _____ Other

DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased, CASE NUMBER: _____. Personally appeared before me the undersigned attorney who, being duly sworn, certifies that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in this Estate and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to me this 12 day of Sept, 2017.

Ronda Agnes Moulden
Notary Public for South Carolina
My Commission Expires: 9/14/2018

TIM WHITFIELD CONSTRUCTION & DEVELOPMENT LLC.
~~Whitfield Construction Company~~

By: Tim Whitfield
Its: President

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document

**Filed By:**

BRUCE A BERLINSKY ESQUIRE

P.O. BOX 206

CHARLESTON SC 29402 (BOX)

RECORDED

Date: October 16, 2017

Time: 11:12:55 AM

Book

0673

Page

028

DocType

Q/Claim

Charlie Lybrand, Register
Charleston County, SC

MAKER:

TIM WHITFIELD CONST ETC

Note:

RECIPIENT:

CITY OF NORTH CHAS

of Pages: 4

Recording Fee	\$ 10.00
State Fee	<Exempt>
County Fee	<Exempt>
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 10.00

Original Book:

Original Page:

AUDITOR STAMP HERE

RECEIVED From RMC

Oct 19, 2017

Peter J. Tecklenburg

Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP MKD

DATE 10/24/2017

31

Drawer **Drawer 2**
Clerk **JBA**



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Page



10/16/2017

Recorded Date



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Original Book



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11:12:55

Recorded Time

Items #3 & #4
Resolution Attached

NORTH CHARLESTON CITY COUNCIL

December 14, 2017

Minutes

Mayor R. Keith Summey called to order the meeting of the North Charleston City Council at 7:00 p.m. in the City Council Chambers of North Charleston City Hall, 2500 City Hall Lane, North Charleston, SC. Other City Council members in attendance were Ms. Virginia Jamison, Mr. Ron Brinson, Mr. Todd Olds, Ms. Dorothy Williams, Mr. Sam Hart, Mr. Bob King, and Mr. Michael Brown (District 10). Excused were Mr. Mike Brown (District 1), Ms. Rhonda Jerome, and Mr. Kenny Skipper. Also in attendance were Special Asst. to the Mayor Julie Elmore, City Attorney Derk Van Raalte, Municipal Clerk Ellen Clark, Deputy Director of Planning and Zoning Eileen Duffy, other staff, and members of the public.

The media, organizations and interested individuals were advised of the meeting in compliance with Sec. 30-4-80 (e) of the South Carolina Code of Laws for 1976, as amended.

Mayor Summey offered the invocation and invited those present to join in reciting the Pledge of Allegiance.

Mayor Summey presented a Proclamation to Ms. Enid Jenkins, Region III Child Welfare Services Director and Ms. Sylvia Mitchum, Charleston County Department of Social Services Director, proclaiming December 2017 as Foster Care Month. They thanked the City for its continued support for the children and families that benefit from Foster Care.

Recreation Department Deputy Director T. J. Rostin recognized Student Athletes from Northwoods Middle, Zucker Middle, Deer Park Middle, Morningside Middle, and Military Magnet Middle Schools. The students, their teachers and parents were recognized for their academic and sporting accomplishments during the 2017 fall sports season.

Mayor Summey then introduced and welcomed the City's new employees from the Police, Public Works, Recreation, and Executive Departments.

1. The first item on the agenda was a request to approve the minutes from the November 21, 2017 City Council meeting.

Motion by Mr. Brown (District 10):

To approve the minutes from the November 21, 2017 City Council meeting as presented.

Motion supported by Mr. Olds. The motion carried unanimously by roll call vote. (8-0-0)

2. The next item on the agenda was the final reading and a public hearing for an Ordinance proposed to rezone the property addressed as 4275 O'Hear Avenue, identified as Charleston County TMS #470-16-00-080, from R-1 Single-Family Residential to R-2 Multi-Family Residential and concurrently amending the Comprehensive Plan's Future Land Use Map for the same parcel, changing it from "Single-Family, Traditional" to "Multi-Family Residential," located in Council District 7.

The subject property is an undeveloped and wooded parcel located along O'Hear Avenue at Conyers Lane, just south of the rail line south of Bexley Street. This parcel is a larger tract (2.5 acres) of undeveloped land in the Park Circle area. The parcel is encumbered with a finger of Noisette Creek, which renders approximately the rear quarter of the property undevelopable. It has been proposed for a rezoning to R-2 to allow multi-family development, which could allow a maximum of 73 units on the property, while the current R-1 zoning could allow roughly 12 dwelling units, provided all other requirements are met. The property meets all of the dimensional requirements for R-2 zoning but has no directly adjacent R-2 zoning; noting, however, the six undeveloped parcels directly across O'Hear Avenue are all zoned R-2. Additionally, there are two apartment buildings (Bexley Commons and an unnamed complex) to the north side of the unused rail line. There are also some single-family houses along Bexley Avenue and all of the properties there, including the apartment buildings, are zoned R-1. The Comprehensive Plan's Future Land Use Map gives the subject parcel a "Single-Family, Traditional" designation, which would require an amendment to "Multi-Family Residential" in order to support the rezoning request.

Based on primarily single-family residential use to the north and the lack of Comprehensive Plan support, staff recommends denial of the requested rezoning. On October 9, 2017 the Planning Commission's motion to approve the rezoning failed. This item was originally scheduled to be considered with a public hearing at the Planning Commission meeting on September 11, 2017; however, that meeting was cancelled due to Hurricane Irma. On October 12, 2017 the City Council held a first reading and referred this item to the Public Safety Committee for review and a recommendation. On October 19, 2017 no action was taken by the Public Safety Committee on this item at the request of the owner's representative. On November 20, 2017 the Public Safety Committee voted to recommend approval.

Mayor Summey stated this was a duly published public hearing and invited anyone wishing to be heard to come forward.

Mr. Floyd Simmons, resident of North Charleston, asked about any changes to his property tax rates based on the proposed rezoning to the property, which is near his home. Mayor Summey said that this would have no effect on his tax rate. No other comments were offered.

Motion by Mr. Hart:

To approve the final reading of Ordinance rezone the property addressed as 4275 O'Hear Avenue, identified as Charleston County TMS #470-16-00-080, from R-1 Single-Family Residential to R-2 Multi-Family Residential and concurrently amending the Comprehensive Plan's Future Land Use Map for the same parcel, changing it from "Single-Family, Traditional" to "Multi-Family Residential," located in Council District 7 as presented.

Motion supported by Ms. Williams. The motion carried by roll call vote with Mr. King voting no. (7-1-0)

✓ 3. The next item on the agenda was a Resolution proposed to annex Section 52-P, a portion of TMS #301-00-00-797. The City proposes to annex one parcel identified as TMS #301-00-00-797. in Charleston County. The property is wholly owned by the City of North Charleston. The City a decade

ago established a position West Ashley. The owner of TMS 301-00-00-797 recently offered to donate it to the City. Acceptance of the property would allow the City to eventually establish a staging area for City personnel/equipment as may be required from time to time to provide City services to those properties within its jurisdiction. The City believes it appropriate to annex its own property into City governance, particularly if the property may be used for City purposes. Since the property is wholly owned by the City there is no requirement for public hearing or petition, though a companion annexation resolution must accompany the normal annexation ordinance. This resolution satisfies the technical requirement. City proposed zoning is AG. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9. Staff recommends approval.

Motion by Mr. Brinson:

To approve A Resolution for the Annexation of an area known as 52-P In Charleston County (TMS #301-00-00-797) and make it part of present City Council District 9, Zoned AG, Agricultural, as shown on a map prepared by the GIS Department for purposes of this annexation, dated October 4, 2017, bearing the legend "Area Proposed For Annexation By The City Of North Charleston Section 52-P" as presented.

Motion supported by Ms. Williams. The motion carried by roll call vote with Mr. King voting no. (7-1-0)

✓ 4. The next item on the agenda was the first reading of an Ordinance proposed to annex an area known as 52-P, identified as Charleston County TMS #301-00-00-797, and make it part of present City Council District 9, Zoned AG, Agricultural District.

This annexation is for one parcel identified as TMS #301-00-00-797, in Charleston County. The property is wholly owned by the City of North Charleston. The City a decade ago established a position West Ashley. The owner of TMS 301-00-00-797 recently offered to donate it to the City. Acceptance of the property would allow the City to eventually establish a staging area for City personnel/equipment as may be required from time to time to provide City services to those properties within its jurisdiction. The City believes it appropriate to annex its own property into City governance, particularly if the property may be used for City purposes. Since the property is wholly owned by the City there is no requirement for public hearing or petition, though a companion annexation resolution is required. The proposed City zoning is AG, Agricultural. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9. Staff recommends approval.

Mr. King noted that the subject property is West of the Ashley, and if the annexation is approved an lawsuit will surely be filed against the City, costing the City possibly millions of dollars. He stated his opposition to the annexation.

Mr. Brinson asked and Mayor Summey confirmed that there are no current development plans, and the Mayor said that when the time comes, the City will consider development. Mayor Summey said this annexation will result in a better quality of life for current and future residents. He acknowledged that this annexation may be challenged, but that it will be well worth it to have this property under the City's jurisdiction.

Mr. King questioned the City's ability to provide services to the property, and Mayor Summey reminded those present that the land is currently vacant and should it become developed, services would be provided by the City or through mutual aid agreements with other municipalities.

Motion by Mr. Brown (District 10):

To approve the first reading of an Ordinance proposed to annex an area known as 52-P, identified as Charleston County TMS #301-00-00-797, and make it part of present City Council District 9, Zoned AG Agricultural District, and to move it to final reading as presented.

Motion supported by Ms. Williams. The motion carried by roll call vote with Ms. Jamison and Mr. King voting no. (6-2-0)

5. The next item on the agenda was the first reading of an Ordinance proposed to rezone the property addressed as 3255 Meeting Street Road, identified as Charleston County TMS# 469-11-00-200, from R-1, Single-Family Residential, to B-2, General Business, and concurrently amending the Comprehensive Plan's Future Land Use Map for that same parcel, changing from "Single-Family, Traditional" to "Major Business/Retail," located in Council District 10.

Ms. Duffy reported that the subject property is located in the Pettigru neighborhood. The applicant is seeking to rezone the subject property to B-2. The lot does not meet any of the dimensional requirements for B-2 zoning. There are no adjacent B-2-zoned properties; however, all of the parcels on the block across Meeting Street Road are zoned B-2, General Business, as are the parcels on seven other blocks located within 500 feet of the subject property. The Comprehensive Plan's Future Land Use Map recommendation of "Single-Family, Traditional" supports maintaining the property as R-1, and thus does not support B-2 zoning.

At the public hearing at the Planning Commission meeting, the applicant and a member of the community spoke in favor of the rezoning, while two property owners, representing several other neighbors in attendance, spoke in opposition. Despite the proximity to B-2 zoning, based on the lack of Comprehensive Plan support and the residential character of the surrounding block, staff recommends denial of the rezoning and the amendment to the Comprehensive Plan's Future Land Use Map. On November 13, 2017, the Planning Commission held a public hearing and voted to recommend denial of the rezoning.

Mayor Summey stated that without objection, this item would be referred to the Public Safety Committee on December 21, 2017 for further review and a recommendation.

6. The next item on the agenda was the first reading of an Ordinance proposed to rezone the properties addressed as 4208, 4210, and 4212 Barnwell Avenue, identified as Charleston County TMS #470-12-0-023, -024, and -098, from R-3, Mobile Home Residential, to R-2, Multi-Family Residential, located in Council District 7.

Ms. Duffy reported that the subject lots are located in an unnamed neighborhood between Rivers Avenue and Noisette Creek, just south of the Park Circle area. There is what appears to be a duplex on the larger parcel (-023), with the two adjoining parcels to the north being vacant. The applicant is

applying for rezoning to R-2. The property and all of the properties on the block are zoned R-3, but there is a large tract of undeveloped R-2-zoned property, including Noisette Creek, adjacent to the rear of parcel -098. Two of the subject parcels (-024 & -098) do not meet the minimum requirements in R-2 for lot width nor lot size, but the third (-023), at 7560 square feet and 60 feet wide, meets all of the requirements as both an R-3 and an R-2-zoned lot. Although the subject properties and the immediate neighborhood are zoned R-3, the Comprehensive Plan's Future Land Use Map designates the subject parcels and its surrounding neighborhood for "Multi-Family Residential" development, supporting a rezoning to R-2.

At the public hearing at the Planning Commission meeting, the applicant spoke in favor of the rezoning, and one neighbor expressed concerns about sewer service in the area. Given the support from the Comprehensive Plan, staff recommends approval of the rezoning from R-3, Mobile Home Residential, to R-2, Multi-Family Residential. On November 13, 2017, the Planning Commission held a public hearing and voted unanimously to recommend approval of the rezoning.

Mayor Summey stated that without objection, this item would be referred to the Public Safety Committee on December 21, 2017 for further review and a recommendation.

Request to Address Council:

Mr. Anthony Bryant, 2123 Courtland Avenue, Charleston, SC 29403, spoke about the IRS documents relative to "hate speech," banking violations, due process, Jeff Sessions, abuse of the court systems, and new tax regulations.

Other Business:

Mayor Summey announced City offices will be closed Friday, December 22, Monday, December 25, and Tuesday, December 26, 2017 in observance of the holidays.

There being no further business to come before the Council, the meeting was adjourned at 7:45 p.m.

Respectfully Submitted.

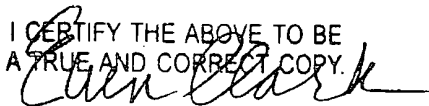


Ellen Clark, Municipal Clerk

These minutes were approved on:

12-21-2017

I CERTIFY THE ABOVE TO BE
A TRUE AND CORRECT COPY.



MUNICIPAL CLERK

A RESOLUTION

FOR THE ANNEXATION OF AN AREA KNOWN AS 52-P IN CHARLESTON COUNTY (TMS #301-00-00-797) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9, ZONED AG, AGRICULTURAL, AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED OCTOBER 4, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P"

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

THE MUNICIPAL OWNED AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, ADJACENT TO THE CITY OF NORTH CHARLESTON SHALL BE ANNEXED PURSUANT TO SECTION 5-3-100 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED AND AUTHORIZED VIA AN ORDINANCE AND A RESOLUTION OF THE CITY COUNCIL OF NORTH CHARLESTON;

THIS RESOLUTION ENDORSES THE ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED OCTOBER 4, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P." IT IS INTENDED TO SATISFY THE TECHNICAL REQUIREMENTS OF S.C. CODE SECTION 5-3-100;

THE PROPERTY TO BE ANNEXED BELONGS ENTIRELY TO THE CITY OF NORTH CHARLESTON;

THE PROPERTY TO BE ANNEXED IS ADJACENT TO THE CITY LIMIT LINES;

THE CITY BELIEVES THAT THE PROPERTY PROPOSED FOR ANNEXATION MAY ASSIST ITS ABILITY TO PROVIDE GOVERNMENT SERVICES TO PROPERTIES IN THE VICINITY THAT ARE ALREADY WITHIN ITS CORPORATE LIMITS AND THAT SUCH FUNCTIONALITY MAY BE ENHANCED BY MAKING THE PROPERTY SUBJECT TO THE CITY OF NORTH CHARLESTON'S REGULATORY JURISDICTION;

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 RESOLVED 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 (FOLLOWING PASSAGE OF A COMPANION ANNEXATION ORDINANCE) HEREAFTER INCLUDE THE FOLLOWING DESCRIBED PROPERTY, MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

The area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797.

The property to be annexed, consisting of approximately 1.0 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated October 4, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P", 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, 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.

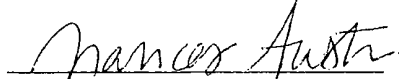
The area proposed for annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG.

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

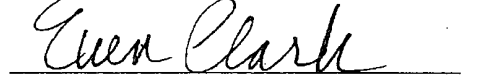
Ordained in City Council this 14th day of December, in the Year of Our Lord, 2017 and in the 241st year of Independence of the United States of America.

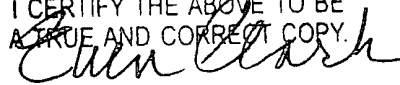

R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:


LEGAL COUNSEL

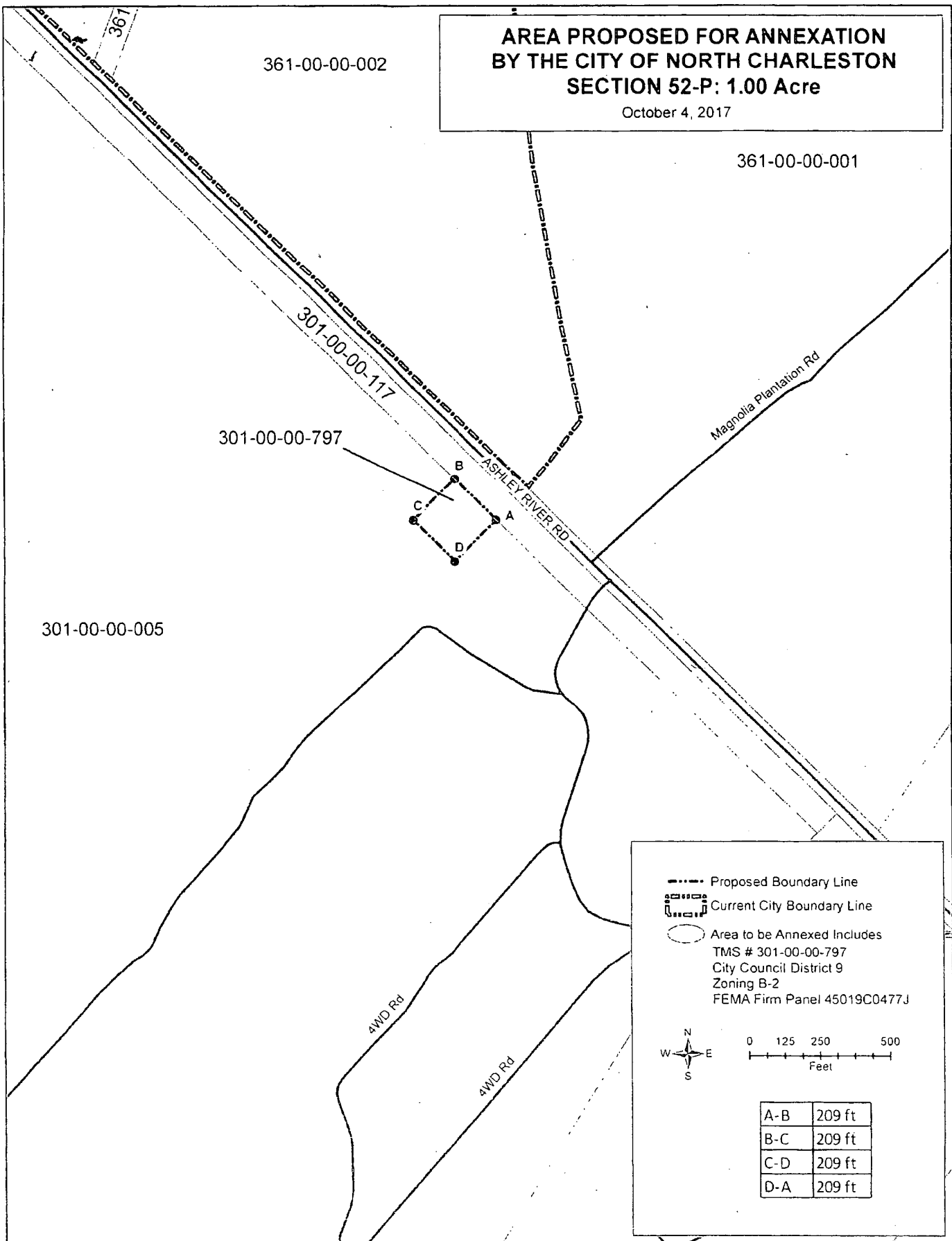
ATTEST:


ELLEN CLARK, MUNICIPAL CLERK

I CERTIFY THE ABOVE TO BE
A TRUE AND CORRECT COPY.

MUNICIPAL CLERK

AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P: 1.00 Acre

October 4, 2017



- - - - Proposed Boundary Line
 - - - - Current City Boundary Line
 ○ Area to be Annexed Includes
 TMS # 301-00-00-797
 City Council District 9
 Zoning B-2
 FEMA Firm Panel 45019C0477J



0 125 250 500
Feet

A-B	209 ft
B-C	209 ft
C-D	209 ft
D-A	209 ft

R. p. 285

APP-285

Item #2
Ordinance Attached

NORTH CHARLESTON CITY COUNCIL

December 21, 2017

Minutes

Mayor R. Keith Summey called to order the meeting of the North Charleston City Council at 7:00 p.m. in the City Council Chambers of North Charleston City Hall, 2500 City Hall Lane, North Charleston, SC. Other City Council members in attendance were Ms. Rhonda Jerome, Ms. Virginia Jamison, Mr. Ron Brinson, Mr. Todd Olds, Mr. Bob King, Mr. Michael Brown (Dist. 10), and Mr. Kenny Skipper. Excused were Mr. Mike Brown (Dist. 1), Ms. Dorothy Williams and Mr. Sam Hart. Also in attendance were Special Asst. to the Mayor Julie Elmore, City Attorney Derk Van Raalte, Municipal Clerk Ellen Clark, Deputy Director of Planning and Zoning Eileen Duffy, other staff, and members of the public.

The media, organizations and interested individuals were advised of the meeting in compliance with Sec. 30-4-80 (e) of the South Carolina Code of Laws for 1976, as amended.

Mayor Summey offered the invocation, invited those present to join in reciting the Pledge of Allegiance. Fire Department Engineer William Kennedy sang "The Star Spangled Banner".

Mayor Summey then called to the podium Fire Chief Gregory Bulanow who wished to introduce the Length of Service award and the Firefighter of the Year Award. Chief Bulanow introduced Cindy Killete for her 30 years of dedicated service to the City. She was hired on December 15, 1987, and was promoted to Assistant Chief in May of 2011, the highest ranking female in the history of the department. She now serves as the City Fire Marshal and has provided a strong focus on customer service and efficiency. She has been very effective in protecting our commercial buildings from the threat of fire. Ms. Killete expressed her appreciation to her co-workers, the administration, and Chief Bulanow for this recognition.

Chief Bulanow then called to the podium Engineer William Kennedy. The North Charleston Firefighter of the Year is awarded each year to one member of the organization who exhibits superior performance, great initiative, respect and professionalism in each aspect of his/her job. After being an active member of the Fire Department's Strategic Planning Committee, Eng. Kennedy volunteered to serve as a member of the Communications Committee that was formed out of this process. Eng. Kennedy is an active member of the committee and this year he agreed to serve as the representative for his shift. This role includes hearing the concerns of shift personnel and reporting directly to the administration and confronting any difficult situations that may arise. Eng. Kennedy has shown moral courage in voicing these concerns up his chain of command and has worked to constructively deal with these difficult issues for the good of the department. Engineer Kennedy expressed his appreciation to his co-workers, the administration, and Chief Bulanow for this award.

1. The first item on the agenda was a request to approve the minutes from the December 14, 2017 City Council meeting.

Motion by Ms. Jerome:

To approve the minutes from the December 14, 2017 City Council meeting as presented.

Motion supported by Mr. Brown. The motion carried unanimously by roll call vote. (8-0-0)

✓ 2. The next item on the agenda was the final reading of an Ordinance Annexing an Area Known as 52-P in Charleston County (TMS #301-00-00-797) and make it part of present City Council District 9, Zoned AG, Agricultural District. This annexation is for one parcel identified as TMS #301-00-00-797, in Charleston County. The property is wholly owned by the City of North Charleston. The City a decade ago established a position West Ashley. The owner of TMS 301-00-00-797 recently offered to donate it to the City. Acceptance of the property would allow the City to eventually establish a staging area for City personnel/equipment as may be required from time to time to provide City services to those properties within its jurisdiction. The City believes it appropriate to annex its own property into City governance, particularly if the property may be used for City purposes. Since the property is wholly owned by the City there is no requirement for public hearing or petition, though a companion annexation resolution will be presented to Council. The proposed City zoning is AG, Agricultural. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9. Staff recommends approval of the annexation.

On December 14, 2017 the City Council voted to approve the Ordinance for first reading and moved it to final reading. Attorney Brady Hair reported that the petition pending before Council bears signatures reflecting 100% of the freehold property owners accounting for at least 100% of the assed property value. The records of the County Auditor and Assessor have been checked and the petition stands ready for adoption should Council so desire.

Motion by Mr. Brinson:

To approve the final reading of an Ordinance Adopting a Bill to be Entitled an Annexation Ordinance of the City of North Charleston Annexing an Area Known as 52-P in Charleston County (TMS #301-00-00-797) and make it part of present City Council District 9, Zoned Agricultural, as shown on a map prepared by the GIS Department for Purposes of this Annexation, dated October 4, 2017, Bearing the Legend "Area Proposed For Annexation By The City Of North Charleston Section 52-P", as presented.

Motion supported by Mr. Olds. The motion carried unanimously by roll call vote. (8-0-0)

3. Mayor Summey reported that the next item on the agenda was withdrawn by the applicant at the December 21, 2017 Public Safety Committee after their recommendation for denial: The final reading of an Ordinance to rezone the property at 3255 Meeting Street Rd., Charleston County TMS# 469-11-00-200, from R-1 Single-Family Residential to B-2 General Business and concurrently amend the Comprehensive Plan's Future Land Use Map for the same parcel, changing it from "Single-Family, Traditional" to "Major Business/Retail" in Council District 10. No action was taken by the City Council.

4. The next item on the agenda was the final reading of an Ordinance proposed to rezone the properties addressed as 4208, 4210, and 4212 Barnwell Avenue (Charleston County TMS #470-12-0-023, -024, and -098) from R-3, Mobile Home Residential, to R-2, Multi-Family Residential in Council Dist. 7. The subject lots are located in an unnamed neighborhood between Rivers Avenue and Noisette Creek, just south of the Park Circle area. There is what appears to be a duplex on the larger parcel (-023), with the two adjoining parcels to the north being vacant. The applicant is applying for rezoning to

R-2. The property and all of the properties on the block are zoned R-3, but there is a large tract of undeveloped R-2-zoned property, including Noisette Creek, adjacent to the rear of parcel -098. Two of the subject parcels (-024 & -098) do not meet the minimum requirements in R-2 for lot width nor lot size, but the third (-023), at 7560 square feet and 60 feet wide, meets all of the requirements as both an R-3 and an R-2-zoned lot. Although the subject properties and the immediate neighborhood are zoned R-3, the Comprehensive Plan's Future Land Use Map designates the subject parcels and its surrounding neighborhood for "Multi-Family Residential" development, supporting a rezoning to R-2.

At the public hearing at the Planning Commission meeting, the applicant spoke in favor of the rezoning, and one neighbor expressed concerns about sewer service in the area. Given the support from the Comprehensive Plan, staff recommends approval of the rezoning from R-3, Mobile Home Residential, to R-2, Multi-Family Residential. On November 13, 2017, the Planning Commission held a public hearing and voted unanimously to recommend approval of the rezoning (8-0-0). On December 14, 2017 the City Council held a first reading and referred this item to the Public Safety Committee for further review and a recommendation. On December 21, 2017 the Public Safety Committee voted to recommend approval of the Ordinance. (8-0-0)

Motion by Mr. Brown (Dist. 10):

To approve the final reading of an Ordinance to rezone the properties addressed as 4208, 4210, and 4212 Barnwell Avenue (Charleston County TMS #470-12-0-023, -024, and -098) from R-3, Mobile Home Residential, to R-2, Multi-Family Residential in Council Dist. 7.

Motion supported by Ms. Jerome. The motion carried unanimously by roll call vote. (8-0-0)

5. The next item on the agenda was the first reading of an Ordinance to Accept a Renewal of a Lease with Senator Tim Scott for Offices at North Charleston City Hall. The City of North Charleston has been very fortunate to have its native son, United States Senator Tim Scott, located in North Charleston City Hall since 2014. With Senator Scott's office being located here, the citizens of both North Charleston and the entire tri-county area are better served. This arrangement has worked out well for Senator Scott, and the City is delighted that Senator wishes to continue to house his office in his home community. Recently re-elected in 2016, this lease will extend throughout Senator's Scott current term ending in 2022. Staff recommends approval. On December 21, 2017 the Finance Committee voted to recommend approval of the Ordinance. (8-0-0)

Motion by Mr. King:

To approve the first reading of an Ordinance to Accept a Renewal of a Lease with Senator Tim Scott for Offices at North Charleston City Hall for a six-year period ending in 2022 and to move it to final reading.

Motion supported by Mr. Brown (Dist. 10). The motion carried unanimously by roll call vote. (8-0-0)

6. The next item on the agenda was the first reading of an Ordinance proposed to Amending the Code of Ordinances of the City of North Charleston by Amending Chapter 9, Article IV, Section 86 and Section 87, which will allow the Public Safety and Housing Committee to Address Health and Sanitation

Nuisances within the City. From time to time, there are nuisance issues within the City that cannot be resolved under the traditional processes. In these situations, the Code Enforcement Director initiates a proceeding against the owner instructing him to abate the nuisance within so many days; and if he fails to do so, the City can correct the nuisance and place a lien on the property for the cost of such work. The process gives the owner an opportunity to challenge the existence of a nuisance in a hearing with the code enforcement department. Grass cutting, tree removal, and salvage clearing are the most common types of nuisances addressed in this process.

If adopted, this ordinance change would allow the hearing to be conducted by the Public Safety and Housing Committee instead of the Code Enforcement Director. The goal is to allow a neutral third party to hear the complaint and determine whether a nuisance requiring abatement exists. This change will also provide for an automatic hearing before the committee instead of the current language that requires the owner to make a formal request for the hearing.

Staff recommends approval. On December 21, 2017 the Public Safety Committee voted to recommend approval of the Ordinance. (8-0-0)

Motion by Mr. King:

To approve the first reading of a proposed Ordinance to Amend the Code of Ordinances of the City of North Charleston by Amending Chapter 9, Article IV, Section 86 and Section 87, which will allow the Public Safety and Housing Committee to Address Heath and Sanitation Nuisances within the City as presented and to move it to final reading.

Motion supported by Mr. Brown (Dist. 10). The motion carried unanimously by roll call vote. (8-0-0)

7. The next item on the agenda was the first reading of an Ordinance Authorizing and Directing the Closing and Abandonment of those portions of Grayson Street, Leland Street, Success Street, Carlton Street, Orvid Street, Calvert Street, Iris Street, Token Street, Norwood Street and English Street as shown on the attached survey by CDM Smith dated January 20, 2017.

The SC Department of Commerce, Division of Public Rails is developing a railyard on a portion of the old navy base. In order to protect the adjoining residential areas, Public Rails is creating a buffer area. Portions of Grayson Street, Leland Street, Success Street, Carlton Street, Orvid Street, Calvert Street, Iris Street, Token Street, Norwood Street and English Street run through the buffer area. The closing of these streets are where they "dead end" and would not prevent access by residents or emergency vehicles to the dwellings and businesses outside the buffer area. Upon abandonment, the City would convey the abandoned right of way to SC Department of Commerce, Division of Public Rails the adjoining property owner on both sides by quit claim deed. Staff recommends approval. On December 21, 2017 the Public Safety Committee voted to recommend approval of the Ordinance. (8-0-0)

Motion by Mr. Brown (Dist. 10):

To approve the first reading of an Ordinance Authorizing and Directing the Closing and Abandonment of those portions of Grayson Street, Leland Street, Success Street, Carlton Street, Orvid Street, Calvert Street, Iris Street, Token Street, Norwood Street and English Street as

shown on the attached survey by CDM Smith dated January 20, 2017 entitled, "Plat Of The Road Right Of Way To Be Acquired By South Carolina Department Of Commerce Division Of Public Railways Prepared For South Carolina Department Of Commerce Division Of Public Railways City Of North Charleston, Charleston County, South Carolina" and to move it to final reading.

Motion supported by Mr. Brinson. The motion carried unanimously by roll call vote. (8-0-0)

8. The next item on the agenda was the first reading of an Ordinance Authorizing and Directing the Closing and Abandonment of First Avenue, Abraham St., and Victoria St. as shown on that certain plat bearing the legend, "Boundary & Tree Survey Charlestowne Academy 5841 Rivers Avenue City Of North Charleston, Charleston County, South Carolina" subject to recording of the final plat.

The Charleston County School District is selling the Charlestowne Academy site on Rivers Avenue. Within a portion of the School District property lie First Avenue, Abraham St., and Victoria St. The School District has approached the City asking that the City abandon the aforesaid right of ways as shown on the attached plat. The City has no objection to abandoning the right of ways but it appears as if there are some encroachments on the right of ways by both the School District and the adjoining property owner JLF Properties, LLC. The City has advised both the School District and JLF Properties, LLC of the proposed abandonment and upon their coming to some agreement, the City will authorize the Mayor the execute quit claim deeds pursuant to their agreement. If the parties do not come to an agreement within 6 months, the City will execute quit claim deeds in accordance with state statute and the property owners will deal with the matter between themselves, as appropriate. Staff recommends approval. On December 21, 2017 the Public Safety Committee voted to recommend approval of the Ordinance. (8-0-0)

Motion by Mr. Brown (Dist. 10):

To approve the first reading of an Ordinance Authorizing and Directing the Closing and Abandonment of First Avenue, Abraham St., and Victoria St. as shown on that certain plat bearing the legend, "Boundary & Tree Survey Charlestowne Academy 5841 Rivers Avenue City Of North Charleston, Charleston County, South Carolina" subject to recording of the final plat and to move it to final reading.

Motion supported by Ms. Jerome. The motion carried unanimously by roll call vote. (8-0-0)

Without objection, the Council members agreed to consider agenda items #9 - #20 as read aloud by title only and as recommended by the CDBG, Public Safety or Finance Committee meetings on December 21, 2017.

Motion by Mr. Brown (Dist. 10) to approve:

9. **A Resolution Authorizing the Mayor or his Designee to Execute a Mutual Aid Agreement Between the City of North Charleston and the Town of Mount Pleasant Regarding Law Enforcement Assistance and Support as presented.**

10. A Resolution Authorizing the Mayor or his Designee to Adopt the Revised Charleston Regional Hazard Mitigation Plan as the Official Plan for the City of North Charleston Regarding Federal Disaster Mitigation as presented.
11. A Resolution Authorizing the Mayor or His Designee to Execute a Memorandum of Understanding with South Carolina DHEC Regarding Access and Distribution of Naloxone to Treat Drug Overdoses as presented.
12. A Resolution Authorizing and Directing Remedial Action relating to the Series 2010 General Obligation Bond proceeds used to purchase Shipwatch Square as presented.
13. A Resolution Authorizing the Mayor to enter into an Agreement Covering Area Lighting with SCE&G for McKewn Plantation Phase 11 (District 9) as presented.
14. A Resolution Replacing the Current Classification and Compensation Plan for the City of North Charleston as presented.
15. A Resolution Authorizing the Mayor to Execute an Amendment to Settlement Agreement and Release with Palmetto Railways to Adjust Property Transfer Dates Based Upon Mutual Agreement as presented.
16. Bid Award for the Asbestos Abatement, Demolition, and Disposal of Five Residential Properties to the Low Bidder, Ladson Wood Recycling, in the amount of \$48,574.50 as presented.
17. Bid Award for the Asbestos Abatement, Demolition, and Disposal of Seven Regulated Properties to the low Bidder, 4 Seasons Site & Demolition, in the amount of \$89,083.00 as presented.
18. Request to Award the Bid for Oak Terrace Preserve Phase III Finish Work to the Low Bidder, Three Oaks Contractors, Inc., Ravenel, SC in the amount of \$1,177,857.95 as presented.
19. Request to Approve Utilization of Non Standard Service Fund to place electric service underground to three locations off Palmetto Commerce Parkway as presented.
20. Request to Approve a Lease Agreement with Charleston County for Use of the EMS Station and authorize up to \$600,000.00 in Renovations as presented.

Motion supported by Ms. Jerome. The motion carried unanimously by roll call vote. (8-0-0)

21. The next item on the agenda was the first reading of 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. 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 Runnymede 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 recommends approval of the Annexation.

Motion by Mr. King:

To approve the first reading of 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 Agricultural District, and to move it to final reading.

Motion carried by Mr. Brinson. The motion carried by roll call vote with Ms. Jamison voting no. (7-1-0)

22. The next item on the agenda was the first reading of an Ordinance Annexing an Area Known as Section 52-T Charleston County (TMS #301-00-00-005). Ashley River Rd and make it part of present City Council District 9, Proposed Zoning AG, Agricultural District. This annexation is for an approximately 2200 acre parcel identified as TMS #301-00-00-005 in Charleston County located on Ashley River Road across from the City's recently annexed Runnymede Plantation. 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 recommends approval of the Annexation.

Motion by Mr. Brinson:

To approve the first reading of an Ordinance Annexing an Area Known as Section 52-T Charleston County (TMS #301-00-00-005), Ashley River Rd and make it part of present City Council District 9, Proposed Zoning AG, Agricultural District, and to move it to final reading.

Motion by Mr. Olds. The motion carried by roll call vote with Ms. Jamison voting no. (7-1-0)

Other Business. Request to Address Council:

Mr. Tim Whitfield, 6518 Dorchester Rd., North Charleston, SC, a partner in the Whitfield Company, the owner of the subject property, said that he feels that the property should remain as beautiful as it is now, regardless of who annexes it, and then complimented the City of North Charleston on its previous wise planning decisions and that he hopes to work diligently with the City.

There being no further business to come before the Council, the meeting was adjourned at 7:45 p.m.

Respectfully Submitted,



Ellen Clark, Municipal Clerk

These minutes were approved on:

01-11-2018

I CERTIFY THE ABOVE TO BE
A TRUE AND CORRECT COPY.



MUNICIPAL CLERK

7

AN ORDINANCE

ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-P IN CHARLESTON COUNTY (TMS #301-00-00-797) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9, ZONED AG, AGRICULTURAL, AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED OCTOBER 4, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P"

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

THE MUNICIPAL OWNED AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, ADJACENT TO THE CITY OF NORTH CHARLESTON SHALL BE ANNEXED PURSUANT TO SECTION 5-3-100 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED AND AUTHORIZED VIA RESOLUTION OF THE CITY COUNCIL OF NORTH CHARLESTON;

SAID RESOLUTION HAS BEEN ADOPTED BY CITY COUNCIL, FOR THE ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED OCTOBER 4, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P."

THE PROPERTY TO BE ANNEXED BELONGS ENTIRELY TO THE CITY OF NORTH CHARLESTON;

THE PROPERTY TO BE ANNEXED IS ADJACENT TO THE CITY LIMIT LINES;

THE CITY BELIEVES THAT THE PROPERTY PROPOSED FOR ANNEXATION MAY ASSIST ITS ABILITY TO PROVIDE GOVERNMENT SERVICES TO PROPERTIES IN THE VICINITY THAT ARE ALREADY WITHIN ITS CORPORATE LIMITS AND THAT SUCH FUNCTIONALITY MAY BE ENHANCED BY MAKING THE PROPERTY SUBJECT TO THE CITY OF NORTH CHARLESTON'S REGULATORY JURISDICTION;

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 area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797.

The property to be annexed, consisting of approximately 1.0 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated October 4, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-P", 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, 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.

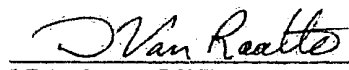
The area proposed for annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG, Agricultural District.

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

Ordained in City Council this 21st day of December, in the Year of Our Lord, 2017 and in the 241st year of Independence of the United States of America.

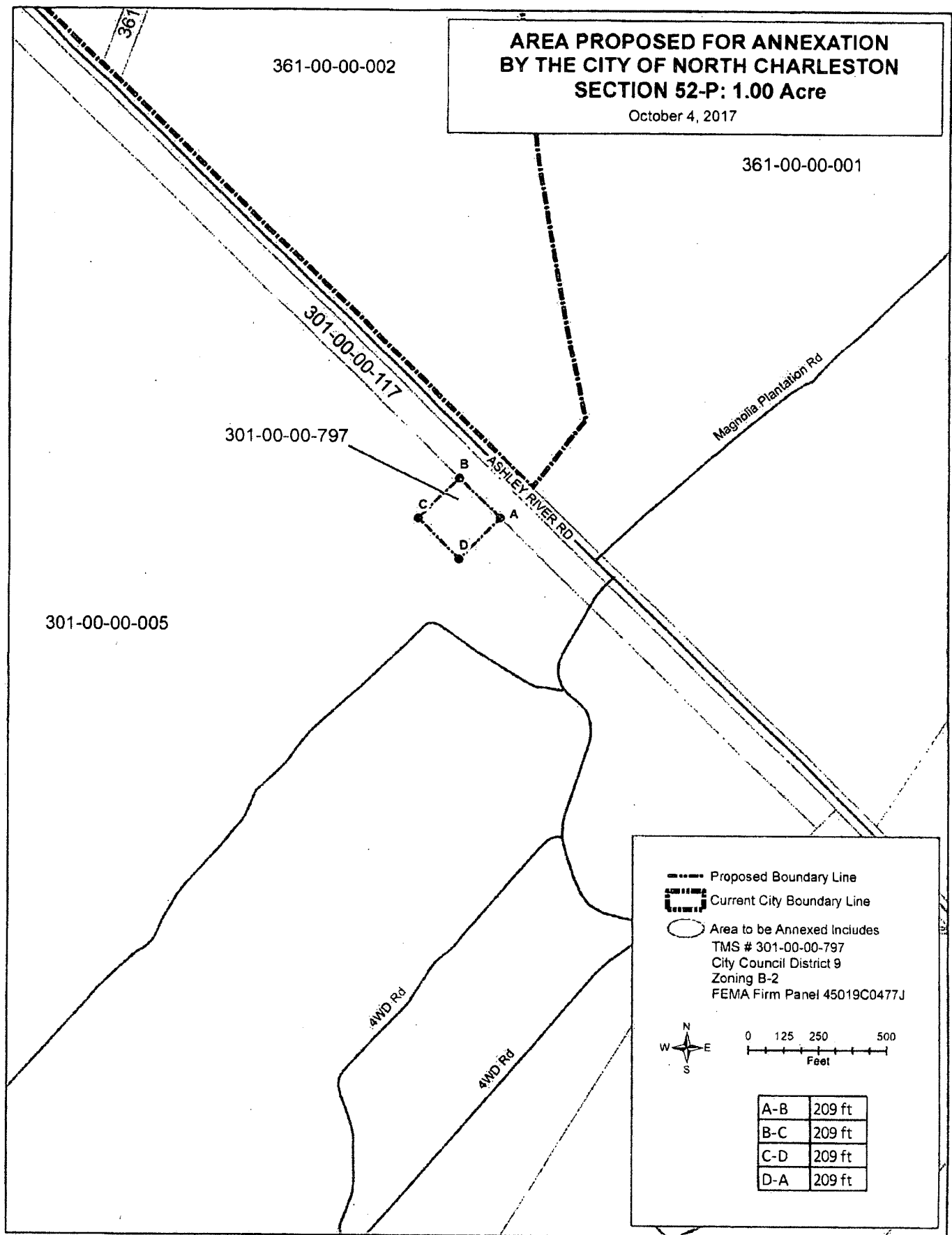

R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:


LEGAL COUNSEL

ATTEST:


ELLEN CLARK, MUNICIPAL CLERK



R. p. 295

**NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM**

Meeting of December 21, 2017

DATE: December 18, 2017

ITEM TITLE: Ordinance – Final Reading & Report
An Ordinance Annexing an Area Known as 52-P in Charleston County (TMS #301-00-00-797) and make it part of present City Council District 9, Zoned 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 one parcel identified as TMS #301-00-00-797, in Charleston County. The property is wholly owned by the City of North Charleston. The City a decade ago established a position West Ashley. The owner of TMS 301-00-00-797 recently offered to donate it to the City. Acceptance of the property would allow the City to eventually establish a staging area for City personnel / equipment as may be required from time to time to provide City services to those properties within its jurisdiction. The City believes it appropriate to annex its own property into City governance, particularly if the property may be used for City purposes. Since the property is wholly owned by the City there is no requirement for public hearing or petition, though a companion annexation resolution will be presented to Council. The proposed City zoning is AG, Agricultural.

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 14, 2017 the City Council voted to approve the Ordinance for first reading and moved it to final reading. (6-2-0)

Exhibits
__X__ Resolution __ Ordinance __ Contract __ Minutes __X__ Plan/Map __ Transfer of Funds __ Other

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES
AND THE CITY OF CHARLESTON,

PLAINTIFFS,

v.

CITY OF NORTH CHARLESTON AND
WHITFIELD CONSTRUCTION COMPANY,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A No.: 2018-CP-10-0848

SUMMONS

FILED
2018 MAR 27 PM 4:08
JULIE A. ARISTON
CLERK OF COURT

TO THE DEFENDANT'S 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 plaintiffs 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.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

By: G. Trenholm Walker

G. Trenholm Walker (S.C. Bar #5777)

P.O. Box 22167

Charleston, SC 29413

Tel: 843-727-2200

Email: walker@wgflaw.com

and

By: William J. Cook by KRW

William J. Cook (S.C. Bar #12183)

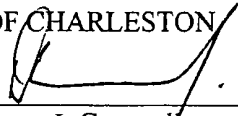
National Trust for Historic Preservation

2600 Virginia Ave., NW; Suite 1100
Washington, DC 20037
Tel: 843-801-3366
Email: wcook@savingplaces.org

ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES

AND

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-10-0848
NATIONAL TRUST FOR HISTORIC	)	
PRESERVATION IN THE UNITED STATES	)	
AND THE CITY OF CHARLESTON,	)	
	)	
PLAINTIFFS,	)	<u>COMPLAINT</u>
	)	
v.	)	
	)	
CITY OF NORTH CHARLESTON AND	)	
WHITFIELD CONSTRUCTION COMPANY,	)	
	)	
DEFENDANTS.	)	

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

Plaintiffs National Trust for Historic Preservation in the United States and the City of Charleston (collectively, "Plaintiffs"), complaining against Defendants City of North Charleston and Whitfield Construction Company (collectively, "Defendants"), allege and state as follows:

PARTIES

1. Plaintiff National Trust for Historic Preservation of the United States ("National Trust") is a private, charitable, and educational non-profit corporation formed under the Act of Congress on October 26, 1949, and existing in good standing under the laws of the District of Columbia and authorized to do business in South Carolina. The National Trust was chartered by the Congress in 1949 to protect and defend America's historic resources, to further the historic preservation policy of the United States, and to facilitate public participation in the preservation of our nation's heritage. See 54 U.S.C. § 312102. The powers of the National Trust include the power to bring suit in its corporate name. Id. § 312105(c). In addition, the National Trust owns property within the area subject to this lawsuit and described in detail below.

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

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

4. Upon information and belief, Defendant Whitfield Construction Company ("Whitfield") is a general partnership and/or sole proprietorship doing business in South Carolina.

JURISDICTION AND VENUE

5. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging an annexation ordinance (the "Contested Ordinance"), adopted by the City Council of North Charleston on December 28, 2017, purporting to annex that certain real property designated as Charleston County TMS 301-00-00-005 (the "Whitfield Property"), as further described in the Contested Ordinance. A copy of the final form of the Contested Ordinance (unexecuted) is attached as Exhibit 1 hereto.

6. The National Trust, which has an office within the City and owns Drayton Hall (a National Historical Landmark located at 3380 Ashley River Road, Charleston, SC 29414), has standing to bring this action by virtue of its ownership of a portion of the Whitfield Property as described in more detail below, its ownership of Drayton Hall, and its ownership of a parcel contiguous to the Whitfield Property described more fully below. Furthermore, the National Trust and its members will suffer an injury-in-fact from the purported annexation. The National Trust has more than one million members and supporters around the country, including members in the Charleston area, many of whom regularly visit Drayton Hall and the Ashley River Historic District (the "Historic District"), which the National Trust placed on its 1995 list of America's 11 Most Endangered Historic Places, in response to threats of intensive development. Drayton Hall has an average of approximately 50,000 visitors each year.

7. Additionally, the National Trust has standing because of the public importance of the issues presented by this challenge to the Contested Ordinance that violates the statutes governing annexation and the South Carolina and United States Constitutions as well as undermines the integrity of the Historic District, which is listed in the National Register of Historic Places as described in more detail below.

8. The City has standing to bring this action because the portion of the Whitfield Property owned by the National Trust in fee simple absolute has previously been annexed into the City of Charleston, and for the other reasons set forth herein.

9. The purported annexation violates statutory and proprietary rights of the National Trust, as will more fully be set forth hereafter.

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

11. The Whitfield Property is located in Charleston County, South Carolina.

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

FACTS

13. On February 1, 1980, Georgia-Pacific Investment Company ("GPIC") conveyed the following described property (the "National Trust Parcel") to The Nature Conservancy ("TNC") by deed recorded in Book O121 at Page 206 ("Deed O121/206") in the Register of Deeds Office for Charleston County, South Carolina (the "ROD").

Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the

property owned by Grantor along the southern right-of-way line of Highway 61.

14. The conveyance to TNC was made subject to the reservation by GPIC of certain easements over and across the National Trust Parcel for access and utilities to the property retained by GPIC. These easements are limited to 18, with each easement being 60 feet in width (or the minimum widths required by law or regulation, if wider). The language for the retained easements also provides:

At the time that the location of each easement is determined by Grantor, its successors or assigns, it shall record, in the office where this instrument is recorded, an instrument which as a matter of record specifically and reasonably identifies the location of each such easement.

15. Also on February 1, 1980, TNC conveyed the National Trust Parcel to the National Trust, by deed recorded in Book O121 at Page 209 in the ROD.

16. GPIC's property included 5,404.04 acres in 1984.

17. Between 1984 and 1987, GPIC subdivided and conveyed more than 3,000 acres of its retained property. After taking into account these subdivisions and conveyances, the GPIC's retained property included 2,294.17 acres.

18. On September 19, 1987, GPIC recorded a plat of the 2,294.17 acres owned by GPIC in Plat Book BP at Page 129 ("Plat BP/129") in the ROD.

19. Plat BP/129 describes the National Trust parcel as a "strip of property 100' wide and parallel to the R/W of S.C. Hwy No. 61" and by reference to Deed O121/209.

20. On July 18, 1989, GPIC conveyed the property shown on Plat BP/129 to Whitfield by deed recorded in Book A186 at Page 320 ("Deed A186/320") in the ROD. The conveyance includes "all of [GPIC's] right, title and interest in and to the remaining sixteen (16) easements as reserved and described in the conveyance from [GPIC] to [TNC] Said easements are sixty

(60) feet in width and are for the purpose of access to the above-described tract from South Carolina Highway No. 61.”

21. On May 10, 2005, the City adopted Ordinance No. 2005-93, annexing several properties into the City, including the National Trust Parcel.

22. On May 15, 2009, Whitfield recorded a plat in Book L09 at Pages 0225 through 0229 with the ROD (the “Easement Plat”). The Easement Plat shows eighteen (18) easement areas, each being 60 feet wide, located on the National Trust Parcel. Although Deed O121/206 describes the National Trust Property as including a strip 100 feet wide and approximately 11,556 feet in length, the Easement Plat shows the National Trust Property as varying in width. The Easement Plat was approved by planning staff for Charleston County, even though the National Trust Parcel was within the City of Charleston at this time.

23. On September 22, 2017, Whitfield recorded Plat S17/0224, subdividing one (1) acre (the “Acre”) from the Whitfield Property. Plat S17/0224 also shows Access Easement #3, as shown on L09/225, running from Highway 61 across the NHTP’s property to New Parcel 1. The width of the National Trust Parcel is shown as 99.69 feet on the north side and 99.7 feet on the south side. Consequently, the Acre included a portion of the National Trust Parcel.

24. Also on September 22, 2017, Whitfield conveyed the Acre, by reference to Plat S17/0224, to Tim Whitfield Construction and Development LLC by Deed 0667/666.

25. On October 16, 2017, Tim Whitfield Construction and Development LLC conveyed New Parcel 1 to the City of North Charleston by Deed 0673/028.

26. Section 5-3-150(1) of the South Carolina Code, an annexation statute commonly referred to as the “75% Method,” provides, in pertinent part:

Any 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 seventy-five percent or more of the freeholders, as defined in Section 5-3-240, owning at least seventy-five percent of the assessed valuation of the real property in the area requesting annexation.

(Emphasis added).

27. 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 an area requesting annexation, which includes the Whitfield Property.

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

29. 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 Whitfield Property into the City of Charleston.

30. On April 10, 2018, the City Council of Charleston will consider final reading and adoption of the ordinance annexing the Whitfield Property into the City of Charleston.

31. In the meantime, on December 21, 2017, the City Council of North Charleston gave first reading to the Contested Ordinance, purportedly using the “100% Method” of annexation in section 5-3-150(3) of the South Carolina Code, 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.

(Emphasis added).

32. Also on December 21, 2017, the City Council of North Charleston passed an ordinance (the “Acre Ordinance”) purporting to annex the Acre into the City of North Charleston.

33. Plaintiffs have challenged the annexation of the Acre pursuant to a separate lawsuit, designated as Case No. 2018-CP-10-00851.

34. On December 28, 2017, the City Council of North Charleston adopted the Contested Ordinance, purporting to annex the Whitfield Property into the City of North Charleston pursuant to the 100% Method.

35. The Contested Ordinance describes the boundary of the Whitfield Property with reference to the boundaries of the Acre. As a result, the Contested Ordinance includes a portion of the National Trust Parcel, and this portion of the National Trust Parcel has previously been annexed into the City of Charleston.

36. Although the City of North Charleston purportedly used the 100% Method to annex the Whitfield Property, the petition to annex the Whitfield Property did not contain the signatures of "all persons owning real estate in the area requesting annexation" because the National Trust did not sign the petition.

37. Although North Charleston did not attempt to annex the Whitfield Property under the 75% Method, the petition was also not signed by 75% of the freeholders of the area to be annexed, as required by section 5-3-150(1). Consequently, any attempt by North Charleston to annex the Whitfield Property under the 75% Method would have been invalid, void, and of no force or effect.

38. Lying and intervening between the corporate limits of North Charleston and the Whitfield Property are (a) the right-of-way for S.C. Highway 61; and (b) the National Trust Parcel.

39. Since 2005, the National Trust Parcel has been within the corporate limits of the City of Charleston.

40. Both the Whitfield Property and the National Trust Parcel are within the Historic District of 23,828.26 acres, that has been listed in the National Register of Historic Places since 1994.

41. The Historic District is largely undeveloped and includes historic, cultural, and archaeological resources that date to the earliest settlement of the Charleston in the late 1600s. The listing in the National Register of Historic Places attests to the public importance of the preservation and protection of the lands within the Historic District.

42. Upon information and belief, Defendants' purported annexation of the Whitfield Property through the Ordinance is part of a larger scheme to increase its tax base and tax revenues by its later development into urban subdivisions in the middle of the Historic District that will forever destroy the Historic District's continuity, injure its historic, cultural, and archaeological significance, and significantly diminish its relatively harmonious scenic natural and historic vistas.

43. The National Trust and its member will suffer concrete and particularized injury that is actual or imminent from the purported annexation and the relief requested in this proceeding will provide redress for that injury.

44. The Whitfield Property is not adjacent to or contiguous with the corporate limits of North Charleston. Instead, the entire northeastern boundary of the Whitfield Property is entirely adjacent to and contiguous with the southwestern boundary of the National Trust Parcel for the full span of its length and, thereby, entirely adjacent to and contiguous with the boundary of the City of Charleston.

45. The Whitfield Property is not adjacent to or contiguous with the corporate limits of North Charleston by virtue of its shared boundaries with the Acre because North Charleston's

purported annexation of the Acre was also invalid for the reasons set forth in the Complaint filed in Case No. 2018-CP-10-00851, which allegations are incorporated herein by reference.

46. The Contested Ordinance violates statutory and proprietary rights of the National Trust in that the Whitfield Property includes land owned in fee simple absolute by the National Trust. Additionally, the purported annexation of the Whitfield Property violates the important public statutes and policies that require that the parcel being annexed be adjacent to and contiguous with the annexing municipality and that do not authorize a municipality to annex property by jumping property in another municipality. The annexation is further against the public interest and will inflict individualized injury on the National Trust and its members, by damaging the Historic District and diminishing the historical context of nearby Drayton Hall owned by the National Trust, contrary to the principles and precepts of the National Trust, as well as its property rights in the National Trust Parcel, the Whitfield Property, and Drayton Hall.

47. The Contested Ordinance violates the statutory and proprietary rights of the City in that it purportedly annexes land owned by the National Trust within the City and over which the City has sole jurisdiction and dominion.

48. The Contested Ordinance violates the statutory and proprietary rights of the City in that it ignores or “leap frogs” over land previously annexed into the City.

49. The question of whether the annexation satisfies the requirements of law is of considerable public importance and will arise again in similar contexts but continuously avoid review if not answered in this case. It is a matter of paramount public importance. This and other similar purported annexations are greatly expanding the boundaries of municipalities into remote, low-density rural areas, including those like the one in this case deemed to be nationally

historically significant, through an illegal interpretation of the applicable statutes by pretending there is contiguity or adjacency when there is none.

50. Plaintiffs filed their notice of intent to contest the purported annexation of the Whitfield Property 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)

51. Plaintiffs re-allege their previous allegations as if fully set forth herein.

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

a. Section 5-3-150(3) of the South Carolina Code requires that “all persons owning real estate in the area requesting annexation” sign the annexation petition before the property may be annexed. The annexation petition in this case was not signed by “all persons owning real estate in the area requesting annexation” because a portion of the Whitfield Property is owned in fee simple absolute by the National Trust and because the National Trust did not sign the petition to annex the Whitfield Property.

b. The City of Charleston previously annexed the portion of the Whitfield Property owned in fee simple absolute by the National Trust.

c. The City of Charleston began the process of annexing the Whitfield Property before the City of North Charleston attempted to annex the Whitfield Property.

d. The Whitfield Property is not and, at the time of the purported annexation, was not, contiguous to the corporate limits of the City of North Charleston.

e. The Contested Ordinance violates the long-standing public policies and laws of this State prohibiting “leap-frog” annexations, including prohibiting municipalities from annexing property on the opposite side of land in a different municipality.

FOR A SECOND CAUSE OF ACTION (DECLARATORY JUDGMENT)

53. Plaintiffs re-allege their previous allegations as if fully set forth herein.

54. Pursuant to section 15-53-10 to -140 of the South Carolina Code (the “Uniform Declaratory Judgments Act”), Plaintiffs are 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 52 of this Complaint.

FOR A THIRD CAUSE OF ACTION

(VIOLATION OF DUE PROCESS)

55. Plaintiff National Trust re-alleges its previous allegations as if fully set forth herein.

56. Plaintiff National Trust has a statutory and constitutional right not to have its property interests diminished in an arbitrary and capricious manner through the purported annexation of its land and adjoining lands that are historically significant in violation of law for the purpose of destroying the relatively rural and historic character of those lands that are all part of the Historic District, including the National Trust Parcel and Drayton Hall.

57. North Charleston acted arbitrarily and capriciously in proceeding with the Contest Ordinance in violation of the National Trust’s rights to substantive due process.

58. Plaintiff National Trust is entitled to a declaratory judgment that the purported annexation supposedly accomplished by the Contested Ordinance is invalid, void, and of no effect for violating its rights to substantive due process.

FOR A FOURTH CAUSE OF ACTION

(TEMPORARY INJUNCTION/PERMANENT INJUNCTION)

59. Plaintiffs re-allege their previous allegations as if fully set forth herein.

60. Plaintiffs are entitled to an Order of this Court preliminarily and permanently enjoining Defendant City of North Charleston from exercising any governmental authority over the Whitfield Property.

WHEREFORE, having set forth their Complaint, Plaintiffs pray 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 Defendant City of North Charleston from exercising any governmental authority over the property subject to the Contested Ordinance, awarding Plaintiffs their attorneys' fees as well as the costs and disbursements of this matter and such other and further relief as the Court may deem appropriate.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

By: *A. Trenholm Walker*

G. Trenholm Walker (S.C. Bar #5777)

P.O. Box 22167

Charleston, SC 29413

Tel: 843-727-2200

Email: walker@wgflaw.com

and

By: *William J. Cook by ASW*

William J. Cook (S.C. Bar #12183)

National Trust for Historic Preservation

2600 Virginia Ave., NW; Suite 1100

Washington, DC 20037

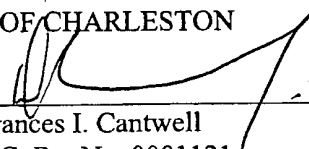
Tel: 843-801-3366

Email: wcook@savingplaces.org

ATTORNEYS FOR PLAINTIFF
NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES

AND

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

EXHIBIT 1

R. p. 312

APP-312

**NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM**

Meeting of December 21, 2017

DATE: December 20, 2017

ITEM TITLE: Annexation Section 52-T –TMS #301-00-00-005- Ashley River Rd

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

CONTACT PERSON: Adam MacConnell, 740-5821

SUMMARY EXPLANATION:

This annexation is for approximately 2200 acre parcel identified as TMS #301-00-00-005 in Charleston County located on Ashley River Road across from the City's recently annexed Runnymede Plantation. City proposed 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:

Exhibits
____ Resolution ____ Ordinance ____ Contract ____ Minutes ____ Plan/Map ____ Transfer of Funds ____ Other

AN ORDINANCE

ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-T IN CHARLESTON COUNTY (TMS #301-00-00-005) 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 DECEMBER 30, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-T".

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 DECEMBER 20, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-T."

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 2214.6 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated December 20, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-T", 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, which point is on the northernmost corner of parcel designated TMS #301-00-00-797; which is also on the present city limits line of the City of North Charleston; 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 B which point is on the westernmost corner of parcel designated TMS #301-00-00-797 which is also on the present city limits line of the City of North Charleston; 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 C which point is on the southernmost corner of parcel designated TMS #301-00-00-797 which is also on the present city limits line of the City of North Charleston; 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 D, which point is on the easternmost corner of parcel designated TMS #301-00-00-797 which is also on the present city limits line of the City of North Charleston; thence; in a generally southeasterly direction a distance of 1,592 feet along the northeasternmost property line of parcel designated TMS #301-00-00-005 to Point E which point is on the northernmost parcel designated 359-00-00-014; thence; in a generally southwesterly direction a distance of 491 feet along the westernmost property line of parcel designated #301-00-00-014 to Point F which point is on the westernmost parcel designated TMS #359-00-00-014; thence; in a generally easterly direction a distance of 842 along the access road of parcel designated TMS #301-00-00-005 to Point G at the intersection of the access road and the southwesternmost corner of parcel designated TMS #359-00-00-014; thence; in a generally southeasterly direction a distance of 30 feet along the right of way of Ashley River Road to Point H on the southernmost right of way of Ashley River Road; thence; in generally westerly direction a distance of 956 feet along the access road to the parcel designated TMS #301-00-00-005 to Point I which point is on the northwesternmost property line of TMS #359-00-00-006; thence; in a generally southwesterly direction a distance of 3,091 feet along the easternmost property line of parcel designated TMS #301-00-00-005 to Point J which point is on the southwesternmost property line of TMS #359-00-00-006; thence; in a generally southeasterly direction a distance of 819 feet along the southwestern property line of the parcel designated TMS #359-00-00-006 to Point K which point is the southeastern corner of the parcel designated TMS #359-00-00-006; thence; in a generally northeasterly direction a distance of 819 feet along the southeasternmost property line of parcel designated TMS #359-00-00-006 to Point L which point is on the southernmost corner of parcel designated TMS #359-00-00-026; thence; in a generally easterly direction a distance of 888 feet along the southwesternmost property line of parcel designated TMS #359-00-00-026 and continues along the southwesternmost property line of parcel designated TMS# 359-00-00-110 to Point M which point is on the easternmost corner of the parcel TMS #301-00-00-005; thence; in a generally southwesterly direction a distance of 2,372 feet along the northwestern property line of parcel designated TMS #301-00-00-039 to Point N which point is on the southwesternmost corner of parcel designated TMS #301-00-00-039; thence; in a generally southeasterly direction a distance of 857 feet along the southwesternmost property line of parcel designated TMS #301-00-00-039 to Point O which point is on the southernmost corner of parcel designated TMS #301-00-00-039; thence; in a generally southwesterly direction a distance of 3,166 feet along the southeastern property line of parcel designated TMS #301-00-00-005 to Point P which point is on the southernmost corner of parcel designated TMS #301-00-00-005; thence; in a generally northwesterly, northerly, westerly, southwesterly and westerly direction a distance of 9,404 feet along the southernmost property line of parcel designated TMS #301-00-00-005 to Point Q which point is on the

southwestern corner of parcel designated TMS #301-00-00-005; thence; in a generally northerly direction a distance of 12,384 feet along the westernmost property line of parcel designated TMS #301-00-00-005 to Point R which point is on the northwesternmost corner of parcel designated TMS #301-00-00-005; thence; in a generally southwesterly direction a distance of 8,201 feet along the northernmost property line of parcel designated TMS #301-00-00-005 to Point A the point of beginning with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #301-00-00-005.

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.

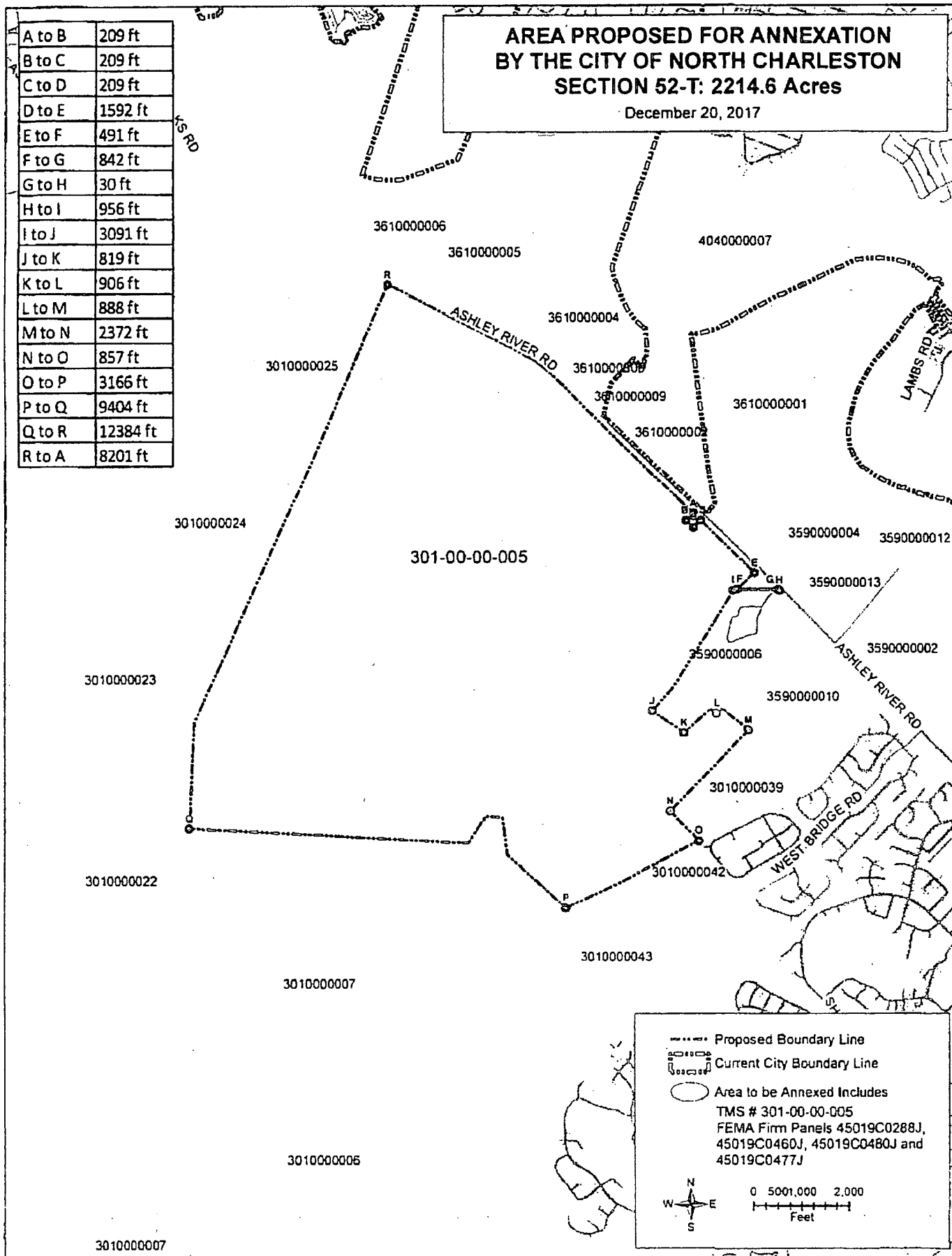
R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:

ATTEST:

LEGAL COUNSEL

ELLEN CLARK, MUNICIPAL CLERK



R. p. 317

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
	)	
National Trust for Historic	)	Case No. 2018-CP-10-848
Preservation in the United States	)	
And the City of Charleston,	)	
	)	Answer, Affirmative Defenses,
Plaintiffs,	)	and Counterclaims by the
	)	City of North Charleston
v	)	
	)	(Whitfield)
City of North Charleston and the	)	
Whitfield Construction Company	)	
Defendant.	)	

FILED
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CLERK OF COURT

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, except that North Charleston denies that the National Trust owns any property annexed in this dispute.
2. The allegations of Paragraph 2 are Admitted.
3. The allegations of Paragraph 3 are Admitted.
4. The allegations of Paragraph 4 are Admitted.
5. Regarding Paragraph 5, North Charleston admits only that the Plaintiffs seek to challenge North Charleston's annexation of TMS 301-00-00-005 ("the

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.

Whitfield property”) pursuant to SC Code Ann. 5-3-270 and admits that the Plaintiffs met the deadlines described therein, but denies that Section 5-3-270 or any other law authorizes the Plaintiffs’ challenge in this instance, denies that North Charleston’s annexation of the Whitfield property was purported rather than legally binding. Regarding the attachment, the final adopted ordinance speaks for itself.

6. Regarding the allegations of Paragraph 6, North Charleston denies all allegations except for those contained in the last two sentences limited to National Trust and Drayton Hall’s membership / attendance numbers. North Charleston specifically denies the allegations that the Historic Trust owns any portion of the Acre annexed by North Charleston or that the Historic Trust and its members will suffer injury.
7. The allegations of Paragraph 7 are denied.
8. The allegations of Paragraph 8 are denied.
9. The allegations of Paragraph 9 are denied.
10. The allegations of Paragraph 10 are denied.
11. Regarding Paragraph 11, North Charleston admits that the Whitfield property is within Charleston County, South Carolina.
12. Regarding Paragraph 12, 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 Whitfield property, 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 12 must be denied as pled.

13. Regarding the allegations of Paragraph 13, North Charleston generally admits that in 1980 GPIC conveyed certain property (hereinafter referred to as "the Shoestring"), to the Nature Conservancy. However, North Charleston denies that the excerpt fully describes the boundaries and instead directs reference to the official property records of Charleston County (including plats associated with the parcels) which speak for themselves. Generally speaking, North Charleston does not contest the fact that The Shoestring may generally be described as a roughly 100' x 11,556' area that parallels Highway 61. North Charleston denies that the legal boundary width of The Shoestring is a perfect 100' in all locations along its length.

14. Regarding the allegations of Paragraph 14, North Charleston generally admits that conveyance of the Shoestring parcel to The Nature Conservancy was made subject to GPIC's right to designate eighteen access easements. However, North Charleston denies that the excerpt fully describes all boundaries and property rights regarding the parcel and easement and instead demands reference to the official property records of Charleston County (including plats associated with the parcels) which speak for themselves.

15. Regarding the allegations of Paragraph 15, North Charleston generally admits that the Nature Conservancy conveyed the Shoestring parcel to the National Trust. The official property records of Charleston County (including plats associated with the parcels) speak for themselves and reference is craved

thereto to the extent there is any inconsistency between the same and the Plaintiffs' pleadings.

16. Regarding the allegations of Paragraph 16, North Charleston does not have sufficient information to admit or deny at present and therefore demands strict proof thereof. The official property records of Charleston County (including plats associated with the parcels) speak for themselves and reference is craved thereto to the extent there is any inconsistency between the same and the Plaintiffs' pleadings.

17. Regarding the allegations of Paragraph 17, North Charleston admits only that Georgia Pacific subdivided its property. The official property records of Charleston County must speak for themselves with regard to exact acreage and boundaries.

18. The allegations of Paragraph 18 are admitted.

19. Regarding the allegations of Paragraph 19, North Charleston admits only that the plat contains a "note" to that effect, but the Shoestring property was not surveyed property on that plat to form the truth of statement so North Charleston does not have sufficient information as to form a belief at present and must therefore deny in favor of strict proof.

20. The allegations of Paragraph 20 are admitted.

21. Regarding the allegations of Paragraph 21, North Charleston generally admits that the City of Charleston annexed the Shoestring parcel in 2005.

22. Regarding the allegations of Paragraph 22, North Charleston admits the first sentence and further admits that the Shoestring property varies in width and

that the plat was approved by Charleston County. North Charleston is without sufficient information at present to form a belief regarding the remaining allegations and thus demands proof thereof.

23. Regarding the allegations of Paragraph 23, North Charleston admits all allegations except the final sentence and thus denies that the "Acre" included a portion of the Shoestring parcel.
24. The allegations of Paragraph 24 are admitted.
25. The allegations of Paragraph 25 are admitted.
26. Regarding the allegations of Paragraph 26, North Charleston admits that S.C. Code Ann. 5-3-150 sets forth the so-called "75% method" of annexation. Said statute speaks for itself and to the extent there might be any deviation between the Complaint and the statute then the statute prevails.
27. Regarding the allegations of Paragraph 27, North Charleston denies that the City of Charleston lawfully accepted a 75% annexation petition for properties including the Whitfield property. North Charleston admits that the City of Charleston purported to take such action, despite the same being a legal impossibility.
28. Regarding the allegations of Paragraph 28, North Charleston denies that the City of Charleston lawfully voted to have a public hearing on the previously referenced petition. North Charleston admits that the City of Charleston purported to take such action, despite the same being a legal impossibility.
29. Regarding the allegations of Paragraph 29, 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.

30. Regarding the allegations of Paragraph 30, 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 Whitfield property.

31. The allegations of Paragraph 31 are admitted, subject to the correction that the annexation was not "purported", but rather legally valid and operative, and that the statute speaks for itself should there be any deviation from its text and that of Paragraph 31.

32. The allegations of Paragraph 32 are admitted, subject to the correction that the annexation was not "purported", but rather legally valid and operative.

33. The allegations of Paragraph 33 are admitted.

34. The allegations of Paragraph 34 are denied, subject to the corrections that the annexation was not "purported", but rather legally valid and operative.

35. Regarding the allegations of Paragraph 35, North Charleston admits only that the boundaries of the Whitfield tract share certain common boundaries with both The Acre and the Shoestring parcels, but denies that the annexed Whitfield property includes any portion of the Shoestring parcel. All other allegations are denied.

36. Regarding the allegations of Paragraph 36, the City of North Charleston did annex using the 100% method, and denies that it lacked any necessary signatures to proceed with that method, and further denies that any signature

from the Plaintiff Trust was required because no land owned by the Trust was annexed.

37. Regarding the allegations of Paragraph 37, North Charleston admits that it did not proceed under the 75% method of annexation and did not desire to do so with regard to the Whitfield property.

38. The allegations of Paragraph 38 are denied as the Whitfield property is contiguous to the previously annexed Acre which is within North Charleston city limits.

39. The allegations of Paragraph 39 are admitted.

40. Regarding the allegations of Paragraph 40, North Charleston is without sufficient information so as to form a belief and therefore denies in favor of proof thereof.

41. North Charleston admits that portion of Paragraph 41 that alleges the area in the vicinity of The Acre is largely undeveloped and denies the remaining allegations of the Paragraph in favor of strict proof thereof.

42. The allegations of Paragraph 42 are conclusions to which no response is required, are denied, and further, North Charleston specifically denies any suggestion that its employment of the same state-authorized planning processes as afforded the Plaintiff City of Charleston or Charleston County will result in any harm.

43. The allegations of Paragraph 43 are denied.

44. The allegations of Paragraph 44 are denied.

45. The allegations of Paragraph 45 are denied.

46. The allegations of Paragraph 46 are denied.
47. The allegations of Paragraph 47 are denied.
48. The allegations of Paragraph 48 are denied.
49. The allegations of Paragraph 49 are denied.
50. The allegations of Paragraph 50 are admitted.
51. Regarding Paragraph 51, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.
52. The allegations of Paragraph 52 are denied.
53. Regarding Paragraph 53, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.
54. The allegations of Paragraph 54 are denied.
55. Regarding Paragraph 55, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.
56. The allegations of Paragraph 56 are denied as they might relate to anything at issue in this case.
57. The allegations of Paragraph 57 are denied.
58. The allegations of Paragraph 58 are denied.
59. Regarding Paragraph 59, North Charleston admits that the Plaintiffs wish to incorporate their previously pled paragraphs and, in response, North Charleston incorporates its previously pled answers.

60. The allegations of Paragraph 60 of the Complaint are denied.

Defenses

Lack of Standing

61. 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))

62. 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

63. 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

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

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

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

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

68. 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.

69. The City of North Charleston completed annexation of Area 52-T (Whitfield 2,200 acre)(TMS 301-00-00-005) on December 28, 2017 by way of Ordinance No. 2017- 084.

70. 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.

71. 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" and "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. 301-00-00-002, 301-00-00-003, 301-00-00-005, 301-00-00-023 (a portion), 359-00-00-006-00-00-002 as shown on the map attached to this ordinance labeled 'annexation exhibit' and to make said properties a part of District 10." (the "Disputed Annexations.")

72. The Disputed Annexation purports to annex the same parcel TMS 301-00-00-005 (2,200 acre Whitfield Tract) (hereinafter, sometimes, the "Disputed Parcel") that is already within the jurisdiction of the City of North Charleston.

FIRST CAUSE OF ACTION

(Violation of South Carolina Freedom of Information Act)
(Declaratory and Injunctive Relief)

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

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

75. The published meeting agenda did not contain any reference to annexation of the Whitfield property or any other property in the vicinity of Runnymede Plantation.

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

77. The City of Charleston videotaped the December 19, 2017, council meeting.

(Hereinafter, "the Video".)

78. 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.

79. 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).

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

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

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

83. 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."

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.”

89. 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.

90. 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).

91. 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.

92. 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.

93. 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.

94. 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.

95. 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)

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

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

98. The City of Charleston on or about April 10, 2018, purported to pass ordinances completing the Disputed Annexations.

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

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

- a. TMS 301-00-00-005 (Whitfield tract), a parcel contained within the Disputed Annexation, 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 Disputed Annexation constitutes an impermissible "shoestring" annexation; and/or
- c. The Disputed Annexation fails to comply with the 75% valuation requirements mandated by S.C. Code Ann. 5-3-150; and / or
- d. The Disputed Annexation impermissibly relies on a private easement or unrecorded permission or other sub-division (formal or informal) of land. This private easement or unrecorded permission is insufficient to establish contiguity and additionally invalidates calculation of 75% value and ownership consent requirements; and /or
- e. 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
- f. 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.

101. 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.

102. The Disputed Annexation, if left undisturbed, would violate the rights of the owners of TMS 301-00-00-005 (Whitfield) and subject them to the jurisdiction of and the payment of taxes to the City of Charleston in violation of their rights.

103. 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 301-00-00-005 (Whitfield) 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 Boundaries and Quiet Title)

104. That the City of North Charleston reiterates and realleges all above allegations and pleadings as if the same were repeated herein verbatim.
105. The City of North Charleston owns approximately one acre of property conveyed by Tim Whitfield Construction and Development, LLC to it and more fully described in deed recorded in the Charleston County RMC Office in Book 0673, at Page 028 and more fully shown on plat recorded in Book S17, Page 0224, said deed and plat are incorporated hereto by reference.
106. The property of National Trust was conveyed to it by the Nature Conservancy and more fully described in deed recorded in the Charleston County RMC Office in Book 0121, Page 209 and more fully shown on plats recorded in Book L09, at Page 0225-0229, said deed and plats are incorporated hereto by reference.
107. The property of Whitfield was conveyed to it by the Whitfield Construction Company by deed dated August 29, 2017, and recorded in the Charleston County RMC Office at Bk 0667 Pg 666.
108. The Plaintiffs have made various allegations of ownership to property owned by North Charleston and/or Whitfield. See, among others, Para. 1, 46, and 47 of the Complaint in this action and the Complaint generally in 2018-CP-10-851.

109. Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston property or the Whitfield property encroaches into or upon the property of National Trust.

110. North Charleston owns its property free and clear of the claims of any third parties, including the Plaintiffs.

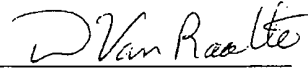
111. The Plaintiffs, in their Complaint, make unconscionable claims and pretensions against North Charleston's title, claiming that boundaries to North Charleston's property were other than those established by survey or deed and encroaches onto National Trust's property.

112. The claims of the Plaintiffs are without any right and the Plaintiffs have no right, title, estate, liens or interest in the property of North Charleston.

113. North Charleston seeks a determination of its fee simple title in this action and further, that the Plaintiffs are forever barred from claiming any right title, or interest in North Charleston's property.

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 Plaintiffs' requested relief be denied; and
- b) That this Honorable Court inquire into the facts alleged and declare that North Charleston is the sole owner of "The Acre" and Whitfield is the sole owner of the Whitfield tract, free and clear of any and all claims of the Plaintiffs; and
- c) That this Honorable Court declare and confirm that neither North Charleston's nor Whitfield's property encroaches onto or upon property of National Trust; and
- d) That this Honorable Court declare and confirm that the City of North Charleston's annexations of The Acre and The Whitfield tract are lawful and binding; and
- e) 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; and
- f) the City of North Charleston be awarded costs and attorney's fees from The City of Charleston in accordance with South Carolina statute; and
- g) 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

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

Plaintiffs,

v.

City of North Charleston, and Whitfield
Construction Company,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A NO. 2018-CP-10-0848
)

) ANSWER
) AND FIRST AMENDED
) COUNTERCLAIMS OF DEFENDANT
) WHITFIELD CONSTRUCTION COMPANY
)

) (Jury Trial Demanded as to the First, Second,
) Third, Fourth, Fifth, and Sixth Counterclaims)
)

Whitfield Construction Company (more properly known as The Whitfield Company, LLC), responds to the Complaint filed against it and asserts counterclaims against The City of Charleston and National Trust for Historic Preservation in the United States. All allegations made by the Plaintiffs that are not expressly admitted, qualified, or explained are denied.

INTRODUCTION

Defendant Whitfield Construction Company became part of The Whitfield Company partnership on or about 1992. On or about 2011, The Whitfield Company converted to a limited liability company, The Whitfield Company, LLC. Collectively, these entities are referred to herein as Defendant Whitfield.

Defendant Whitfield is the owner of real property located on Highway 61 in Charleston County, more specifically identified as Tax Map No. 301-00-00-005 (hereinafter, the "Whitfield Property"). In December 2017, Defendant Whitfield exercised its rights and petitioned for annexation of the Whitfield Property into the City of North Charleston. That same month, the City of North Charleston accepted Defendant Whitfield's petition and approved annexation. Now,

more than three months later, the City of Charleston is attempting to nullify Defendant Whitfield's previous petition to the City of North Charleston by forcing the annexation of the Whitfield Property into the City of Charleston. Defendant Whitfield rejects any such attempt.

AS A FIRST DEFENSE

1. Defendant Whitfield is without sufficient information to admit or deny the allegations of Paragraph 1, and, placing its denial on these grounds, Defendant Whitfield denies the same and demands strict proof thereof. Defendant Whitfield denies that that National Trust owns any property annexed in this dispute.

2. The allegations of Paragraphs 2-3 are admitted.

3. The allegations of Paragraph 4 are denied. Defendant Whitfield is a partnership doing business in South Carolina, and it owns all assets of the former Whitfield Construction Company.

4. Concerning Paragraph 5, Defendant Whitfield only admits so much of said Paragraph as alleged or infers that Plaintiffs seek to challenge the City of North Charleston's annexation of the Whitfield Property, but denies that Section 5-3-270 authorizes such a challenge, and craves reference to the final adopted ordinance of the City of North Charleston.

5. Regarding the allegations of Paragraph 6, Defendant Whitfield denies all allegations except for those contained in the last two sentences limited to National Trust and Drayton Hall's membership / attendance numbers. Defendant Whitfield specifically denies the allegations that the Historic Trust owns any portion of the Whitfield Property annexed by the City of North Charleston or that the Historic Trust and its members will suffer injury.

6. The allegations of Paragraph 7-10 are denied.

7. The allegations of Paragraph 11 are admitted.

8. The allegations of Paragraph 12 are denied. Defendant Whitfield 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 Whitfield property; however, Defendant Whitfield denies that the Plaintiffs have standing to present such a claim, and, as such, the Court is without a case or controversy over which to exercise jurisdiction.

9. Defendant Whitfield is without sufficient information to admit or deny the allegations of Paragraphs 13-19, and, placing its denial on these grounds, Defendant Whitfield denies the same and demands strict proof thereof. Defendant Whitfield craves reference to the official property records of Charleston County.

10. Defendant Whitfield admits the allegations of Paragraph 20 and craves reference to the official property records of Charleston County to the extent there is any inconsistency between the same and Plaintiffs' pleadings.

11. Defendant Whitfield is without sufficient information to admit or deny the allegations of Paragraph 21, and, placing its denial on these grounds, Defendant Whitfield denies the same and demands strict proof thereof. Defendant Whitfield craves reference to the official records of the City of Charleston.

12. Defendant Whitfield admits the allegations of the first sentence of Paragraph 22 and craves reference to the official property records of Charleston County to the extent there is any inconsistency between the same and Plaintiffs' pleadings. Defendant Whitfield is without sufficient information to admit or deny the remaining allegations of Paragraph 22 and placing its denial on these grounds, Defendant Whitfield denies the same and demands strict proof thereof.

13. Defendant Whitfield admits the allegations of Paragraph 23 except the final sentence and thus denies that the "Acre" included a portion of the National Trust Parcel.

14. The allegations of Paragraphs 24-25 are admitted.

15. Regarding the allegations of Paragraph 26, Defendant Whitfield admits that the referenced statute sets forth the “75% Method” of annexation. Defendant Whitfield craves reference to the statute, as it speaks for itself.

16. Defendant Whitfield denies the allegations of Paragraph 27.

17. Defendant Whitfield is without sufficient information to admit or deny the allegations of Paragraphs 28-30 and placing its denial on these grounds, Defendant Whitfield denies the same and demands strict proof thereof.

18. The allegations of Paragraph 31 are admitted, subject to the correction that the annexation was not “purported.” Defendant Whitfield craves reference to the statute, as it speaks for itself.

19. The allegations of Paragraph 32 are admitted, subject to the correction that the annexation was not “purported.”

20. The allegations of Paragraph 33 are admitted.

21. The allegations of Paragraph 34 are admitted, subject to the correction that the annexation was not “purported.”

22. Regarding the allegations of Paragraph 35, Defendant Whitfield admits that that Whitfield Property shares certain boundaries with the Acre. The remaining allegations are denied.

23. Regarding the allegations of Paragraph 36, Defendant Whitfield admits that the City of North Charleston used the 100% Method to annex the Whitfield Property. All remaining allegations are denied.

24. Regarding the allegations of Paragraph 37, Defendant Whitfield admits that the City of North Charleston did not use the 75% Method to annex the Whitfield Property. All remaining allegations are denied.

25. The allegations of Paragraph 38 are denied.

26. Defendant Whitfield is without sufficient information to admit or deny the allegations of Paragraphs 39-41 and placing its denial on these grounds, Defendant Whitfield denies the same and demands strict proof thereof.

27. To the extent the allegations of Paragraph 42 are directed to Defendant Whitfield they are denied.

28. The allegations of Paragraphs 43-49 are denied.

29. The allegations of Paragraph 50 are admitted.

30. In response to Paragraph 51, Defendant Whitfield incorporates its answers to Paragraphs 1-50 herein.

31. The allegations of Paragraph 52 are denied.

32. In response to Paragraph 53, Defendant Whitfield incorporates its answers to Paragraphs 1-52 herein.

33. The allegations of Paragraph 54 are denied.

34. In response to Paragraph 55, Defendant Whitfield incorporates its answers to Paragraphs 1-54 herein.

35. The allegations of Paragraphs 56-58 are denied.

36. In response to Paragraph 59, Defendant Whitfield incorporates its answers to Paragraphs 1-58 herein.

37. The allegations of Paragraph 60 are denied.

AS A SECOND DEFENSE
(Lack of Standing)

38. Defendant Whitfield incorporates all of the previous Paragraphs as if set forth verbatim herein.

39. The Plaintiffs lack standing to challenge the annexation of the City of North Charleston.

40. The Whitfield Property was annexed into the City of North Charleston with consent of 100% of the freehold property owners. In such circumstances, the only party who has standing to challenge the annexation is the Attorney General for the State of South Carolina. *See Vicary v. Town of Awendaw*, 417 S.C. 631 (S.C. App. 2016).

**AS A THIRD DEFENSE
(Failure to state claim Rule 12(b)(6))**

41. Defendant Whitfield incorporates all of the previous Paragraphs as if set forth verbatim herein.

42. Plaintiffs have failed to state facts sufficient to state a cause of action.

**AS A FOURTH DEFENSE
AND BY WAY OF COUNTERCLAIMS**

43. Defendant Whitfield is the owner of real property on Highway 61 in Charleston County, more specifically identified as Tax Map No. 301-00-00-005 (hereinafter, the “Whitfield Property”).

44. Plaintiff, The City of Charleston, is a municipality with the power of eminent domain, annexation, and zoning.

45. Plaintiff National Trust for Historic Preservation in the United States identifies itself as a private, charitable, and educational non-profit corporation, and it purportedly owns property in the vicinity of the Whitfield Property.

46. The City of Charleston has taken steps to annex the Whitfield Property into its corporate limits, expand its zoning classifications, and place an agricultural zoning on the property. Whitfield Company did not consent to such annexation or zoning changes.

47. For the reasons set forth above and as alleged in more detail below, jurisdiction and venue are proper.

FACTUAL BACKGROUND

48. Defendant Whitfield purchased the Whitfield Property in 1989 from Georgia-Pacific Investment Company.

49. The Whitfield Property has approximately 2,200 acres of land located on the west side of Ashley River Road (Hwy 61) near Runnymede Plantation and Millbrook Plantation in Charleston County, South Carolina. To date, the property has been used for phosphate mining, timber growing, and hunting.

50. More than eighteen (18) months ago, Defendant Whitfield began exploring the possibility of developing the Whitfield Property for single family residential use.

51. In May 2016, Whitfield Company entered into a contract with a third-party to sell five hundred acres on the southern end of the Whitfield Property for a three-phase planned single family residential development adjacent to the existing Shadowmoss neighborhood, (hereinafter, the "Development Contract"). The Development Contract conditions the closing of each phase upon, inter alia, no change in the legal conditions of the property and the City of North Charleston's rezoning approval for the property at a density of not less than two single family residential units per acre. The Development Contract has been extended and remains in effect at this time. The third-party that contracted with the Whitfield Company in the Development Contract has expressed interest in contracting for an additional 500 acres in the future.

52. Defendant Whitfield estimates that approximately 100-150 acres will be necessary to dedicate to a retention pond or other drainage solution for the Whitfield Property.

53. The Whitfield Property is currently zoned as agricultural in the County of Charleston. As part of its development, Defendant Whitfield will seek rezoning from the City of North Charleston for higher density than permitted under agricultural zoning, which it anticipates being granted.

Annexation by the City of North Charleston

54. As of December 20, 2017, the Whitfield Property was situated in the unincorporated area of Charleston County. Defendant Whitfield determined that becoming part of the City of North Charleston would align with its development plans for the Whitfield Property.

55. On December 20, 2017, Defendant Whitfield petitioned the City of North Charleston to annex the Whitfield Property.

56. On December 21, 2017, the City of North Charleston City Council voted to approve the Ordinance annexing the Whitfield Property for first reading and moved it to final reading.

57. On December 28, 2017, the City of North Charleston City Council voted at final reading to approve Ordinance #2017-084, which annexed the Whitfield Property. (Ordinance #2017-084, attached as **Exhibit 1**).

58. On December 28, 2017, the Whitfield Property became part of the City of North Charleston.

Annexation and Zoning Actions by the City of Charleston

59. On January 23, 2018, the City of Charleston City Council considered at first reading and voted affirmatively on an annexation of Tax Map Nos. 301-00-00-002, 301-00-00-003, 301-00-00-005 (Whitfield Property), and 301-00-00-023 (a portion), and 359-00-00-006 (hereinafter, “the 75% Annexation”). (Proposed Ordinance for 75% Annexation, attached as **Exhibit 2**).

60. Defendant Whitfield did not sign the petition for annexation nor does it desire or consent to the annexation of the Whitfield Property by the City of Charleston. At the time of the City of

Charleston's first reading on the 75% Annexation, the Whitfield Property had already been annexed into the City of North Charleston.

61. The City of Charleston has sought to annex the Whitfield Property by obtaining the petition of landowners allegedly adjacent to the Whitfield Property that together purportedly hold property valued at 75% of the total assessed valuation of the real property in the proposed 75% Annexation.

62. On February 15, 2018, the City of Charleston, along with the National Trust for Historic Preservation in the United States, filed in the Charleston County Court of Common Pleas a Notice of Challenge to Annexation, challenging the City of North Charleston's annexation of the Whitfield Property.

63. On March 7, 2018, the City of Charleston Planning Commission held a special meeting and recommended the approval of development agreements for three of the five tracts in the 75% Annexation; recommended amending the City of Charleston Zoning Ordinance to add Zoning Districts AG-8 and AG-S; and upon information and belief, recommended to zone the Whitfield Property as AG-8 to restrict density to one (1) dwelling unit per eight (8) acres. (Proposed Ordinance to Amend Zoning of City of Charleston, attached as **Exhibit 3**).

64. Upon information and belief, on or about April 10, 2018, City Council for the City of Charleston considered and approved the 75% Annexation and zoning changes to the Whitfield Property.

65. Upon information and belief, the City of Charleston is seeking to annex the Whitfield Property to prevent the expansion of the City of North Charleston and to restrict Plaintiff's use and development of the Whitfield Property, which purportedly is to benefit public use.

66. Upon information and belief, the City of Charleston would like to use approximately 350-450 acres of the Whitfield Property for a drainage retention pond to support drainage for existing developments.

**FOR A FIRST COUNTERCLAIM
AS TO THE CITY OF CHARLESTON
(Inverse Condemnation)
(Jury Trial Requested)**

67. Defendant Whitfield realleges each and every allegation set forth above as if repeated verbatim herein.

68. The City of Charleston is not permitted to take private property for public use without just compensation.

69. These affirmative and aggressive acts to annex the Whitfield Property and place zoning restrictions upon it by the City of Charleston amount to a permanent taking and damaging of Defendant Whitfield's private property and its rights to develop the Whitfield Property.

70. Upon information and belief, the City of Charleston desires to require 350-450 acres of the Whitfield Property to be devoted to drainage use to partially support existing developments outside of the Whitfield Property.

71. Upon information and belief, the City of Charleston is attempting to use the mechanisms of annexation and zoning to restrict density of the Whitfield Property and artificially depress the market value of the Whitfield Property for future acquisition.

72. In so annexing, zoning, and restricting development of the Whitfield Property, the City of Charleston has imposed, or will impose, restrictions on the use of the property such that deprive Defendant Whitfield of the property's economically viable use.

73. Such affirmative acts amount to a taking under the Fifth Amendment of the United States Constitution and Article I, § 13 of the South Carolina Constitution and must be compensated.

**FOR A SECOND COUNTERCLAIM
AS TO THE CITY OF CHARLESTON
(Denial of Due Process)
(Jury Trial Requested)**

74. Defendant Whitfield realleges each and every allegation set forth above as if repeated verbatim herein.

75. These affirmative acts constitute a denial of Defendant Whitfield's civil due process rights pursuant to the South Carolina Constitution.

76. The City of Charleston convened for a meeting on the evening of December 19, 2017.

77. The City of Charleston published an agenda more than 24 hours in advance of that meeting. However, that agenda did not contain any reference to annexation of the Whitfield Property.

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

79. The Video is posted by the City of Charleston to its online channel and may be access by the public via the City of Charleston's website or YouTube.

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

81. In the last five minutes of this meeting, Mayor Tecklenberg called for an Amendment to the Agenda to Accept Annexation Petition.

82. In the Video, members of City of Charleston Council "move" and "second" the Amendment; however, the motion was never voted upon. As such, the Agenda was never amended.

83. 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.

84. 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.

85. The Council for the December 19th meeting never included any reference to annexation or acceptance petition for the Whitfield Property.

86. The City of Charleston has violated the due process rights of Defendant Whitfield, including but not limited to those included in S.C. Code Ann. § 30-4-80, by failing to provide adequate and timely notice of the annexation proceedings and provide Defendant Whitfield with an opportunity to oppose such annexation.

**FOR A THIRD COUNTERCLAIM
AS TO THE CITY OF CHARLESTON
(Denial of Equal Protection)
(Jury Trial Requested)**

87. Defendant Whitfield realleges each and every allegation set forth above as if repeated verbatim herein.

88. These affirmative acts constitute a denial of Defendant Whitfield's civil rights to the equal protection of the laws in the use of its property because of unfair, non-uniform and inequitable treatment causing Defendant Whitfield to suffer disproportionate injuries as a result of a project designed to benefit the public as a whole.

**FOR A FOURTH COUNTERCLAIM
AS TO THE CITY OF CHARLESTON
(Unconstitutional Exaction)
(Jury Trial Requested)**

89. Defendant Whitfield realleges each and every allegation set forth as if repeated verbatim herein.

90. Upon information and belief, the City of Charleston has imposed or will impose, as a condition for any rezoning, development, or use request by Defendant Whitfield, a 350-450 acre drainage pond on the Whitfield Property.

91. Upon information and belief, the 350-450 acre pond is not for the purpose of draining any use or development of the Whitfield Property itself but is imposed by the City of Charleston to support drainage for other, already-existing developments.

92. There is no nexus between the City of Charleston's condition and the development or use of the Whitfield Property, and thus constitutes a taking without compensation in violation of the state and federal Constitutions.

93. As a result of the actions of the City of Charleston, Defendant Whitfield is entitled to damages.

**FOR A FIFTH COUNTERCLAIM
AS TO NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED
STATES AND CITY OF CHARLESTON
(Interference with a Contractual Relationship)
(Jury Trial Requested)**

94. Defendant Whitfield realleges each and every allegation set forth as if repeated verbatim herein.

95. In May 2016, Whitfield Company entered into a contract with a third-party to sell five hundred acres on the southern end of the Whitfield Property for a three-phase planned single family residential development adjacent to the existing Shadowmoss neighborhood, (the "Development Contract").

96. The Development Contract provides that the closing of each phase of the development is contingent upon, inter alia, no change in the legal conditions of the property and the City of North

Charleston's rezoning approval for the property at a density of not less than two single family residential units per acre. This contract has been extended and remains in effect at this time.

97. As part of this planned development, Defendant Whitfield sought annexation by the City of North Charleston. In addition, once annexed, the zoning for the property would be changed from agricultural to the appropriate designation for the development.

98. Upon information and belief, the City of Charleston and National Trust were aware that Whitfield Company was considering development of the Whitfield Property at the time they challenged the annexation of the Whitfield Property by the City of North Charleston.

99. Plaintiff National Trust owns a strip of land along Highway 61 running the length of the Whitfield Property. Defendant Whitfield owns easements across Plaintiff National Trust property to access Highway 61.

100. Upon information and belief Plaintiff National Trust purchased this "spite strip" along Highway 61 with the intention of preventing development of lands west of Highway 61, including the Whitfield Property.

101. Upon information and belief Plaintiff National Trust conspired with City of Charleston to acquire the spite strip and purportedly annex it into the City of Charleston in order to prevent development of lands west of Highway 61.

102. Plaintiffs National Trust and City of Charleston are seeking to prevent Defendant Whitfield (and upon information and belief, other neighboring property owners) from exercising and enjoying its property rights and from fulfilling the contract for sale and development.

103. Through their actions, Plaintiffs National Trust and City of Charleston have interfered with Defendant Whitfield's existing contract to sell/develop the property. Plaintiffs have acted with an improper purpose or by improper methods, to wit: conspiring to annex the Whitfield Property,

despite the fact that the Whitfield Property has already been annexed by the City of North Charleston; and conspiring to impose zoning restrictions that will prevent Defendant Whitfield from fulfilling the contract for sale.

104. Plaintiffs' attempt to force the Whitfield Property into the City of Charleston so that the City of Charleston can limit its use and development is without justification.

105. As a direct and proximate result of Plaintiffs' actions, Defendant Whitfield has been damaged in an amount to be more specifically proven at trial on this matter.

**FOR A SIXTH COUNTERCLAIM
AS TO NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED
STATES AND CITY OF CHARLESTON
(Interference with Prospective Economic Advantage)
(Jury Trial Requested)**

106. Defendant Whitfield realleges each and every allegation set forth as if repeated verbatim herein.

107. The Development Contract provides for the development of 500 acres in three phases. The closing of each phase is contingent upon, inter alia, no change in the legal conditions of the property and the City of North Charleston's rezoning approval for the property at a density of not less than two single family residential units per acre. Should these conditions not be met, it will frustrate the economic expectations of the Whitfield Company in entering the Development Contract.

108. The third-party that contracted with the Whitfield Company in the Development Contract has expressed interest in contracting for an additional 500 acres in the future.

109. By challenging the annexation of the Whitfield Property by the City of North Charleston, Plaintiffs are intentionally interfering with Whitfield Company's potential economic realization of

the Development Agreement and potential contractual relations for future development of the Whitfield Property.

110. Plaintiffs National Trust and City of Charleston are seeking to prevent Defendant Whitfield (and upon information and belief, other neighboring property owners) from exercising and enjoying its property rights, including the right to develop its property.

111. Plaintiffs National Trust and City of Charleston have acted with an improper purpose or by improper methods, to wit: conspiring to annex the Whitfield Property, despite the fact that the Whitfield Property has already been annexed by the City of North Charleston; and conspiring to impose zoning restrictions that will prevent Plaintiff Whitfield from future development of the Whitfield Property.

112. As a direct and proximate result of the Plaintiffs' actions, Defendant Whitfield has been damaged in an amount to be more specifically proven at trial on this matter.

PRAYER FOR RELIEF

WHEREFORE, Defendant Whitfield prays for relief and judgment as follows:

- A. Denying all of causes of action in Plaintiffs' Complaint.
- B. Awarding Defendant Whitfield their costs and expenses incurred in this action, including reasonable attorneys' fees, appraisal and engineering fees, accountants' and experts' fees, costs and expenses; and
- C. Granting such other and further relief as the Court deems just and proper.

In the alternative, Defendant Whitfield prays for relief and judgment as follows:

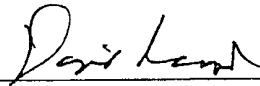
- D. Awarding against City of Charleston for monetary judgment for diminution in value to the Whitfield Property caused by the City of Charleston's annexation, zoning, and anticipated drainage restrictions thereof.

E. A declaration that Plaintiff's actions violated Defendant Whitfield's due process and equal protection rights.

F. Granting Defendant's Whitfield's counterclaims and awarding damages in an amount to be determined at trial on this matter.

G. Awarding Defendant Whitfield their costs and expenses incurred in this action, including reasonable attorneys' fees, appraisal and engineering fees, accountants' and experts' fees, costs and expenses; and

H. Granting such other and further relief as the Court deems just and proper.



Keith M. Babcock (Bar No. 456)
Ariail E. King (Bar No. 8952)
David L. Paavola (Bar No. 100714)
Lewis Babcock L.L.P.
1513 Hampton Street (29201)
Post Office Box 11208
Columbia, South Carolina 29211
Telephone: (803) 771-8000
Facsimile: (803) 733-3534
Email: kmb@lewisbabcock.com
ae@lewisbabcock.com
dlp@lewisbabcock.com

Columbia, South Carolina
June 21, 2018

Counsel for Defendant Whitfield
Construction Company, more properly
known as The Whitfield Company, LLC.

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-10-851

Appeal No. 2019-____

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2019 MAY -2 PM 12:22

FILED

National Trust for Historic Preservation
In the United States and The City of Charleston, Appellants,

v.

City of North Charleston,

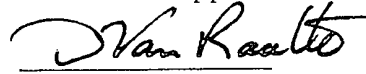
Cross-Appellant / Respondent.

NOTICE OF CROSS APPEAL

The City of North Charleston (hereinafter "City") wishes to cross appeal portions of the Order of Judge Eugene Griffith in the event that the National Trust for Historic Preservation in the United States (hereinafter, "Trust") and City of Charleston (hereinafter, "Charleston") appeal Judge Griffith's Order.¹ The Order in controversy was signed March 1, 2019, in case No. 2018-CP-10-851. A copy is enclosed. The City

¹ Should no primary appeal be filed by the Trust or Charleston then the City of North Charleston would respectfully withdraw this cross-appeal.

received notice of this Order on March 1, 2019. Time to file a Notice of Appeal was stayed by the Motion for Reconsideration filed by opposing parties. This motion was denied as of April 26, 2019 and this Notice of Intent to Appeal immediately follows.

 4/29/19

Derk Van Raalte and J. Brady Hair
Law Offices of Brady Hair
2500 City Hall Lane
North Charleston, SC 29406
843-572-8700
derk@bradyhair.com

**For Cross-Appellant / Respondent
City of North Charleston**

Other counsel of record:

Bruce Miller
Bruce E. Miller, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412

Attorney for Millbrook

Trenholm Walker
Walker, Gressette, Freeman & Linton
PO Box 22167
Charleston, SC 29413

Attorney for National Trust

Amy Wooten
Brown Law, LLP
555 Fayetteville St, Suite 240
Raleigh, NC 27601

Attorney for National Trust

William Cook
Nat. Trust for Historic Preservation
2600 Virginia Ave, NW, Suite 1100
Washington, DC 20037

Attorney for National Trust

Frances Cantwell
Daniel McQueeney
City of Charleston Legal Dept
50 Broad Street
Charleston, SC 29401

Attorneys for City of Charleston

Keith Babcock
David Paavola
Lewis Babcock, LLP
PO Box 11266
Columbia, SC 29211

Attorneys for Whitfield

cc: Bruce Miller
Trenholm Walker
Amy Wooten
William Cook
Frances Cantwell
Daniel McQueeney
Keith Babcock
David Paavola

FILED
2019 MAY -2 PM 12:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Certificate of Service

I certify that I have served the Appellants and the Hon. Daniel E. Sneed by depositing a copy of the following documents:

Notice of Intent to Cross Appeal
Certificate of Service

In the care of the United States Postal Service, postage prepaid, addressed either directly or to their respective attorneys of record as follows:

Hon. Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Ms. Caroline Leonard
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Other counsel of record:

Bruce Miller
Bruce E. Miller, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412

Attorney for Millbrook

Trenholm Walker
Walker, Gressette, Freeman & Linton
PO Box 22167
Charleston, SC 29413

Attorney for National Trust

Amy Wooten
Brown Law, LLP
555 Fayetteville St, Suite 240
Raleigh, NC 27601

Attorney for National Trust

William Cook
Nat. Trust for Historic Preservation
2600 Virginia Ave, NW, Suite 1100
Washington, DC 20037

Attorney for National Trust

Frances Cantwell
Daniel McQueeney
City of Charleston Legal Dept
50 Broad Street
Charleston, SC 29401

Attorneys for City of Charleston

Keith Babcock
David Paavola
Lewis Babcock, LLP
PO Box 11208
Columbia, SC 29211

Attorneys for Whitfield

April 29, 2019



Derk Van Raalte
J. Brady Hair
Law Offices of Brady Hair
2500 City Hall Lane
North Charleston, SC 29406
843-572-8700
derk@bradyhair.com

Counsel for North 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

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

FILED
2019 MAY 28 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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

Respondents,

v.

City of North Charleston,

Appellant.

NOTICE OF APPEAL

Respondent 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.

On April 29, 2019, Appellant City of North Charleston filed a notice of cross-appeal of the orders filed on March 1, 2019 and May 1, 2019, conditioned on the filing of a "primary appeal" by one or more of the Respondents. On May 2, 2019, Appellant City of North Charleston's notice of cross-appeal was filed with the South Carolina Court of Appeals.

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 Respondent City of Charleston

Other Counsel of Record:

G. Trenholm Walker
Walker, Gressette, Freeman, & Linton, LLC
Post Office Box 22167
Charleston, South Carolina 29413
Attorneys for Respondent National Trust for
Historic Preservation in the United States

William J. Cook
National Trust for Historic Preservation
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037
Attorneys for Respondent National Trust for
Historic Preservation in the United States

Amy H. Wooten
Brown Law LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601
Attorneys for Respondent National Trust for

Historic Preservation in the United States

J. Brady Hair, Esquire
Derk Van Raalte
Legal Department
2500 City Hall Lane
North Charleston, SC 29406
Attorneys for Appellant City of North 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

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

FILED
2019 MAY 28 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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

Respondents,

v.

City of North Charleston,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Appellant 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

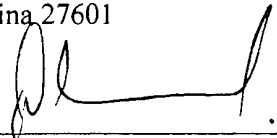
I also certify that I have served the Notice of Appeal on Respondent National Trust for Historic Preservation in the United States by depositing a copy of it in the United States mail, postage prepaid, on May 24, 2019, addressed to its attorneys of record, as follows:

G. Trenholm Walker
Walker Gressette Freeman & Linton, LLC
Post Office Box 22167
Charleston, SC 29413

William J. Cook
National Trust for Historic Preservation
2600 Virginia Avenue, NW; Suite 1100
Washington, DC 20037

Amy H. Wooten
Brown Law LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601

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 Respondent City of Charleston

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0851
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CLERK OF COURT
BY _____

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

Respondents-Appellants,

v.

City of North Charleston,

Appellant-Respondent.

NOTICE OF APPEAL

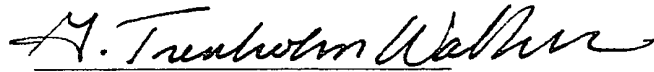
National Trust for Historic Preservation in the United States (the "National Trust") appeals the orders of the Honorable Eugene C. Griffith, Jr., dated March 1, 2019, and April 25, 2019, in the above referenced case. Both Orders are attached hereto.

On March 4, 2019, the National Trust 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 National Trust received written notice of entry of the Re-Filed Order.

On March 14, 2019, the National Trust 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, sending a copy to the Honorable Eugene C. Griffith, Jr.

On May 2, 2019, the National Trust received written notice of entry of the order denying the National Trust's Motion to Reconsider dated April 25, 2019, and filed on May 1, 2019.

May 31, 2019



G. Trenholm Walker
S.C. Bar No. 5777
Walker, Gressette, Freeman, & Linton, LLC
Post Office Box 22167
Charleston, South Carolina 29413
T: 843-727-2200
F: 843-727-2238
walker@wgflaw.com

Amy H. Wooten
N.C. Bar No. 39762/S.C. Bar No. 100128
Brown Law LLP
555 Fayetteville Street, Suite 420
Raleigh, North Carolina 27601
T: 919-719-0854
F: 919-719-0858
amy@brownlawllp.com

Attorneys for Respondent-Appellant National Trust
for Historic Preservation in the United States

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-10-0851
Appellate Case No. 2019-000728

FILED
2019 JUN -4 PM 1:22
JULIE J. ARTHUR
CLERK OF COURT
BY _____

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

Respondents-Appellants,

v.

City of North Charleston,

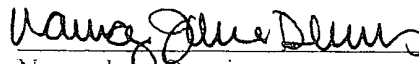
Appellant-Respondent.

PROOF OF SERVICE

I certify that I have served the **Respondent-Appellant National Trust for Historic Preservation in the United States' Notice of Appeal** by depositing a copy in the United States Mail, postage prepaid, on May 31, 2019, addressed to the attorneys of record:

Susan J. Herdina, Esq.
Frances I. Cantwell, Esq.
Daniel S. ("Chip") McQueeney, Jr., Esq.
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Attorneys for Appellant City of Charleston

J. Brady Hair, Esq.
Derk Van Raalte, Esq.
Legal Department
2500 City Hall Lane
North Charleston, SC 29406
Attorneys for Respondent City of North
Charleston


Nancy Jane Dennis
Paralegal

c: J. Brady Hair, Esq. (US Mail)
Derk Van Raalte, Esq. (US Mail)
(Counsel for City of North Charleston)

Susan J. Herdina, Esq. (US Mail)
Frances I. Cantwell, Esq. (US Mail)
Daniel S. ("Chip") McQueeney, Jr., Esq. (US Mail)
(Counsel for City of Charleston)

Amy H. Wooten, Esq. (US Mail)
(Counsel for National Trust)

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-10-0851
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National Trust for Historic Preservation
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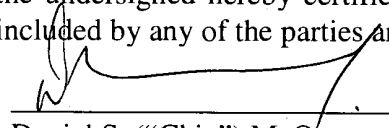
City of North Charleston,

Appellant/Respondent.

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.

February 5, 2020


Daniel S. ("Chip") McQueeney, Jr.
(S.C. Bar No. 6802)
Email: mcqueeneyd@charleston-sc.gov

City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorney for Respondent/Appellant City of Charleston

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FEB 27 2020
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 No.: 2018-CP-10-851
Appellant Case No. 19-000728

RECEIVED

FEB 27 2020

SC Court of Appeals

National Trust for Historic Preservation in the United States and the
City of Charleston, ... Respondents/Appellants,

v.

City of North Charleston, ... Appellant/Respondent.

**BRIEF OF RESPONDENT/APPELLANT NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES**

G. Trenholm Walker
S.C. Bar No. 5777
Walker, Gressette, Freeman, & Linton, LLC
Post Office Box 22167
Charleston, SC 29413-2167
T: (843) 727-2208
F: (843) 727-2238
walker@wgflaw.com

Anne E. Nelson
Associate General Counsel
National Trust for Historic Preservation
in the United States
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037
T: (202) 588-6142
anelson@savingplaces.org

ATTORNEYS FOR
RESPONDENT/APPELLANT NATIONAL
TRUST FOR HISTORIC PRESERVATION
IN THE UNITED STATES

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Statement of Issues on Appeal

I. Did the circuit court err in granting North Charleston's motion for summary judgment on lack of standing even though the National Trust submitted an affidavit creating a genuine issue of material fact that the property annexed included property owned by the National Trust?

II. Did the circuit court err in determining that the area annexed depended on record title rather than the description of the area annexed in the annexation resolution and in finding the subjective intent of North Charleston overrode its description of the property annexed?

III. Did the circuit court err in ruling that the National Trust lacked standing under the public importance exception to challenge the annexation of an area within the Ashley River National Register Historic District?

Statement of the Case

On December 21, 2017, Appellant/Respondent, City of North Charleston (“North Charleston”), adopted Ordinance No. 2017-080 (the “Contested Ordinance”) **(R.pp. 293-295)** purporting to annex real property owned by North Charleston under the statutory annexation method for instances where the entire area is owned by the annexing municipality. See S.C. Code Ann. § 5-3-100. **(Contested Ordinance, R.pp. 293-295)**. The real property purportedly annexed by North Charleston consists of one (1) acre designated as TMS #301-00-00-797 (the “Acre”).¹ Respondent/Appellant National Trust for Historic Preservation in the United States (“National Trust”) did not join in the annexation petition even though the National Trust asserts a small portion of the Acre is owned by the National Trust and is within the boundaries of Respondent/Appellant City of Charleston (“City of Charleston”).

On March 20, 2018, after timely noticing their intent to contest this annexation, the National Trust and the City of Charleston (collectively the “Respondents/Appellants”) filed an action in circuit court challenging the annexation and asserting, inter alia, that the annexed land was not adjacent to nor contiguous with North Charleston and that the annexation was void and unauthorized as a matter of law. **(Respondents/Appellants Notice of Challenge of Annexation, R.pp. 30-31; Respondents/Appellants Summons & Compl., R.pp. 32-43)**. Lying and intervening between the corporate limits of North Charleston and the Acre are the right-of-way for S.C. Highway 61 and real property owned by the National Trust that both lie within the City of Charleston. **(Hrg. Tr. R.pp. 221:24-222:1)**. On April 16, 2018, North

¹ Prior to the purported annexation of the Acre, in October 2017, North Charleston annexed another parcel of real property known as Runneymede Plantation, which is a 113-acre parcel identified as TMS #361-00-00-002 (the “Runneymede Parcel”) located directly across the Ashley River from the municipal boundaries of North Charleston. **(Hrg. Tr. R.p. 182:11-13)** No annexation challenge was filed by Appellants (or others) because the Runneymede Parcel is contiguous to the municipal boundaries of North Charleston.

Charleston filed an answer denying these allegations, asserting affirmative defenses and filing counterclaims against the Respondents/Appellants. (**North Charleston Answer, Affirmative Defenses and Counterclaims, R.pp. 47-58**). North Charleston's counterclaim requested a declaration that the Acre did not encroach on the adjacent land owned by the National Trust. (**Id. at ¶ 61-63, R.p. 56**). On May 17 and 21, 2018, respectively, Respondents/Appellants filed separate replies denying the counterclaims. (**National Trust Reply to Counterclaims of City of North Charleston, R.pp. 63-66; City of Charleston Reply to Counterclaims of North Charleston, R.pp. 59-62**).

On October 9, 2018, North Charleston served: (1) its motion for partial summary judgment pursuant to Rule 56, SCRPC, requesting an order that annexations under S.C. Code § 5-3-100 do not require contiguity and that the Acre was "adjacent" to North Charleston; and (2) its motion to dismiss pursuant to Rules 12 and 56, SCRPC, arguing that Respondents/Appellants lacked standing to challenge the annexation. (**North Charleston Mot. for Partial Summ. J., R.p. 67; North Charleston Mot. To Dismiss, R.p. 68**). North Charleston accompanied its motions with the affidavit of Adam MacConnell who authenticated certain minutes of council, ordinances, and instruments of record attached to his affidavit. (**Aff. of MacConnell, R.pp. 240-241**).

On November 9, 2018, Respondents/Appellants moved for summary judgment arguing, inter alia, that the purported annexation of the Acre was void since the Acre is not adjacent to nor contiguous with the corporate limits of North Charleston and that the Acre annexed included land owned by the National Trust within the City of Charleston. (**Respondents/Appellants Mot. for Summ. J, R.pp. 69-72**). On December 6, 2018, Respondents/Appellants served the affidavit of Daniel C. Forsberg in opposition to North Charleston's motions and on December 7,

2018, served separate memorandums in opposition to the motion to dismiss for lack of standing and a consolidated memorandum on the summary judgment motions. (**Aff. of Forsberg, R.pp. 242-245; National Trust Mem. In Opposition To Defendant's Mot. To Dismiss, R.pp. 86-101; City of Charleston Mem. In Opposition To Defendant's Mot. To Dismiss, R.pp. 73-85; Respondents/Appellants Con. Mem. On Summ. J. Mot., R.pp. 102-121**).

The Honorable Eugene C. Griffith, Jr., circuit court judge, held a hearing on these motions on December 10, 2018. (**Hrg. Tr., R.pp. 177-239**). On March 1, 2019, Judge Griffith signed a written order finding that Respondents/Appellants did not have standing to challenge the annexation. (**Order, R.p. 1**). In the same order, Judge Griffith held that “[i]n the event that [the circuit court] is found to be in error regarding its ruling of lack of standing of the [Respondents/Appellants], this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.” (**Order, R.pp. 1-2**). Respondents/Appellants received written notice of the entry of the order on March 4, 2019, which order was re-filed on March 5, 2019. (**Re-filed Order, R.pp. 15-28**). On March 14, 2019, Respondents/Appellants separately filed motions to reconsider, alter, or amend the Order, which were denied by Judge Griffith by Order filed on May 1, 2019. (**National Trust Mot. to Reconsid., R.pp. 167-176; City of Charleston Mot. to Reconsid., R.pp. 155-166; Order Denying Mots. To Reconsid., R.p. 29**).

On April 29, 2019, North Charleston filed a cross appeal of portions of the Order in the event that the Respondents/Appellants appealed the Order. (**North Charleston Notice of Cross Appeal, R.pp. 358-362**). After the circuit court's denial of their motions to reconsider on May 1, 2019, the City of Charleston served its notice of appeal on May 24, 2019, and the National Trust served its notice of appeal on May 31, 2019. (**City of Charleston Notice of Appeal, R.pp. 363-365; National Trust Notice of Appeal, R.pp. 368-369**). On June 18, 2019, North

Charleston filed its Initial Brief of Cross-Appellant. **(North Charleston Initial Brief)**. On October 15, 2019, the Court of Appeals issued an order setting forth a briefing schedule. **(Court of Appeals Order)**.

Statement of the Facts

The annexation in question involves a continuation of the effort by North Charleston to greatly expand its historical western geographic limits, in this instance by jumping the Ashley River, S.C. Highway 61, and a two-mile-long property owned by the National Trust adjoining S.C. Highway 61 within the City of Charleston. The Acre allegedly annexed is located within a nationally recognized scenic and historic corridor and across S.C. Highway 61 from a landmark property owned by the National Trust. The Acre was donated by deed to North Charleston shortly before its purported annexation in an effort to establish contiguity with North Charleston by a property owner who wants to develop the extensive surrounding acreage owned by it into a residential subdivision. **(Aff. of MacConnell, deed dated September 12, 2018 recorded at 0673/028, R.pp. 274-277; Whitfield Ans. And First Amended Counterclaims in 2018-CP-10-0848, R.pp. 342-343; Hrg. Tr. R.p. 233:18-21)**.

At the time it approved the annexation, North Charleston fully expected a legal challenge:

Mr. King noted that the subject property is West of the Ashley, and if the annexation is approved a lawsuit will surely be filed against the City [of North Charleston], costing the City [of North Charleston] possibly millions of dollars. He stated his opposition to the annexation.

Mr. Brinson asked and Mayor Summey confirmed that there are no current development plans, and the Mayor said that when the time comes, the City [of North Charleston] will consider development. Mayor Summey said this annexation will result in a better quality of life for current and future residents. He acknowledged that this annexation may be challenged, but that it will be well worth it to have this property under the City [of North Charleston]'s jurisdiction.

(Aff. of MacConnell, Minutes of December 14, 2017, ¶ 4, R.p. 280).

All the properties in question are within the Ashley River Historic District (the “Historic District”), which is listed in the National Register of Historic Places (the “National Register”).² **(National Trust Mem. In Opposition To Defendant’s Mot. To Dismiss, R.p. 87).** The Historic District is a largely undeveloped approximately 23,000-acre area and includes historic and archaeological resources that date to the earliest settlement of Charleston in the late 1600s. **(Id., R.p. 88).** Important historic resources in the Historic District include the 11.5 mile stretch of the S.C. Highway 61 (also known as the Ashley River Road) (individually listed on the National Register and a resource that contributes to the significance of the Historic District), which has served as a major transportation route since 1691 and is known for its historic viewshed canopy of live oak trees, and Drayton Hall, a National Historic Landmark³ owned by the National Trust, which is considered to be the earliest and finest example of Palladian architecture in the United States. **(Id.).** Since 1974, the National Trust has owned and operated⁴ Drayton Hall as a National Trust Historic Site open to the public, receiving over 50,000 visitors

² The National Register of Historic Places is the official list of the nation’s historic places worthy of preservation. Authorized by the National Historic Preservation Act and managed by the National Park Service, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America’s historic and archaeological resources. 54 U.S.C. § 302101 *et. seq.* The National Register is an authoritative guide to be used by Federal, state and local governments, private groups, and citizens to identify the nation’s cultural resources and to indicate what properties should be considered for protection from destruction or adverse impacts. 36 C.F.R. § 60.2. Listing in the National Register also makes property owners eligible to be considered for Federal grants for historic preservation and other Federal and state financial incentives, such as historic rehabilitation tax credits. *Id.* § 60.2(b), (c). A property can be removed from the National Register if the qualities which caused it to be originally listed have been lost or destroyed. 36 C.F.R. § 60.15.

³ National Historic Landmarks (“NHLs”) are historic places that hold exceptional national significance and receive heightened protection under Section 110(f) of the National Historic Preservation Act. 54 U.S.C. § 306107. Authorized by the Historic Sites Act of 1935, the Secretary of the Interior designates these places as exceptional because of their abilities to illustrate the United States’ heritage. Today, there are only about 2,600 NHLs in the United States. See <http://www.nps.gov/articles/roots-of-the-national-historic-landmarks-program.htm> (accessed Sept. 16, 2019).

⁴ As of January 1, 2015, the Drayton Hall Preservation Trust operates the site on behalf of the National Trust pursuant to a set of legal agreements.

each year. **(Respondents/Appellants Summons. & Compl., R.p. 35).** The National Register listings and the designation of Drayton Hall as a National Historic Landmark attest to the public significance of the preservation and protection of the properties and landscapes within the Historic District.⁵ In addition to Drayton Hall, the National Trust owns other parcels in the Historic District that were primarily acquired and are held for conservation purposes. **(National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, R.pp. 87-88).**

The National Trust's land holdings in this area include a two-mile long strip of property, 100' in width, butting up to the western side of S.C. Highway 61 that is designated as Charleston County TMS #301-00-00-017 (the "National Trust Parcel"). **(Aff. of Forsberg, R.p. 244).** The National Trust Parcel, along with the right-of-way for S.C. Highway 61, are within the City of Charleston and lie between the municipal boundary of North Charleston and the Acre. **(National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, Annexation Area Overview Maps, R.pp. 100-101; Hrg. Tr. R.p. 221:24-222:1).** The Nature Conservancy conveyed the National Trust Parcel to the National Trust by deed dated January 28, 1980, recorded in RMC Office for Charleston County in Book O121 at Page 209 (the "National Trust Deed"), for the purpose of protecting the historic character and context of the Historic District and the viewsheds along the historic Ashley River Road. **(Aff. of Forsberg, R.pp. 242-245; Deed into National Trust recorded at 0121/209, R.pp. 255-257; National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, R.pp. 87-88).**

⁵ The Court may take judicial notice of these listings. See National Register of Historic Places, Ashley River Historic District, Charleston County, South Carolina, available at: <http://www.nationalregister.sc.gov/dorchester/S10817718009/S10817718009.pdf> and <http://www.nationalregister.sc.gov/dorchester/S10817718009/S10817710158BI.pdf> (additional documentation and boundary increase); Ashley River Road, available at <http://www.nationalregister.sc.gov/dorchester/S10817718010/S10817718010.pdf>; and Drayton Hall, available at <http://www.nationalregister.sc.gov/charleston/S10817710005/S10817710005.pdf>.

The National Trust Deed conveyed a parcel of 26.53 acres, more or less, more particularly described as “[t]hose certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of 11,556 feet in length....” (**Aff. of Forsberg, Deed into National Trust at 0121/209, R.pp. 255-257**). The National Trust Parcel is located across from the entrance to Drayton Hall and slightly to the north running along the historic Ashley River Road. (**National Trust Mem. In Opp. To Defendant’s Mot. to Dismiss, R.p. 88**). Both of the National Trust’s properties of interest to this appeal (the National Trust Parcel and Drayton Hall) are located within the City of Charleston’s municipal boundaries. The City of Charleston annexed the National Trust Parcel in 2005. (**Order, R.p. 2**). This uncontested fact is pivotal to questions relating to the validity of the attempted annexation by North Charleston.

The National Trust Deed was subject to certain reservations of easements included in the prior deed conveying the National Trust Parcel from Georgia-Pacific Investment Company (“Georgia-Pacific”) to The Nature Conservancy dated January 2, 1980 (the “Nature Conservancy Deed”). (**Aff. of Forsberg, ¶ 6, R.p. 243, and R.pp. 252-254**). The reservation of easements was limited to eighteen easements with the specific purpose “of permitting Grantor, and its successors and assigns, vehicular and pedestrian access from its real property to Highway 61, over and across the [National Trust Parcel], and for installation of utility lines or facilities.” (**Id., Deed into The Nature Conservancy recorded at 0121/206, R.pp. 252-254**). On May 15, 2009, the Whitfield Construction Company recorded a plat in RMC Office for Charleston County in Book L09, Page 228, identifying the easement locations across the National Trust Parcel (the “2009 Plat”). (**Id., Plat L09/0225, R.pp. 264-268**). To the best of its knowledge, the National Trust had no knowledge of the chosen locations of the reserved easements prior to the

recording of the 2009 Plat. **(Order, R.p. 5)**. The National Trust has owned the National Trust Parcel for thirty-nine years, of which fourteen were under (and continue to be under) the jurisdiction of the City of Charleston.

Tim Whitfield Construction and Development LLC (a related entity to the Whitfield Construction Company, which are together hereinafter referred to as “Whitfield”) transferred the Acre, the parcel subject to this annexation challenge, to North Charleston for five dollars on September 12, 2017, by deed recorded in the RMC Office for Charleston County in Book 0673, Page 028 on October 16, 2018 (the “Acre Deed”). **(Aff. of Forsberg ¶ 4(j), R. p. 244; Deed into North Charleston recorded at 0673/028, R.pp. 274-277)**. Whitfield subdivided the Acre from its much larger 2,200-acre tract, which is designated as TMS 301-00-00-005 (the “Whitfield Parcel”) that Whitfield acquired from Georgia-Pacific on July 14, 1989.⁶ The Acre, the Whitfield Parcel, and the National Trust Parcel were originally part of the same tract of land owned by Georgia-Pacific.

The Acre Deed identifies the land conveyed as that property described in the plat for the Acre approved by Charleston County on September 9, 2018, and recorded in Plat Book S17, Page 0224 in the RMC Office for Charleston County on September 22, 2017 (the “Acre Plat”). **(Id., Plat recorded at S17/0224, R.p. 269)**. The Acre Plat shows the northeastern boundary of the Acre that abuts the National Trust Parcel in two separate locations as 99.7’ and 99.69’ from the right-of-way line of S.C. Highway 61, thereby including a total of approximately 62 square feet of the National Trust Parcel for its entire length. **(Id., R.p. 269)**. The Acre Plat describes

⁶ Whitfield desired to have the Whitfield Parcel annexed into North Charleston because it was a condition of the sale of 500 acres of the Whitfield Parcel to a residential developer. See ¶ 50-51 of Whitfield’s Answer and First Amended Counterclaim in Circuit Court Case No. 2018-CP-10-2073, a related case. **(R.p. 347)**.

the Acre and, as a result, TMS 301-00-00-797 to include a portion of the National Trust Parcel.

(Id.).

North Charleston purportedly adopted the Contested Ordinance under the auspices of section 5-3-100 of the South Carolina Code, which provides, in pertinent part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality.... Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

The Contested Ordinance described the area to be annexed as “one acre identified as parcel designated TMS #301-00-00-797,” that includes a portion of the National Trust Parcel.

(R.p. 294). The National Trust did not consent to the annexation of the Acre, nor does it desire for any portion of the National Trust Parcel to be annexed into North Charleston, particularly since the National Trust Parcel lies within the City of Charleston. **(Order, R.p. 5)**.

Standard of Review

A motion to dismiss under Rule 12 is treated as a motion for summary judgment under Rule 56 if affidavits are considered, as occurred below. Rule 12(b), SCRPC (“If...matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56...”). The circuit court may properly grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). In determining whether any triable issues of fact exist, the lower court must view the evidence and all reasonable inferences that may be drawn from the evidence in the

light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988). “In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla of evidence* in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (emphasis added).

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

Because the ruling below was on a motion for summary judgment and not after a trial on the merits, the lower court was required to accept as true the allegations supporting the National Trust’s ownership of a portion of the land annexed as set forth in the affidavit presented by Respondents/Appellants. Instead, the lower court incorrectly disregarded the averments in that affidavit, ruled as a matter of law that the annexation could only include property owned by North Charleston regardless of the description of the property annexed, and granted North Charleston’s summary judgment motion for lack of standing.

Argument

I. The circuit court erred in not applying the standard for summary judgment and erred in granting North Charleston’s motion for summary judgment on lack of standing where the affidavit submitted by the National Trust created a genuine issue of fact that the property annexed included property owned by the National Trust.

The standing issue was before the circuit court on North Charleston’s motion to dismiss that was converted to a motion for summary judgment by the parties’ submission of affidavits. Here, North Charleston did not provide any evidence in its supporting affidavit or otherwise to contradict the National Trust’s Affidavit of Daniel C. Forsberg, a licensed civil engineer and land

surveyor, that the Acre described in the annexation included a portion of the National Trust's property. (**Aff. of Forsberg, R.pp. 242-245**). This proof established the National Trust's standing or, at a minimum, a genuine issue of material fact as to its standing.

The threshold question is, what property did North Charleston purport to annex? The attachments to the affidavit of Adam McConnell submitted by North Charleston establish that the property annexed was TMS #301-00-00-797 that is in turn described by the survey of the Acre referenced in the deed to North Charleston. (**Aff. of MacConnell, R.pp. 240-241, 293-294**).

As stated in the minutes of North Charleston City Council meeting on December 14, 2017, "The City proposes to annex *one parcel identified as TMS #301-00-00-797* in Charleston County." (**Aff. of MacConnell, Minutes of December 14, 2017, R.p. 279**) (double emphasis added). "The next item on the agenda was the first reading of an Ordinance proposed to annex an area known as 52-P, *identified as Charleston County TMS #301-00-00-797*, and make it part of present City Council District 9, Zoned AG, Agricultural District." (**Id., R.p. 280**) (double emphasis added). "The area proposed for annexation includes *one acre identified as parcel designated TMS #301-00-00-797*." (**Id., Resolution #2017-067, R.pp. 283-284**) (double emphasis added). The dimensions of the Acre that is TMS #301-00-00-797 show that its northeastern boundary along the National Trust Parcel is 99.69' and 99.7' from the right of way of S.C. Highway 61 for a length of 208.71'. (**Id., Plat recorded at S17/0224 dated 9-14-17, R.p. 269**). The Acre necessarily includes a portion of the National Trust Parcel that was established as 100' in width from the right of way of S.C. Highway 61 in the deed from the common Grantor. (**Aff. of MacConnell, Deed into The Nature Conservancy at 0121/206, R.**

pp. 252-254; Deed into National Trust at 0121/209, R.pp. 255-257; Order, R.p. 2; Respondents/Appellants Cons. Mem. On Summ. J. Mots., R.pp. 102-121).

In opposition to North Charleston's motion on standing, Forsberg attested the annexation included a portion of the National Trust Parcel, averring, in part:

The deed to the National Trust for the [National Trust Parcel] was made subject to the right of [Georgia-Pacific] to create 18 easements for access from S.C. Highway 61 across the [National Trust Parcel]. Plats L09/0225-0229 lay out these access easements. Plat S17/0225 also shows Access Easement #3, as shown on Plat L-09/0225, running from Highway 61 across the National Trust's property to [the] Acre. The purported width of the National Trust's property is shown as 99.69 feet on the north side and 99.7 feet on the south side. As a result, 62 square feet of the [National Trust Parcel] appears to have been included in [the] Acre.

(Aff. of Forsberg, ¶ 6, R.p. 244).

Moreover, in light of these uncontroverted facts, Mr. Forsberg concluded:

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that [the] Acre overlaps the [National Trust Parcel], *encroaching on 62 square feet of the [National Trust Parcel]*.

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then *the land that was annexed included a small portion of the [National Trust Parcel]*.

(Id., ¶¶ 8-9, R.p. 245) (double emphasis added).

Viewing the evidence in the light most favorable to the non-moving party, the National Trust presented far more than the needed scintilla of evidence to withstand the motion for summary judgment on standing. Lord v. D & J Enterprises, Inc., 407 S.C. 544, 558, 757 S.E.2d 695, 702 (2014). At a minimum, because summary judgment is a drastic remedy, and where, as here, discovery was not complete, summary judgment is never appropriate where further inquiry

into the facts of the case would have been helpful to clarify application of the law. Id. at 553, 757 S.E.2d at 699.

North Charleston's mere allegation that "it did not claim any ownership of the strip owned by the National Trust" is irrelevant. (**Order, R.pp. 5-6**). The question is not whether North Charleston asserted title to a portion of the National Trust Parcel as held by the circuit court. (**Id., R.p. 6**). The question is whether the area described in the annexation included any property owned by the National Trust. It did. North Charleston's assertion as to its intent cannot overcome the uncontroverted Affidavit of Forsberg who determined that North Charleston's annexation of the Acre did encroach on the National Trust Parcel and the National Trust's proprietary rights.

The circuit court acknowledged that "the 2009 [P]lat had width variations of a few inches here and there, so too did the 2017 plat of the Acre." (**Id., R.p. 4**). Furthermore, North Charleston has acknowledged the "four-inch discrepancy." (**Hrg. Tr., R.p. 185**). These width variations in the legal description of the plats and cited in the Contested Ordinance as the area to be annexed are sufficient to determine, in the light most favorable to the National Trust, that a portion of the National Trust Parcel was purportedly annexed by North Charleston.

Finally, the circuit court's reliance on what it considered to be a relatively minor encroachment of four inches contradicts the circuit court's earlier finding on page 5 of the Order that no encroachment occurred. (**Order, R.pp. 5, 9**). This acknowledgment, however, is proof of the National Trust's proprietary rights and standing. The circuit court's rejection of this proof in its standing analysis provides another instance of the circuit court misapplying the standard for summary judgment that all evidence be viewed in the National Trust's favor. There was a genuine issue of material fact that the area purportedly annexed included a portion of the

National Trust Parcel, and the circuit court erred in granting North Charleston's motion for summary judgment on the basis of standing.

II. The circuit court erred in determining that the area annexed depended on record title rather than the description of the area annexed in the annexation resolution and in finding the subjective intent of North Charleston overrode its description of the property annexed.

In its analysis of proprietary standing, the circuit court reasoned that North Charleston, the party seeking annexation of the Acre, could not annex property that was not owned by North Charleston. (Id., R.pp. 6-7). The circuit court recognized the discrepancy in the 2009 Plat locating the access easements and the Acre Plat creating the Acre and TMS #301-00-00-797, which included that a small portion of the National Trust Parcel was included in the platted description of the Acre, but found that the discrepancy did not make a difference because North Charleston did not own it (if North Charleston's contentions are true) and did not intend to annex land it did not own. (Id., R.pp. 4, 6-7).

The statutes governing annexation focus on the area to be annexed. These statutes have no provisions that the areas proposed to be annexed can only be property owned by the petitioners for annexation. The statutes also make no reference to the intent of the annexation petitioner. Their focus is entirely on description of the territory or area to be annexed. Section 5-3-100 looks at the "territory proposed to be annexed."⁷ This is akin to S.C. Code Ann. § 5-3-150(3) governing annexation under the 100% rule that refers to "a petition signed by all persons owning real estate in the *area requesting annexation*" and to "the agreement of the governing body to accept the petition and annex *the area....*" S.C. Code Ann. § 5-3-100 (double emphasis added).

⁷ "If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete." S.C. Code § 5-3-100.

For example, in Ex parte State ex rel. Wilson, 391 S.C. 565, 707 S.E.2d 402 (2011) cited by the parties and the circuit court in this case, much of the Supreme Court's opinion there dealt with who had standing to contest the annexation of public trust tidelands that were described in the area annexed. The Supreme Court noted as follows:

The State, which is the presumptive owner of the annexed marshlands, did not sign the petition. Notwithstanding the absence of the State's consent to the annexation, the annexation ordinance recites that the Town received a petition signed 'by all persons owning real estate' in the annexed area....

....Where the State holds title to real property in the area to be annexed, it is a 'person[] owning real estate' within the meaning of section 5-3-150(3) and its signature is required to accomplish an annexation by 100% petition....

By its plain language, section 5-3-150(3) requires the signatures of 'all persons owning real estate in the area requesting annexation.'...

This annexation did not comply with the requirements of the 100% petition method. The State was the presumptive owner of the annexed marshlands and the Town did not provide the State with prior notice of the annexation or obtain the State's signature on the petition. Nevertheless, the State's challenge of the annexation is time-barred.

Id. at 569-78, 707 S.E.2d at 404-409.

The Supreme Court did not hold that the parties to the annexation petition and the governmental body approving the annexation had no ability to annex property the petitions did not own. To the contrary, the Supreme Court found that the annexation petitioners had indeed annexed the tidelands they did not own under the 100% method but that the South Carolina Attorney General, the sole party with standing to challenge the annexation of the public trust tidelines, did not assert its objection in a timely manner under the controlling statutes.

Similarly, in this case, the question of proprietary standing turns on whether the National Trust presented a genuine issue of material fact that the National Trust owned a portion of the area annexed. The area annexed was described in the Contested Ordinance as "TMS 301-00-00-797" and "as shown on a map prepared by the GIS Department for purposes of this annexation,

dated October 4, 2017, being the legend ‘Area Proposed For Annexation By The City Of North Charleston Section 52-P.’” (**Aff. of MacConnell, Ordinance #2017-080, R.pp. 293-295**). The Contested Ordinance goes on to specifically describe the area annexed as the property in the precise survey that includes a portion of the National Trust Parcel:

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 distance being more or less.

(Id., R.p.294).

The TMS parcel reference includes a portion of the National Trust Parcel. Engineer and surveyor Forsberg avers in his affidavit that “[t]he tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat. (**Aff. of Forsberg, ¶ 5, R.p. 244**). The legal description for the Acre references Plat S 17 /0224. As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797.” (**Id., R.p. 244**).

Because, at a minimum, there is a genuine issue of material fact that the territory annexed included property owned by the National Trust, North Charleston was not entitled to summary judgment on the question of the National Trust’s proprietary standing. Whether North Charleston was mistaken about the Acre Plat or only intended to annex the property it owned

does not override the description of the area annexed in the annexation resolution and Contested Ordinance.

Although not determinative of its proprietary standing, the lower court seemed to give weight to its notion that it was incumbent on the National Trust to bring a legal action to clear title if it believed the Acre Plat included a portion of its property. The National Trust would point out that the circuit court apparently overlooked that the question of title has in fact been raised in this litigation. (**Hrg. Tr. R.pp. 209:7-210:12**). North Charleston has counterclaimed against the National Trust in 2018-CP-10-00-851 for a declaration that it has title to all portions of the Acre. (**North Charleston's Answer and Counterclaim, PP 59-60, R.p. 56**) (“Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston property encroaches into or upon the property of National Trust. North Charleston owns its property free and clear of the claims of any third parties, including the Plaintiffs.”).

The lower court committed legal error in its concluding that the area purportedly annexed must be determined by the legal title of North Charleston and its expressions of intent in the Contested Ordinance rather than by the actual property description of the annexed area in the Contested Ordinance.

III. The circuit court erred in ruling that the National Trust lacked standing under the public importance exception to challenge the annexation of an area within the Ashley River Historic District.

A. Protection of Historic Preservation Interests

Although the National Trust has proprietary standing based on North Charleston's encroachment of the National Trust's proprietary rights, the circuit court also misapprehended the state of the law, namely Vicary v. Town of Awendaw, 425 S.C. 350, 822 S.E.2d 600 (2018),

and Vicary's application to the National Trust in ruling that the National Trust lacks public importance standing.

First of all, unlike the parties seeking to invoke public importance in the cases cited by the circuit court, the National Trust is clearly invested with advancing the recognized national interest in historic preservation. The National Trust was chartered by the United States Congress in 1949 to advocate on behalf of historic preservation, including places like the Historic District and Drayton Hall, which is, as discussed above, a National Historic Landmark owned by the National Trust and located in close proximity to the National Trust Parcel that was partially annexed by North Charleston. **(54 U.S.C. §§ 312102-312106 (2015); Mem. National Trust in Opposition to Defendant's Mot. to Dismiss, R.pp. 95-96).**

The circuit court's statement that the National Trust only articulated "good deeds" in support of its public importance standing overlooks that these actions were listed as examples of similar advocacy to demonstrate the National Trust's vigilant advancement of the declared national interest in historic preservation that is its charge from the United States Congress. **(Order, R.p. 8; National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, R.pp.96-97).** The circuit court's characterization is especially ironic in light of the fact that the National Trust Parcel was acquired in 1980 in fee simple ownership for the express purpose of protecting the historic context of the entire Historic District in perpetuity, including the portion of the natural Historic District that North Charleston wishes now to convert to sprawling subdivisions, far beyond what Charleston County's zoning would have allowed. **(Id., R.pp. 91-92).** The circuit court also ignored the National Trust's long history of legal engagement in the pursuit of historic preservation and of ownership of historic property in the immediate area. **(Id., R.pp. 95-96).**

Further, the South Carolina Attorney General's interest is far different from the public interests promoted by the National Trust. The South Carolina Attorney General does not have a statutory charter from the United States Congress, which determined that nationally significant historic places should be preserved by the National Trust. There is nothing in the statutes of this state or case law that instills the South Carolina Attorney General with protecting the public interest in historic preservation. Historic preservation is outside of the Attorney General's "job description." The National Trust submits the circuit court erred in holding that the inaction of the South Carolina Attorney General is determinative of whether this case involves a matter of public importance. The circuit court's error is compounded in this case where there is utterly nothing in the record to demonstrate the South Carolina Attorney General was fully apprised of the material facts associated with these annexations and made a deliberate decision not to intercede. Thus, there is a genuine issue of material fact as to the National Trust's standing based on the public interest versus the different interests served by the South Carolina Attorney General.

B. Need for Future Guidance on Requirements of Adjacency and Contiguous under Section 5-3-100.

The circuit court also misapprehended the need for "future guidance," which is inextricably connected to the public need. Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The fact that North Charleston, by the circuit court's own admission, leapfrogged illegally over the City of Charleston's municipal wall—created by the National Trust Parcel that was previously annexed by the City of Charleston in 2005—and attempted an annexation by the 100% owned by a municipality method with a legally flawed definition of contiguity creates an undisputed incentive for other municipalities to follow North Charleston's lead. **(Order, R.p. 13)**. North Charleston's conduct, therefore, creates a dangerous incentive for a messy patchwork

of annexations statewide, as well as harm to the private property and statutory rights of South Carolina residents and property owners throughout the state. Respectfully, these are the type of “unique facts” Justice Hearn suggested in Vicary merited recognition of public importance standing and that the circuit court commented in its Order. (**Id.**, R.pp. 8-9). Therefore, the unusual facts of this case provide a second basis for finding that the National Trust has public importance standing.

Conclusion

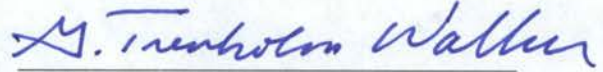
In making the ruling below the circuit court lost sight that the motion for summary judgment required the circuit court to consider the affidavit of the National Trust as to its individualized injury and other allegations of standing in the light most favorable to the National Trust. A genuine issue of fact clearly exists as to whether a portion of the National Trust Parcel was purportedly annexed by North Charleston.

The circuit court also made clear legal errors. Specifically, the lower court erred in holding that North Charleston could only annex area it had legal title to rather than the description of the area annexed in the Contested Ordinance, and in considering the intent of North Charleston as opposed to the property description. The circuit court also erred in ruling against the National Trust on its grounds for standing when the National Trust undoubtedly has statutory standing as an injured property owner and propriety standing as the national organization with a mission to save historic places.

Based on the foregoing, the circuit court erred in finding that there was no genuine issue of material fact and the Respondents/Appellants lacked standing as a matter of law. Accordingly, the circuit court’s decision should be REVERSED.

February 25, 2020

Respectfully submitted,



G. Trenholm Walker
S.C. Bar No. 5777
Walker, Gressette, Freeman, & Linton, LLC
Post Office Box 22167
Charleston, SC 29413
T: (843) 727-2200
F: (843) 727-2238
Walker@wgflaw.com

Anne E. Nelson
Associate General Counsel
National Trust for Historic Preservation
in the United States
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037
T: (202) 588-6142
anelson@savingplaces.org

Attorneys for Respondent/Appellant
National Trust for Historic Preservation in
the United States

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

Appellate Case No. 2019-000728

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City of North Charleston Appellant/Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.

February 25, 2020



G. Trenholm Walker
S.C. Bar No. 5777
Walker Gressette Freeman & Linton, LLC
Post Office Box 22167
Charleston, SC 29413
T: (843) 727-2200

Attorney for Respondent/Appellant National Trust
for Historic Preservation in the United States

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RESPONDENT/APPELLANT CITY OF CHARLESTON'S FINAL APPELLANT'S BRIEF

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 Respondent/Appellant City of Charleston

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN LIMITING STANDING TO CHALLENGE AN ANNEXATION UNDER SECTION 5-3-100 OF THE SOUTH CAROLINA CODE TO A PROPERTY OWNER OF THE ANNEXED LAND OR THE ATTORNEY GENERAL?
2. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN GRANTING SUMMARY JUDGMENT TO NORTH CHARLESTON BASED ON A PURPORTED LACK OF STANDING DESPITE RECORD EVIDENCE ESTABLISHING AT LEAST A GENUINE ISSUE OF MATERIAL FACT THAT THE TERRITORY TO BE ANNEXED INCLUDES A PORTION OF THE NATIONAL TRUST PROPERTY ANNEXED BY CHARLESTON IN 2005?
3. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN INTERPRETING NORTH CHARLESTON'S ANNEXATION ORDINANCE TO INCLUDE ONLY PROPERTY BELONGING TO NORTH CHARLESTON AND LYING OUTSIDE CHARLESTON'S MUNICIPAL LIMITS?
4. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN FINDING THAT NORTH CHARLESTON DID NOT CLAIM OWNERSHIP OVER ANY PORTION OF THE NATIONAL TRUST'S PROPERTY DESPITE NORTH CHARLESTON'S REPEATED ALLEGATIONS THAT NORTH CHARLESTON OWNED THE ENTIRETY OF THE PROPERTY TO BE ANNEXED?
5. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN HOLDING THAT CHARLESTON LACKED STANDING TO CHALLENGE NORTH CHARLESTON'S ANNEXATION ORDINANCE IN ORDER TO PROTECT THE INTEGRITY OF ITS BORDERS WHEN SUCH STANDING WOULD PROVIDE FUTURE GUIDANCE TO OTHER MUNICIPALITIES AND DECREASE THE POTENTIAL FOR FUTURE LITIGATION?

STATEMENT OF THE CASE

This matter arises from multiple notices of appeal challenging the circuit court's decision in an annexation dispute. In the present brief, Respondent/Appellant the City of Charleston ("Charleston") challenges the circuit court's ruling that Charleston lacks standing to challenge the underlying annexation.¹

On December 21, 2017, North Charleston adopted Ordinance No. 2017-080 (the "Contested Ordinance"), which purports to annex an acre of land (the "Acre"), designated as Charleston County TMS No. 301-00-00-797, located southwest of Highway 61, also known as Ashley River Road. (R. pp. 293-95). North Charleston adopted the Contested Ordinance under the auspices of section 5-3-100 of the South Carolina Code, available when "the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto" (R. p. 293). In the Contested Ordinance, North Charleston represents that the Acre "belongs entirely" to North Charleston. (R. p. 293).

Pursuant to section 5-3-270 of the South Carolina Code, on February 16, 2018, Respondent/Appellant The National Trust for Historic Preservation in the United States (the "National Trust") and Charleston filed and served a notice of intent to challenge the Contested Ordinance, and, on March 20, commenced an action challenging the Contested Ordinance. (R. pp. 30-46). The complaint sought a determination that the Contested Ordinance was invalid because (1) the Acre did not "belong entirely" to North Charleston; (2) the Contested Ordinance included property owned by the National Trust since 1980 and previously annexed by Charleston in 2005; (3) the Acre was not contiguous or adjacent to North Charleston's municipal limits; and (4) the

¹ Pursuant to the scheduling order of the South Carolina Court of Appeals entered on October 15, 2019, the cross-appeal of Appellant/Respondent City of North Charleston ("North Charleston") is being briefed separately.

Contested Ordinance violated the long-standing public policy against “leap frog” annexations. (R. pp. 40-41, ¶ 38).

The National Trust alleged standing to challenge the Contested Ordinance based on its ownership of a portion of the property being annexed and under the “public importance exception” to the general framework for standing to challenge municipal annexations. (R. p. 35, ¶¶ 4-6; pp. 39-40, ¶¶ 32, 35). Charleston alleged standing to challenge the Contested Ordinance because Charleston previously annexed a portion of the Acre in 2005 and because the purported annexation would permit North Charleston to “leap frog” over privately-owned territory previously annexed by Charleston. (R. pp. 39-40, ¶¶ 33-35).

North Charleston answered the complaint on April 17, 2018, interposing a general denial and asserting affirmative defenses that the National Trust and Charleston did not have standing and that the complaint failed to state a claim. (R. pp. 47-58). North Charleston also asserted counterclaims requesting a declaration that it was the sole owner of the Acre. (R. pp. 55-56, ¶¶ 57-63, p. 57, ¶¶ b-c). Charleston and the National Trust replied to the counterclaims on May 17, 2018, and May 21, 2018, respectively. (R. pp. 59-62; pp. 63-66).

North Charleston moved to dismiss the complaint pursuant to Rule 12, SCRPC, and Rule 56, SCRPC, arguing that the National Trust and Charleston lacked standing to challenge the Contested Ordinance. (R. p. 68). Simultaneously, North Charleston moved for partial summary judgment, arguing that the Acre was “adjacent to” its municipal limits, as a matter of law. (R. p. 67). The National Trust and Charleston later moved for summary judgment based on, among other things, the lack of contiguity or adjacency between the Acre and North Charleston’s municipal limits. (R. pp. 69-72). The circuit court heard these motions on December 10, 2018, and requested

that the parties prepare proposed orders, which the parties later submitted. (R. pp. 130-154; p. 236, line 17-p. 237, line 8).

On March 1, 2019, the circuit court entered an order (the “Original Order”) dismissing the complaint and finding that neither the National Trust nor Charleston had standing to challenge the Contested Ordinance. (R. pp. 1-14). The circuit court also held: “In the event that this Court is found to be in error regarding its ruling of lack of standing of the Plaintiffs, this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.” (R. pp. 1-2). The circuit court refiled the Original Order on March 5, 2019 (the “Refiled Order”). (R. pp. 15-28). As used herein, references to the “Order” include the “Original Order” and the “Refiled Order,” which are identical.

On the issue of standing, the circuit court limited standing to challenge an annexation, in the absence of an allegation of deceitful conduct, to (1) the owners of the property being annexed; and (2) the Attorney General. (R. p. 5). The circuit court also concluded, as a matter of law, that the Contested Ordinance did not attempt to annex any property owned by the National Trust. (R. pp. 7-8). With respect to the public importance grounds for standing, the circuit court held that only the Attorney General could contest a “leap frog” annexation on public importance grounds, and that only an allegation of “deceitful conduct” would support standing in favor of the National Trust or Charleston. (R. pp. 8-9).

Charleston received written notice of entry of the Original Order on March 4, 2019, and written notice of the entry of the Refiled Order on March 6, 2019. (R. p. 363). On March 14, 2019, Charleston and the National Trust served separate motions to reconsider the Original Order and the Refiled Order as they pertained to the issue of standing. (R. pp. 155-166; pp. 167-176). The circuit court denied both motions by order entered on May 1, 2019 (the “Reconsideration Order”).

(R. p. 29). Charleston received written notice of entry of the Reconsideration Order on May 2, 2019. (R. p. 363).

On April 29, 2019, North Charleston filed a “Notice of Cross Appeal” of the circuit court’s decision on adjacency, conditioned upon the National Trust or Charleston filing a “primary appeal.” (R. pp. 358-62). On May 24, 2019, Charleston served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. (R. pp. 363-67). On May 31, 2019, the National Trust served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. (R. pp. 368-71).

FACTS

In 1967, Georgia-Pacific Investment Company (“GPIC”) acquired title to more than 12,000 acres of land, including real property lying to the southwest of Highway 61. (R. p. 2, ¶ 1; p. 242, ¶ 4.a; pp. 246-50). On January 2, 1980, GPIC conveyed a portion of this property (the “National Trust Property”) to The Nature Conservancy. (R. p. 2, ¶ 2; p. 243, ¶ 4.c; pp. 252-54). On January 28, 1980, The Nature Conservancy conveyed the National Trust Property to the National Trust. (R. p. 2, ¶ 2; p. 240, ¶ 4.c; p. 243, ¶ 4.d; pp. 255-57). Both deeds describe the National Trust Property as follows:

[T]hat certain tract or parcel of land, in fee, situate, lying and being along the southern right of way line of Highway 61, County of Charleston, State of South Carolina, containing Twenty Six and Fifty Three Hundredths (26.53) acres, more or less, and more particularly described as follows:

Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the property owned by

Grantor along the southern right-of-way line of
Highway 61

(R. p. 252; p. 255). The deed from GPIC also reserved to GPIC the right to establish eighteen (18) easements across the National Trust Property to provide access from Highway 61 to the remainder of GPIC's property. (R. pp. 253-54). At the time, Charleston County designated the National Trust Property as TMS No. 301-00-00-017. (R. p. 2, ¶ 2; p. 252; p. 255). In 2005, Charleston annexed the National Trust Property. (R. p. 2, ¶ 5; pp. 37-38, ¶¶ 17, 23; pp. 49-50, ¶¶ 17, 23; pp. 301-03, ¶¶ 13, 21; pp. 320-21, ¶¶ 13, 21).

In 1989, GPIC conveyed its remaining property, consisting of 2,294.17 acres, to Whitfield Construction Company ("Whitfield"). (Order, p. 2, ¶ 4; p. 243, ¶¶ 4.e, 4.f; p. 258; pp. 259-63). The deed to Whitfield expressly refers to the deed from GPIC to The Nature Conservancy in providing that sixteen (16) of the easements reserved in such deed were being assigned to Whitfield. (R. p. 261).

In 2009, Whitfield recorded plats (the "Easement Plats") showing eighteen (18) separate access easements running through the National Trust Property. (R. p. 3, ¶ 6; p. 243, ¶ 4.g; pp. 264-68). The Easement Plats show the width of the National Trust Property as variable, in some places being less than the 100-foot width stated in the deed to the National Trust, and in some places being in excess of the 100-foot width stated in the deed to the National Trust. (R. pp. 264-68). The Easement Plats also contain the following disclaimer: "THIS PLAT IS TO SHOW THE LOCATIONS OF THE EXISTING ACCESS EASEMENTS ONLY[.] THIS IS NOT A BOUNDARY SURVEY." See S.C. Code Regs. Ann. § 49-430.C(14) (defining "boundary survey") (R. pp. 264-68).

At the time the Easement Plats were created, the National Trust Property was located in Charleston. (R. p. 243, ¶ 4.g; p. 244, ¶ 6; pp. 263-68). Nothing on the plats indicates that the

National Trust or Charleston reviewed and approved the plats, the location of the easements, or the width of the National Trust Property. (R. p. 5, ¶ 13, p. 243, ¶ 4.g; p. 244, ¶ 6; pp. 263-68).

In 2017, Whitfield created the Acre, shown as “New Parcel 1” on Plat S17/0224 (the “Acre Plat”). (R. p. 243, ¶ 4.h; p. 269). Adam MacConnell, a project manager for North Charleston, confirmed that the Acre Plat shows Charleston County TMS No. 301-00-00-797. (R. p. 240, ¶¶ 2, 4.d; p. 244, ¶ 5; p. 269). The Acre Plat utilized the Easement Plats to establish the boundaries for the Acre. (R. p. 4, ¶ 11; p. 244, ¶¶ 5-6; p. 269).

The Acre Plat shows “Access Easement #3,” as created by the Easement Plats, running from Highway 61 across the National Trust Property to the property corners of the Acre. (R. p. 244, ¶ 6; p. 264; p. 269; p. 303, ¶ 23; p. 322, ¶ 23). The stated width of the National Trust Property on the Easement Plats for Access Easement #3 and on the Acre Plat is shown as 99.69 feet on the north side and 99.7 feet on the south side. (R. p. 244, ¶ 6; p. 264; p. 269). This width conflicts with the stated width of the National Trust Property as being 100 feet from the southern right-of-way line of Highway 61, as delineated in the National Trust’s title history, resulting in an overlap, or encroachment, of the Acre onto National Trust Property. (R. pp. 244-245, ¶¶ 6-8).

Daniel C. Forsberg, a professional engineer and land surveyor licensed by the State of South Carolina with over 39 years of experience, submitted an affidavit confirming that (1) the Acre Plat includes approximately 62 square feet of the National Trust Property as part of the Acre; (2) the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property; and (3) TMS No. 301-00-00-797 includes a small portion of the National Trust Property. (R. pp. 242, ¶¶ 1-2; pp. 244-245, ¶¶ 6, 8).

After recording the Acre Plat, Whitfield conveyed the Acre, by reference to the Acre Plat, to Tim Whitfield Construction and Development LLC, which then conveyed the Acre by deed

incorporating the Acre Plat (the “Acre Deed”) to North Charleston. (R. p. 244, ¶¶ 4.i, 4.j; pp. 270-73; pp. 274-77).

The Contested Ordinance describes the Acre utilizing the same measurements depicted on the Acre Plat and states “the area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797.” (R. p. 294). The legal description in the Contested Ordinance describes the property being annexed by reference to the “easternmost,” “northernmost,” “westernmost,” and “southernmost” corners of TMS No. 301-00-00-797. (R. p. 294). The boundary lines in this legal description include the “northeasternmost,” “northwesternmost,” “southwesternmost,” and “southeasternmost” property lines of TMS No. 301-00-00-797. (R. p. 294). The map incorporated into the Contested Ordinance identifies the parcel being annexed as 301-00-00-797. (R. p. 295). According to Forsberg, “if North Charleston annexed the Acre . . . as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property.” (R. p. 245, ¶ 9). Forsberg’s affidavit was not refuted.

STANDARD OF REVIEW

Although North Charleston originally couched its motion as a motion to dismiss based on a lack of standing, the circuit court considered “the pleadings, affidavits, exhibits, memoranda, and arguments of counsel,” before granting the motion. (R. p. 1). “A trial court may properly grant a motion for summary judgment when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” Brockbank v. Best Capital Corp., 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000), quoting Rule 56(c), SCRCP.

“Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” Id. “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” Id. at 378-79, 534 S.E.2d at 692. “An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP.” Id. at 379, 534 S.E.2d at 692.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN LIMITING STANDING TO CHALLENGE THE CONTESTED ORDINANCE TO A PROPERTY OWNER OF THE ANNEXED LAND OR THE ATTORNEY GENERAL.

The circuit court committed an error of law in determining that, absent deceitful conduct, the only parties who may challenge a 100% annexation are the owners of the annexed land and the Attorney General. (R. p. 5). Charleston agrees that the owner of real property being annexed has standing to challenge any attempt to annex its own property. However, the test for standing includes not only those asserting an infringement of “proprietary interests,” but also those asserting an infringement of “statutory rights.” The Supreme Court of South Carolina has repeatedly recognized statutory and proprietary rights of municipalities over properties within their jurisdiction, including the right to contest annexations of property within their municipal limits.

“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 St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002) (“In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.”). The common phraseology arises

from case law addressed specifically to the standing of political subdivisions. See County of Lexington v. Columbia, 303 S.C. 300, 300, 400 S.E.2d 146, 147 (1991) (recognizing that, in the absence of “an issue of overriding public concern,” a political subdivision seeking to challenge a municipal annexation “must allege an infringement of its own interests or statutory rights to establish standing.”).

It is axiomatic that a municipality has standing to challenge the annexation of property already lying within such municipality’s corporate limits. 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.”).

Since 2005, Charleston has had the statutory right to exclusive municipal jurisdiction over the portion of the Acre owned by the National Trust and previously annexed by Charleston, 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. § 5-3-280 (prescribing procedure under which corporate limits may be reduced).

As set forth in Arguments II and III, Charleston alleged and produced evidence that the Contested Ordinance included property previously annexed to Charleston. Charleston therefore has standing under well-established case law in South Carolina.

II. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN GRANTING SUMMARY JUDGMENT TO NORTH CHARLESTON BECAUSE THE RECORD EVIDENCE ESTABLISHES AT LEAST A GENUINE ISSUE OF MATERIAL FACT THAT THE ACRE INCLUDES A PORTION OF THE NATIONAL TRUST PROPERTY ANNEXED BY THE CITY IN 2005.

According to the circuit court, “North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797.” (R. p. 7). The circuit court thus described the issue for determination as “what land is actually part of that parcel.” (R. p. 7). The circuit court then declared that a “TMS number and map do not supersede a deed.” (R. p. 7). “Thus, the reference in the [Contested Ordinance] to ‘TMS 301-00-00-797’ is subservient to the deed as well.” (R. p. 7).

The disconnect with this ruling is that the record evidence creates at least a genuine issue of material fact that the Acre Deed, the Acre Plat, and TMS No. 301-00-00-797 include property owned by the National Trust and annexed by Charleston in 2005. In fact, Forsberg’s affidavit is the only evidence of “what is included in that parcel.” (R. p. 242, ¶¶ 1-2; pp. 244-245).

A party opposing summary judgment is entitled to have the evidence and all reasonable inferences drawn therefrom viewed in the light most favorable to it. See David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) (“In determining whether any triable issues

of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.”). It is well-recognized that even testimony from an *unlicensed* surveyor is admissible on the question of the proper boundary between two properties. See, e.g., Williams v. Moore, 400 S.C. 90, 102, 733 S.E.2d 224, 230 (Ct. App. 2012) (“While Coker was not a licensed land surveyor, the trial court found his training and experience qualified him as an expert as to the boundary line in this case, and we do not see any reason to doubt that qualification.”); cf. S.C. Code Ann. § 27-1-20 (permitting circuit court to appoint surveyors at nomination of parties in disputes involving title or boundaries).

Forsberg opines, to a reasonable degree of certainty based on his education and experience that “if North Charleston annexed the Acre as described by Plat S17/0224 [the Acre Plat] or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property.” (R. p. 245, ¶ 9) (emphasis added). Forsberg refers to the area shown on the Acre Plat as the “Acre.” (R. p. 243, ¶ 4.h; p. 269); explains that the Acre Deed conveys the property described on the Acre Plat to North Charleston (R. p. 244, ¶ 4.j; p. 269, pp. 274-77); and also concludes, to a reasonable degree of certainty based on his education and experience, that “the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property.” (R. p. 245, ¶ 8).

It is undisputed that, if the National Trust Property is part of the Acre, so is territory previously annexed by Charleston in 2005. (R. p. 124, n. 4). Even the circuit court recognized: “In 2005, the City Council of Charleston adopted Ordinance No. 2005-93, annexing several properties into Charleston’s municipal limits, including the National Trust Property, TMS No. 301-00-00-017.” (R. p. 2, ¶ 5).

The facts cited by Forsberg could not more clearly bear this out. The National Trust Property is 100 feet wide and hugs the southern right-of-way line of Highway 61, a circumstance that has existed since 1980. (R. p. 243, ¶¶ 4.c, 4.d; pp. 252-57). The National Trust Property is in the City of Charleston, a circumstance that has existed since 2005. (R. p. 38, ¶ 23; p. 50, ¶ 23). The Acre Deed incorporates the Acre Plat, which shows the northeastern-most boundary line of the Acre commencing at points 99.69 and 99.7 feet from the southern right-of-way of Highway 61. (R. p. 269; pp. 274-77). These numbers are what they are, and demonstrate on their face that the property described in the deed to North Charleston includes a portion of National Trust Property, which Property is within the municipal limits of Charleston. (R. p. 245, ¶ 9).

Instead of considering Forsberg's affidavit, the circuit court apparently reasoned that, because a grantor cannot convey an interest in land greater than what the grantor owns, the Acre Deed could not convey any portion of the National Trust Property to North Charleston, and because the Contested Ordinance recited that the property described therein "belongs entirely" to North Charleston, the Contested Ordinance only annexed land owned by North Charleston, regardless of how the annexed property was actually described. (R. pp. 6-7).

This reasoning misapplies general principles of real property law. The rules for interpreting a deed are the same as those for interpreting contracts, and it is the intention of the parties at the time the deed is executed that controls, not after-discovered extrinsic evidence. See Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987) ("In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy."); Klapman v. Hook, 206 S.C. 51, 56, 32 S.E.2d 882, 883 (1945) ("The vital question is the intent of the grantor at the time the deed is executed.").

There is no legal or factual support for the circuit court's apparent conclusion that TMS

No. 301-00-00-797 included some subset of the property described as being conveyed to North Charleston in the Acre Deed, as shown on the Acre Plat. There is no evidence that Charleston County mapped 301-00-00-797 by something other than the legal description in the Acre Deed, and, even if there were, Forsberg's affidavit explains that the "tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat." (R. p. 244, ¶ 5).

Forsberg continued: "The legal description for the Acre references Plat S17/0224 [the Acre Plat]." (R. p. 244, ¶ 5). "As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797." (R. p. 244, ¶ 5). "[I]f North Charleston annexed the Acre as described on [the Acre Plat] or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." (R. p. 245, ¶ 9). This at least establishes a genuine issue of material fact as to whether Charleston County mapped TMS No. 301-00-00-797 utilizing the Acre Deed and the Acre Plat, as opposed to some other parcel.

The circuit court also relied on the rule that a purchaser generally may not convey more than he owns to support an interpretation of the Acre Deed that the grantor intended to convey something less than what is shown on the Acre Plat. (R. p. 6). But this rule is not one of interpretation or construction. Rather, it is a rule of priority utilized in deciding boundary disputes and quiet title actions.² The cases cited by the circuit court in favor of the proposition bear this out.

² There are many inherent problems with converting this rule into one of interpretation or construction. The most obvious is that the evidence required to determine what the grantor owned at the time of the conveyance would impermissibly go beyond the four corners of the deed to determine what the parties intended. See Gardner, 293 S.C. at 25, 358 S.E.2d at 392 ("The intention of the grantor must be found within the four corners of the deed."). There is also no question that, in a lawsuit between the grantor and North Charleston over title to the land described in the Acre Deed, North Charleston would prevail notwithstanding this rule.

See F.C. Enters. v. Dibble, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) (concluding that purchaser at tax sale purchased subject to lease and option because tax deed could convey only what delinquent owner held at time of tax sale); Cummings v. Varn, 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992) (recognizing plaintiffs could not recover against defendant in possession of tract because plaintiffs could not show perfect chain of title); Griggs v. Griggs, 199 S.C. 295, 301, 19 S.E.2d 477, 479 (1942) (holding that grantee, who held perfect paper title to premises prior to acquiring conditional deed from grantor, should prevail even against allegations that conditional deed was invalid because grantor had no title to convey under the conditional deed); Hutto v. Ray, 192 S.C. 364, 366, 6 S.E.2d 747, 748 (1940) (finding in favor of plaintiffs because grantee of Hutto could take only Hutto's life estate in premises). In the present case, the rule clearly favors the National Trust's claim that it owns a portion of the Acre. But it contributes nothing to the determination of what the grantor intended to convey to North Charleston via the Acre Deed.

Additionally, the circuit court mistakenly relied upon the quitclaim nature of the Acre Deed. Again, this confuses the issue of interpreting a deed with the issue of determining the impact or effect of the deed in light of other claims to the same property. See Martin v. Ragsdale, 71 S.C. 67, 76, 50 S.E. 671, 674 (1905) ("The authorities are conflicting as to whether a person can interpose the defense of purchaser for valuable consideration without notice, when he derives his title from one holding under a mere quit claim deed."). It also conflates the quantity of the land described in the deed with the quality of the right, title, or interest being conveyed.

Here, the issue is what land is included in the Acre Deed, the Acre Plat, TMS No. 301-00-00-797, and the Contested Ordinance, not the extent or quality of title North Charleston acquired by virtue of its deed. See Milton P. Demetre Family Ltd. P'ship v. Beckmann, 413 S.C. 38, 55, 773 S.E.2d 596, 605 (Ct. App. 2014) ("A quitclaim deed is a lawful means of conveying title.");

Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) (“A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.”).

While North Charleston and the circuit court give much weight to a reference in the Acre Deed to “p/o TMS No. 301-00-00-005,” the tax map sequencing (TMS) number assigned by Charleston County to the property owned by Whitfield, this reference is not contained within the legal description of the property, and the explicit incorporation of the Acre Plat to show the “size, shape, dimensions, buttings and boundings” of the Acre controls over the general recitation of the TMS number for the purported parent tract. See S.C. Code Ann. § 30-5-250 (when a recorded deed refers to a recorded plat, “such reference shall be equivalent to setting forth in extenso in such deed . . . the boundaries, metes, courses or distances of such real estate as may be delineated or shown on any such plat . . .”).

Charleston proffered more than sufficient evidence to demonstrate that land within its municipal borders was included in the Contested Ordinance, cloaking it with standing to challenge the Contested Ordinance. At the very least, viewing the evidence and all reasonable inferences that may be drawn from it in the light most favorable to Charleston, there exists in the record a genuine issue of material fact on the overlap, rendering the award of summary judgment to North Charleston erroneous.

III. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN INTERPRETING THE CONTESTED ORDINANCE TO INCLUDE ONLY PROPERTY BELONGING TO NORTH CHARLESTON AND LYING OUTSIDE CHARLESTON’S MUNICIPAL LIMITS.

The issue before the circuit court was what land was encompassed by the Contested Ordinance, a matter of statutory construction. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Bayle v. S.C. DOT, 344 S.C. 115, 122, 542

S.E.2d 736, 739 (Ct. App. 2001). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” Id. “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Id. at 122, 542 S.E.2d at 739-40. “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” Id. at 122, 542 S.E.2d at 740. “Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id.

It was North Charleston’s responsibility to ensure the sufficiency of the legal description of the property being annexed, not Charleston’s. Cf. 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 Contested Ordinance affirmatively states the territory annexed includes TMS No. 301-00-00-797, the tax map number assigned to the property surveyed on the Acre Plat. (R. pp. 293-95). The legal description of the area to be annexed by the Contested Ordinance identifies the corners of the property to be annexed as based on the “easternmost,” “northernmost,” “westernmost,” and “southernmost” corners of TMS No. 301-00-00-797. (R. p. 294). The property lines of the annexed area reference the “northeasternmost,” “northwesternmost,” “southwesternmost,” and “southeasternmost” property lines of TMS No. 301-00-00-797. (R. p.

294). The map attached to the Contested Ordinance identifies the area to be annexed as “301-00-00-797.” (R. p. 295).

North Charleston was thus unequivocal in establishing that North Charleston intended to annex TMS No. 301-00-00-797, which Forsberg explained includes “a small portion of the National Trust Property.” (R. p. 245, ¶ 9). In this respect, even the circuit court held: “North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797.” (R. p. 7).

North Charleston’s after-acquired knowledge regarding the state of its title also does not negate that the property description in the Contested Ordinance is the controlling factor of the extent of the land included in the annexed area. Legislation is construed in light of conditions obtaining at the time of enactment, not based on after-acquired knowledge of the governing body. 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, 387, 162 S.E. 444, 449 (1932) (adopting Durant as the opinion of the South Carolina Supreme Court).

The circuit court appears to acknowledge the potential of “the 4” plat error,” but then dismisses its efficacy because it was created long before North Charleston took ownership to the property and was unknown to North Charleston and “most recent surveyors.” (R. p. 9). These circumstances do not alter the boundaries of the land North Charleston attempted to annex under the Contested Ordinance. North Charleston had the opportunity to protect itself against errors in its chain of title and errors in the description of the territory to be annexed. By contrast, neither the National Trust nor Charleston had this opportunity, as neither had notice of the Easement Plats or the Acre Plat. (R. p. 5, ¶ 13).

The circuit court committed an error of law in interpreting the Contested Ordinance. The Contested Ordinance unequivocally attempted to annex property owned by the National Trust and annexed by Charleston in 2005. As a result, the circuit court erred in finding that Charleston lacked standing to challenge the Contested Ordinance, which infringes upon Charleston's proprietary interests and statutory rights over the portion of the Acre owned by the National Trust. As a result, the circuit court's ruling that Charleston lacks standing to challenge the Contested Ordinance should be reversed.

IV. THE CIRCUIT COURT MISTAKENLY RULED THAT NORTH CHARLESTON DID NOT CLAIM OWNERSHIP OVER ANY PORTION OF THE NATIONAL TRUST PROPERTY BY IGNORING NORTH CHARLESTON'S REPEATED ALLEGATIONS THAT NORTH CHARLESTON OWNED THE ENTIRETY OF THE ACRE.

The reasoning of the circuit court is further misinformed because it is influenced, in part, on an erroneous factual finding that North Charleston was not claiming ownership to any portion of the National Trust Property. (R. p. 5, ¶ 16). The circuit court also suggested that the issue of title to the Acre was "not a question of fact that this Court is tasked to resolve since the issue was not requested as relief in the pleadings." (R. p. 8). Such is simply not the case. In fact, the circuit court's analysis of what property is included in the Acre Deed and within TMS No. 301-00-00-797 directly contradicts this conclusion. (R. pp. 6-7).

The National Trust and Charleston asserted that the National Trust owned a portion of the property shown on the Acre Plat (R. p. 269), described in the Acre Deed (R. pp. 274-77), designated as Charleston County TMS No. 301-00-00-797, and purportedly annexed under the Contested Ordinance. (R. p. 39, ¶¶ 31-32). The complaint defines the Acre as "real property designated as TMS 301-00-00-797." (R. p. 35, ¶ 4). In its answer, North Charleston also defines TMS No. 301-00-00-797 as the "Acre." (R. pp. 47-48, ¶ 4). But North Charleston denies every

single allegation in the complaint relating to the National Trust's ownership of a portion of the Acre. (R. pp. 47-52, ¶¶ 4, 15, 28, 31).

North Charleston also counterclaimed seeking "a determination of its fee simple title in this action and, further, that the Plaintiffs are forever barred from claiming any right title or interest in North Charleston's property." (R. p. 56, ¶ 63). In fact, North Charleston's counterclaims accuse the National Trust and Charleston of making "unconscionable claims and pretensions against North Charleston's title, claiming that boundaries to North Charleston's property were other than those established by survey or deed and encroaches onto National Trust's property." (R. p. 56, ¶ 61) (emphasis added). North Charleston's prayer for relief similarly placed title at issue in this action by clearly requesting a determination as to ownership of the Acre. (R. p. 57, ¶¶ b, c). Thus, at least as late as April 17, 2018, when North Charleston filed its answer, North Charleston claimed that it owned the Acre.

North Charleston cannot have it both ways. It cannot claim sole ownership of TMS No. 301-00-00-797 for purposes of quieting title, accuse the National Trust and Charleston of making "unconscionable" assertions against such title, and then disavow ownership of any portion of TMS No. 301-00-00-797 that may overlap with the National Trust Property in an effort to defeat the National Trust's standing argument. See Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (precluding parties from adopting a position in conflict with one earlier taken in the same or related litigation).

To the extent North Charleston concedes that the National Trust, not North Charleston, holds title to a portion of the property described in the Acre Deed, shown on the Acre Plat, or designated as TMS No. 301-00-00-797, then the circuit court's decision on standing should be reversed and judgment entered against North Charleston because the Contested Ordinance

infringes on the National Trust's proprietary interests, the Contested Ordinance infringes on Charleston's proprietary interests and statutory rights, and the territory annexed did not "belong entirely" to North Charleston.

In any event, North Charleston's allegations not only establish that the issue of ownership of the Acre has been submitted to the Court for resolution, but also emphasize that, even at the time it filed its answer, North Charleston *believed* it owned the Acre, as shown on the Acre Plat, in the Acre Deed, and by reference to TMS No. 301-00-00-797. Thus, as discussed in Argument III, it is clear that, when North Charleston attempted to annex the Acre, it intended to annex the Acre as shown on the Acre Plat, as described in the Acre Deed, and by reference to TMS No. 301-00-00-797. Because this territory includes property owned by the National Trust and previously annexed by Charleston, the circuit court erred in finding that Charleston lacked standing to challenge the Contested Ordinance.

V. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN HOLDING THAT CHARLESTON LACKED STANDING TO CHALLENGE THE CONTESTED ORDINANCE IN ORDER TO PROTECT THE INTEGRITY OF ITS BORDERS.

Even if the appellate court agrees with the circuit court that, as a matter of law, the Contested Ordinance attempted to annex only territory belonging entirely to North Charleston, such territory is physically separated from the corporate limits of North Charleston by land in Charleston, that being Highway 61 and the National Trust Property. (R. p. 3, ¶ 8). If not judicially vetted, the Contested Ordinance will establish that one municipality, by acquiring property outside its limits and then annexing it under the device of section 5-3-100, may ignore the borders of another. If not judicially vetted, the Contested Ordinance will establish precedent that a municipality may undertake annexations that jump over, or "leap-frog," the corporate limits of another municipality, as and when convenient.

The public importance exception has been relaxed under discreet, limited circumstances when future guidance is paramount. The facts of this case qualify as such a circumstance. “In numerous recent cases, this Court has found that standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.” Davis v. Richland Cty. Council, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). “The linchpin of the public importance exception is the need for future guidance.” Vicary v. Town of Awendaw, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018).³ “An appropriate balance between the competing policy concerns underlying the issue of standing must be realized.” Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

“Citizens must be afforded access to the judicial process to address alleged injustices.” Id. “On the other hand, standing cannot be granted to every individual who has a grievance against a public official.” Id. “Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.” Id. “For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.” ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

While the “nefarious conduct” alleged against the Town of Awendaw in Vicary is not present here, this case, like Vicary, involves novel issues, inextricably connected to the public need for court resolution for future guidance. These issues will also escape judicial review, absent standing being conferred under the “public importance” exception, and the factual scenario posed

³ As stated, Vicary emphasized that the “linchpin” for “public importance” standing is the extent to which future guidance is necessary. In this respect, the circuit court erroneously interpreted Vicary as adopting a “bright-line” test that *only* an allegation of deceitful conduct triggers such standing.

by this case is subject to being repeated in other locales across the State. On the other hand, governments would not be subject to “numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits,” if Charleston were granted standing to proceed under the particular circumstances of this case. See id.

Charleston, as the municipality whose boundaries are being leaped, is particularly well-suited to assert public importance standing here, ensuring that standing is not granted to “every individual who has a grievance.” The Supreme Court of South Carolina has recognized the standing of a municipality to contest cases when another entity attempts to include properties within its jurisdiction, or claimed to be so. See Forest Acres v. Forest Lake, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (concluding Town of Forest Acres may maintain action to invalidate purported detachment of its territory via annexation by Forest Lake).

The same must hold true for maintaining the sanctity of a municipality’s borders. A municipal border establishes a jurisdictional line that serves as a barrier to expansion by nearby municipalities. It establishes and preserves to a municipality an area for future growth into contiguous properties. If municipal borders can be leap-frogged, they become essentially meaningless. If not inherent to its right of home rule, the statutory scheme of annexation and its judicial interpretation devolve to Charleston the right to maintain the integrity of its borders, to include the right to exclude other municipalities, like North Charleston, from establishing a foothold in areas of growth that its boundaries establish. A sound public policy demands that municipalities have access to the courts to protect their boundary rights, and this Court should so hold.

The circuit court has already issued a ruling denying the ability of one municipality to “leap frog” another under the auspices of the “adjacent to” requirement in section 5-3-100, concluding:

“As a matter of law, adjacency under § 5-3-100 of the South Carolina Code is destroyed when privately-owned property lying within another municipality’s corporate limits intervenes between the area to be annexed and the existing limits of the annexing municipality.” (R. p. 13). In other words, whatever the term “adjacent to” means in section 5-3-100, it is destroyed, as a matter of law, by intervening property within another municipality.

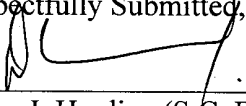
There is no case interpreting section 5-3-100 or any State precedent authorizing one municipality to “leap frog” another municipality’s boundaries, absent affirmative legislative authority. In the absence of an adjudication of these issues, municipalities will be given no guidance as to when section 5-3-100 applies, especially when, as in the present case, the annexing municipality asserts that the term “adjacent to” means “near” or “in close proximity.” It is also easy to see how a municipal “turf war” could ensue if the term “adjacent to” is left undefined or so broadly interpreted. A ruling in favor of Charleston on the issue of standing—and on the merits—may effectively end such practice altogether.

As a result, such a ruling would not only serve the need for “future guidance” imperative to application of a “public importance” exception, but also decrease—not increase—the number of potential lawsuits involving similar annexation attempts. Therefore, it appears imperative, of significant public importance, and in furtherance of maintaining sound public policy, that standing be accorded to Charleston to challenge the Contested Ordinance. See ATC, 380 S.C. at 199, 669 S.E.2d at 341 (“The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.”).

CONCLUSION

For the reasons set forth herein, it is submitted that the circuit court's ruling that Charleston lacks standing to challenge the Contested Ordinance should 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 Respondent/Appellant City of Charleston

February 25, 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

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

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Respondents/Appellants,

v.

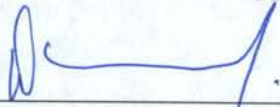
City of North Charleston,

Appellant/Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Appellant's Brief complies with Rule 211(b), SCACR.

February 25, 2020


Daniel S. ("Chip") McQueeney, Jr.
(S.C. Bar No. 6802)
Email: mcqueeneyd@charleston-sc.gov

City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorney for Respondent/Appellant City of Charleston

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Court of Common Pleas

Hon. Eugene Griffith

Case No. 2018-CP-10-851

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National Trust for Historic Preservation

In the United States and The City of Charleston, Respondents/Appellants

v.

City of North Charleston,

Appellant / Respondent.

**Final Brief of Appellant/Respondent, City of North Charleston
(Contiguity / Adjacency)**

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 Cross-Appellant
City of North Charleston

Other Counsel of Record:

Francis Cantwell, Susan Herdina
Daniel ("Chip") McQueeney, Jr.
50 Broad Street
Charleston, SC 29401
mcqueeneyd@charleston-sc.gov
843-724-3730

Attorneys for the City of Charleston

Trenholm Walker, Esquire
Walker, Gressette, Freeman, Linton
PO Box 22167
Charleston, SC 29413
walker@WGFLAW.com
843-727-2208
Attorney for National Trust

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Statement of Issues on Cross-Appeal

Should the lower court's standing decision be upheld in the main appeal neither issue presented herein need be decided.

- 1) The Trial Court erred by adding an unwritten contiguity requirement to annexations under SC Code Ann. Section 5-3-100
- 2) The land annexed here is statutorily "adjacent" and thus appropriate for annexation under SC Code Ann. 5-3-100.

Statement of the Case

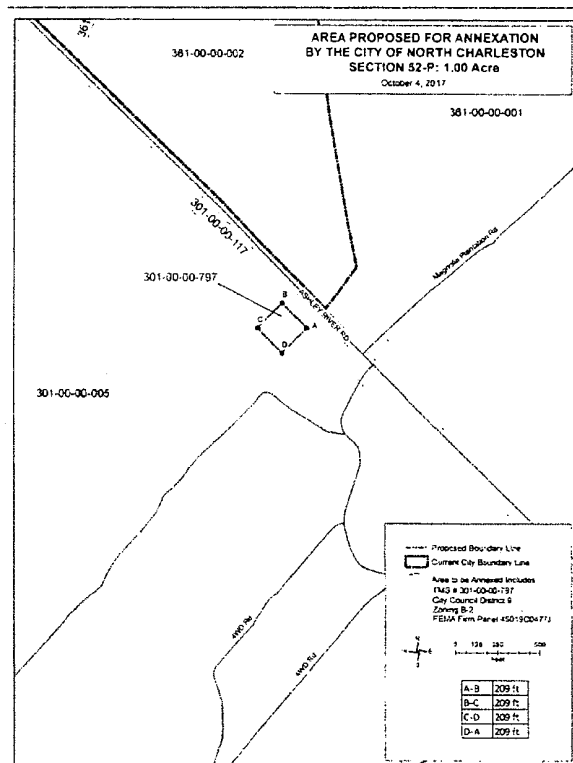
North Charleston, in late 2017, engaged in annexation activity west of the Ashley River. This began when North Charleston annexed the 113 acre Runnymede Plantation parcel (TMS 361-00-00-002) (hereinafter, "Runnymede") on or about October 27, 2017. ROA p. 3, Order, pg. 3, Para 7. No annexation challenge was filed. Id.

North Charleston later obtained title to a one-acre parcel (TMS# 301-00-00-797) (hereinafter, "the Acre") that lies about one hundred (100') feet to the Southwest of Runnymede. ROA p. 4, Order, pg. 4. Runnymede and the one-acre parcel do not share a common boundary. As shown on the map below¹, they are separated by Ashley River Road and a slender 100' wide x 11,000' long shoestring parcel known at TMS 301-00-00-017 (hereinafter, the "100' strip.")² ROA

¹ This map may be found on page 3 of Judge Griffith's Order.

² All references to 100' are approximate.

pp. 3-4, Order, pg. 3-4. On December 21, 2017 the City of North Charleston annexed the one-acre parcel that North Charleston owns. ROA p. 4, Order, pg. 4, Para. 12.



On February 16, 2018, the City of Charleston filed an annexation objection regarding The Acre. The City of Charleston later filed an annexation challenge lawsuit on March 20, 2018. The National Trust also timely filed an objection and subsequent challenge action.

The City of North Charleston filed motions³ on October 19, 2018 seeking determinations that Charleston and others lacked standing to object to the annexation, and that under S.C. Code Ann. 5-3-100 (a) annexation of the Acre did not require contiguity and (b) the Acre was “adjacent” to pre-existing North Charleston limits for purposes of Section 5-3-100.

³ These were a Motion to Dismiss (Lack of Standing) and a Motion for Partial Summary Judgment (Adjacent / Contiguous).

On December 10, 2018, Judge Griffith heard oral argument on the City's motions and on March 1, 2019 issued a written order. The main portion of that order resolved the case in North Charleston's favor but the order also contained various "back-up" rulings which are the subject of North Charleston's cross-appeal here.⁴

On March 14, 2019, the City of Charleston and National Trust filed Motions for Reconsideration for the March 1, 2019 Order.

On April 29, 2019, the City of North Charleston filed a *limited* Notice of Conditional Cross Appeal with this court. Judge Griffith's main ruling was that North Charleston prevailed because Charleston and the National Trust had no standing to challenge.⁵ However, as a fallback, Judge Griffith went on to say that *if* standing had existed, then he would have ruled in the challengers' favor because he disagreed with North Charleston's interpretation of Section 5-3-100. North Charleston requested review only of this "fallback" portion of Judge Griffith's Order if, and only if, the City of Charleston and/or National Trust filed a primary appeal.

Judge Griffith denied Charleston's Motion for Reconsideration by order filed May 1, 2019.

The City of Charleston subsequently filed its own primary appeal May 24, 2019, thus satisfying the condition for the North Charleston's cross-appeal to become effective with respect to it. The National Trust similarly filed a Notice of Appeal dated May 31, 2019.

⁴ This March 4th Order was subsequently re-filed on March 5, 2019.

⁵ North Charleston in this *cross-appeal*, anticipates that its opponent will present standing arguments in the main-appeal Brief of the Appellant. North Charleston respectfully reserves the right to address those arguments by way of a separate Brief of the Respondent North Charleston.

Standard of Review

Statutory interpretation is a “question of law” reviewed under a de novo standard. See State v. Massey, 426 SC 90, 94, 825 S.E.2d 717, 719 (SC App 2019)(“However, ‘[q]uestions of statutory interpretation are questions of law, which are subject to de novo review and which we are free to decide without any deference to the court below.’ State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012)”); See Univ. of S. Cal. v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (“An issue regarding statutory interpretation is a question of law.”); See Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“[T]his [c]ourt reviews questions of law de novo.”);

Argument

Both issues presented below become relevant only should the lower court’s primary ruling regarding standing be reversed. If the lower court’s standing ruling is affirmed then no further consideration of these cross-appeal issues is necessary.

1) The Trial Court Erred By Adding An Unwritten Contiguity Requirement To Annexations Under SC Code Ann. 5-3-100.

The City of North Charleston’s cross-appeal is based solely on a narrow question of law. North Charleston does not challenge the vast majority of Judge Griffith’s Order. North Charleston agrees:

- That it annexed The Acre pursuant to S.C. Code Ann. 5-3-100, which deals with the very limited situation of a local government holding title to property being annexed;
- The Acre is not contiguous to pre-existing North Charleston City limits lines, but rather is separated by a tiny sliver of property outside of North Charleston’s jurisdiction;

- *That until year 2000, Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996) might have suggested⁶ that contiguity would have been required here even though Section 5-3-100 clearly uses the word “adjacent” and not “contiguous.”*

North Charleston’s disagreement is concise – the enactment of S.C. Code 5-3-305 in year 2000 defined contiguity in such as way that “contiguous” could thereafter no longer be used synonymously with “adjacent.” After the Legislature passed Section 5-3-305 “adjacent” and “contiguous” became distinct and contiguity could no longer be argued for annexations pursuant to S.C. Code 5-3-100.

S.C. Code 5-3-100, dealing with the unusual instance in which government already holds title to the land being annexed, specifically requires annexed land to be “adjacent” rather than “contiguous.” As stated by the South Carolina Legislature:

“If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.” S.C. Code Ann 5-3-100. (emphasis added.)

⁶ Both Judge Griffith and the Glaze court point to Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961) for the proposition that our Supreme Court previously recognized “a contiguity requirement even in the absence of a statutory mandate to that effect.” However, North Charleston notes (a) that in Tovey the Court recounts that the parties did not argue against a contiguity requirement, thus making any comments technically dicta (See Tovey, 237 SC at 484, 117 SE2d at 876), and (b) more dispositively, that both Tovey and Glaze predate the passage of S.C. Code Ann. 5-3-305. To the extent Tovey, can be read as relied on by the court below, North Charleston respectfully asserts that Section 5-3-305 has effectively superseded Tovey in that particular regard.

Section 5-3-100 does not mention contiguity. Compare Section 5-3-100's "and is adjacent thereto" language with the explicit contiguity requirement in Section 5-3-150, almost universally used because it deals with typical privately owned property: ("(1) Any area or property *which is contiguous to a municipality* may be annexed to the municipality...")(emphasis added.) Such a difference might be readily explained by the fact that Section 5-3-100 deals with a very limited universe of properties, ones actually owned by the government.

Reading "adjacent" to mean "contiguous" would ignore the words chosen by the Legislature. That is not permissible statutory construction. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (SC 2000)("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature.")(internal citations omitted.) Interpreting "adjacent" to mean "contiguous" would directly contradict S.C. Code Ann. 5-3-305. There the Legislature in year 2000 told us, among other things, that "[f]or purposes of this chapter, 'contiguous' means property which is adjacent to a municipality and shares a continuous border." This definition sets forth a two-part test. Contiguity requires a property to be (1) "adjacent" **AND** (2) "share a continuous border." Thus, the term "adjacent" *in isolation*, as presented in S.C. Code 5-3-100, cannot require that the annexed parcel and pre-existing town limits touch along a common border. Should such a change be desired the Legislature would have to amend the statute. See, generally, Storm M.H. v. Charleston County Board of Trustees, 400 S.C. 478, 492, 735 S.E.2d 492, 500 (SC 2012)(Court noting that it was constrained to interpret unambiguous language as written and if the Legislature intended a different outcome the Legislature must amend the statute's words.)

2) The Land Annexed Here Is Statutorily “Adjacent” And Thus Appropriate For Annexation Under SC Code Ann. 5-3-100.

The one-acre parcel at issue in this case is “adjacent” to the pre-existing North Charleston City limit line. Given that Sections 5-3-100 and 5-3-305 collectively mean that an actual “touching” of the two parcels is not required, “adjacent” is left to mean that the properties must be in close proximity. The one-acre parcel here and the pre-existing North Charleston city limits are about as close as possible without actually touching. The roadway itself is invisible in terms of normal annexation analysis. See S.C. Code Ann. 5-3-305. Thus, the relevant separation for purposes of our annexation separation analysis is a single parcel roughly 100’ wide.

“Adjacent”, at the very least, must allow for separation by a single parcel. Adjacency, under Section 5-3-305, does not require a common boundary. The only way to avoid a common boundary is for at least one other parcel to intervene. Thus, separation of the annexed property and city limits by at least a single parcel, as here, is inherent in the statutory language and cannot destroy adjacency.

There are several factors that make the adjacency of the one-acre parcel even more compelling in this particular case. *First*, the 100’ width of the intervening parcel is just about the smallest imaginable. *Second*, the 100’ parcel at issue is the classic disfavored “shoestring”, measuring over 11,000 feet long⁷, despite being only 100’ wide. *Third*, North Charleston possesses a recorded easement allowing it to cross over the 100’ strip. Thus, North Charleston does not even need to “jump over” the 100’ strip. The City has a legal right to drive across it to access the one-acre parcel. See ROA p269, Charleston County RMC Deed Records, Book S17, Page 224 (Plat showing access easement) and ROA p.255 Book 0-121, Page 206 (Actual Access

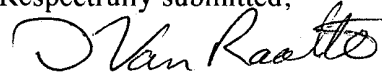
⁷ See Complaint, para. 17.

Easement). Thus, the normal “right to exclude” that the 100’ strip owner might have does not even apply with respect to the City. In this regard the easement means that crossing over the 100’ strip is rather analogous to crossing a waterway (invisible for annexation purposes under S.C. Code 5-3-305) in that no trespass is required for North Charleston to go from the pre-existing city limit line to reach the annexed parcel.

Conclusion

The conditional, “backup” portion of the Trial Court’s opinion below erred in concluding that The Acre was not appropriate for annexation by way of SC Code Ann. 5-3-100. The Trial Court mistakenly added a non-existent “contiguity” requirement. All parties agree that the Acre is not contiguous. It is, however, “adjacent” and adjacency is all that is required for annexation under Section 5-3-100. That standard is satisfied here.

Respectfully submitted,



Derk Van Raalte
Brady Hair
Legal Dept.
2500 City Hall Lane
North Charleston, SC 29406
843-740-2550 derk@bradyhair.com

Attorneys for the Cross-Appellant
City of North Charleston

This 7th day of February, 2020

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-10-851

Appeal No. 2019-000728

RECEIVED
FEB 18 2020
SC Court of Appeals

National Trust for Historic Preservation
In the United States and The City of Charleston, Appellants

v.

City of North Charleston, Cross-Appellant / Respondent.

Certificate of Counsel (Briefing)

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 7, 2020.



Derk Van Raalte
Legal Dept., 2500 City Hall Lane
North Charleston, SC 29406
843-740-2550 derk@bradyhair.com

Attorneys for the
City of North 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

Case No.: 2018-CP-10-851
Appellant Case No. 19-000728

RECEIVED

FEB 27 2020

SC Court of Appeals

National Trust for Historic Preservation in the United States and the
City of Charleston, ... Respondents/Appellants,

v.

City of North Charleston, ... Appellant/Respondent.

**BRIEF OF RESPONDENT/APPELLANT NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES**

G. Trenholm Walker
S.C. Bar No. 5777
Walker, Gressette, Freeman, & Linton, LLC
Post Office Box 22167
Charleston, SC 29413-2167
T: (843) 727-2208
F: (843) 727-2238
walker@wgflaw.com

Anne E. Nelson
Associate General Counsel
National Trust for Historic Preservation
in the United States
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037
T: (202) 588-6142
anelson@savingplaces.org

ATTORNEYS FOR
RESPONDENT/APPELLANT NATIONAL
TRUST FOR HISTORIC PRESERVATION
IN THE UNITED STATES

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Statement of Issues on Appeal

I. Did the circuit court err in granting North Charleston's motion for summary judgment on lack of standing even though the National Trust submitted an affidavit creating a genuine issue of material fact that the property annexed included property owned by the National Trust?

II. Did the circuit court err in determining that the area annexed depended on record title rather than the description of the area annexed in the annexation resolution and in finding the subjective intent of North Charleston overrode its description of the property annexed?

III. Did the circuit court err in ruling that the National Trust lacked standing under the public importance exception to challenge the annexation of an area within the Ashley River National Register Historic District?

Statement of the Case

On December 21, 2017, Appellant/Respondent, City of North Charleston (“North Charleston”), adopted Ordinance No. 2017-080 (the “Contested Ordinance”) (**R.pp. 293-295**) purporting to annex real property owned by North Charleston under the statutory annexation method for instances where the entire area is owned by the annexing municipality. See S.C. Code Ann. § 5-3-100. (**Contested Ordinance, R.pp. 293-295**). The real property purportedly annexed by North Charleston consists of one (1) acre designated as TMS #301-00-00-797 (the “Acre”).¹ Respondent/Appellant National Trust for Historic Preservation in the United States (“National Trust”) did not join in the annexation petition even though the National Trust asserts a small portion of the Acre is owned by the National Trust and is within the boundaries of Respondent/Appellant City of Charleston (“City of Charleston”).

On March 20, 2018, after timely noticing their intent to contest this annexation, the National Trust and the City of Charleston (collectively the “Respondents/Appellants”) filed an action in circuit court challenging the annexation and asserting, inter alia, that the annexed land was not adjacent to nor contiguous with North Charleston and that the annexation was void and unauthorized as a matter of law. (**Respondents/Appellants Notice of Challenge of Annexation, R.pp. 30-31; Respondents/Appellants Summons & Compl., R.pp. 32-43**). Lying and intervening between the corporate limits of North Charleston and the Acre are the right-of-way for S.C. Highway 61 and real property owned by the National Trust that both lie within the City of Charleston. (**Hrg. Tr. R.pp. 221:24-222:1**). On April 16, 2018, North

¹ Prior to the purported annexation of the Acre, in October 2017, North Charleston annexed another parcel of real property known as Runneymede Plantation, which is a 113-acre parcel identified as TMS #361-00-00-002 (the “Runneymede Parcel”) located directly across the Ashley River from the municipal boundaries of North Charleston. (**Hrg. Tr. R.p. 182:11-13**) No annexation challenge was filed by Appellants (or others) because the Runneymede Parcel is contiguous to the municipal boundaries of North Charleston.

Charleston filed an answer denying these allegations, asserting affirmative defenses and filing counterclaims against the Respondents/Appellants. (**North Charleston Answer, Affirmative Defenses and Counterclaims, R.pp. 47-58**). North Charleston's counterclaim requested a declaration that the Acre did not encroach on the adjacent land owned by the National Trust. (**Id. at ¶ 61-63, R.p. 56**). On May 17 and 21, 2018, respectively, Respondents/Appellants filed separate replies denying the counterclaims. (**National Trust Reply to Counterclaims of City of North Charleston, R.pp. 63-66; City of Charleston Reply to Counterclaims of North Charleston, R.pp. 59-62**).

On October 9, 2018, North Charleston served: (1) its motion for partial summary judgment pursuant to Rule 56, SCRPC, requesting an order that annexations under S.C. Code § 5-3-100 do not require contiguity and that the Acre was "adjacent" to North Charleston; and (2) its motion to dismiss pursuant to Rules 12 and 56, SCRPC, arguing that Respondents/Appellants lacked standing to challenge the annexation. (**North Charleston Mot. for Partial Summ. J., R.p. 67; North Charleston Mot. To Dismiss, R.p. 68**). North Charleston accompanied its motions with the affidavit of Adam MacConnell who authenticated certain minutes of council, ordinances, and instruments of record attached to his affidavit. (**Aff. of MacConnell, R.pp. 240-241**).

On November 9, 2018, Respondents/Appellants moved for summary judgment arguing, inter alia, that the purported annexation of the Acre was void since the Acre is not adjacent to nor contiguous with the corporate limits of North Charleston and that the Acre annexed included land owned by the National Trust within the City of Charleston. (**Respondents/Appellants Mot. for Summ. J, R.pp. 69-72**). On December 6, 2018, Respondents/Appellants served the affidavit of Daniel C. Forsberg in opposition to North Charleston's motions and on December 7,

2018, served separate memorandums in opposition to the motion to dismiss for lack of standing and a consolidated memorandum on the summary judgment motions. (**Aff. of Forsberg, R.pp. 242-245; National Trust Mem. In Opposition To Defendant's Mot. To Dismiss, R.pp. 86-101; City of Charleston Mem. In Opposition To Defendant's Mot. To Dismiss, R.pp. 73-85; Respondents/Appellants Con. Mem. On Summ. J. Mot., R.pp. 102-121**).

The Honorable Eugene C. Griffith, Jr., circuit court judge, held a hearing on these motions on December 10, 2018. (**Hrg. Tr., R.pp. 177-239**). On March 1, 2019, Judge Griffith signed a written order finding that Respondents/Appellants did not have standing to challenge the annexation. (**Order, R.p. 1**). In the same order, Judge Griffith held that “[i]n the event that [the circuit court] is found to be in error regarding its ruling of lack of standing of the [Respondents/Appellants], this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.” (**Order, R.pp. 1-2**). Respondents/Appellants received written notice of the entry of the order on March 4, 2019, which order was re-filed on March 5, 2019. (**Re-filed Order, R.pp. 15-28**). On March 14, 2019, Respondents/Appellants separately filed motions to reconsider, alter, or amend the Order, which were denied by Judge Griffith by Order filed on May 1, 2019. (**National Trust Mot. to Reconsid., R.pp. 167-176; City of Charleston Mot. to Reconsid., R.pp. 155-166; Order Denying Mots. To Reconsid., R.p. 29**).

On April 29, 2019, North Charleston filed a cross appeal of portions of the Order in the event that the Respondents/Appellants appealed the Order. (**North Charleston Notice of Cross Appeal, R.pp. 358-362**). After the circuit court's denial of their motions to reconsider on May 1, 2019, the City of Charleston served its notice of appeal on May 24, 2019, and the National Trust served its notice of appeal on May 31, 2019. (**City of Charleston Notice of Appeal, R.pp. 363-365; National Trust Notice of Appeal, R.pp. 368-369**). On June 18, 2019, North

Charleston filed its Initial Brief of Cross-Appellant. **(North Charleston Initial Brief)**. On October 15, 2019, the Court of Appeals issued an order setting forth a briefing schedule. **(Court of Appeals Order)**.

Statement of the Facts

The annexation in question involves a continuation of the effort by North Charleston to greatly expand its historical western geographic limits, in this instance by jumping the Ashley River, S.C. Highway 61, and a two-mile-long property owned by the National Trust adjoining S.C. Highway 61 within the City of Charleston. The Acre allegedly annexed is located within a nationally recognized scenic and historic corridor and across S.C. Highway 61 from a landmark property owned by the National Trust. The Acre was donated by deed to North Charleston shortly before its purported annexation in an effort to establish contiguity with North Charleston by a property owner who wants to develop the extensive surrounding acreage owned by it into a residential subdivision. **(Aff. of MacConnell, deed dated September 12, 2018 recorded at 0673/028, R.pp. 274-277; Whitfield Ans. And First Amended Counterclaims in 2018-CP-10-0848, R.pp. 342-343; Hrg. Tr. R.p. 233:18-21)**.

At the time it approved the annexation, North Charleston fully expected a legal challenge:

Mr. King noted that the subject property is West of the Ashley, and if the annexation is approved a lawsuit will surely be filed against the City [of North Charleston], costing the City [of North Charleston] possibly millions of dollars. He stated his opposition to the annexation.

Mr. Brinson asked and Mayor Summey confirmed that there are no current development plans, and the Mayor said that when the time comes, the City [of North Charleston] will consider development. Mayor Summey said this annexation will result in a better quality of life for current and future residents. He acknowledged that this annexation may be challenged, but that it will be well worth it to have this property under the City [of North Charleston]'s jurisdiction.

(Aff. of MacConnell, Minutes of December 14, 2017, ¶ 4, R.p. 280).

All the properties in question are within the Ashley River Historic District (the “Historic District”), which is listed in the National Register of Historic Places (the “National Register”).² **(National Trust Mem. In Opposition To Defendant’s Mot. To Dismiss, R.p. 87).** The Historic District is a largely undeveloped approximately 23,000-acre area and includes historic and archaeological resources that date to the earliest settlement of Charleston in the late 1600s. **(Id., R.p. 88).** Important historic resources in the Historic District include the 11.5 mile stretch of the S.C. Highway 61 (also known as the Ashley River Road) (individually listed on the National Register and a resource that contributes to the significance of the Historic District), which has served as a major transportation route since 1691 and is known for its historic viewshed canopy of live oak trees, and Drayton Hall, a National Historic Landmark³ owned by the National Trust, which is considered to be the earliest and finest example of Palladian architecture in the United States. **(Id.).** Since 1974, the National Trust has owned and operated⁴ Drayton Hall as a National Trust Historic Site open to the public, receiving over 50,000 visitors

² The National Register of Historic Places is the official list of the nation’s historic places worthy of preservation. Authorized by the National Historic Preservation Act and managed by the National Park Service, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America’s historic and archaeological resources. 54 U.S.C. § 302101 *et. seq.* The National Register is an authoritative guide to be used by Federal, state and local governments, private groups, and citizens to identify the nation’s cultural resources and to indicate what properties should be considered for protection from destruction or adverse impacts. 36 C.F.R. § 60.2. Listing in the National Register also makes property owners eligible to be considered for Federal grants for historic preservation and other Federal and state financial incentives, such as historic rehabilitation tax credits. *Id.* § 60.2(b), (c). A property can be removed from the National Register if the qualities which caused it to be originally listed have been lost or destroyed. 36 C.F.R. § 60.15.

³ National Historic Landmarks (“NHLs”) are historic places that hold exceptional national significance and receive heightened protection under Section 110(f) of the National Historic Preservation Act. 54 U.S.C. § 306107. Authorized by the Historic Sites Act of 1935, the Secretary of the Interior designates these places as exceptional because of their abilities to illustrate the United States’ heritage. Today, there are only about 2,600 NHLs in the United States. See <http://www.nps.gov/articles/roots-of-the-national-historic-landmarks-program.htm> (accessed Sept. 16, 2019).

⁴ As of January 1, 2015, the Drayton Hall Preservation Trust operates the site on behalf of the National Trust pursuant to a set of legal agreements.

each year. **(Respondents/Appellants Summons. & Compl., R.p. 35).** The National Register listings and the designation of Drayton Hall as a National Historic Landmark attest to the public significance of the preservation and protection of the properties and landscapes within the Historic District.⁵ In addition to Drayton Hall, the National Trust owns other parcels in the Historic District that were primarily acquired and are held for conservation purposes. **(National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, R.pp. 87-88).**

The National Trust's land holdings in this area include a two-mile long strip of property, 100' in width, butting up to the western side of S.C. Highway 61 that is designated as Charleston County TMS #301-00-00-017 (the "National Trust Parcel"). **(Aff. of Forsberg, R.p. 244).** The National Trust Parcel, along with the right-of-way for S.C. Highway 61, are within the City of Charleston and lie between the municipal boundary of North Charleston and the Acre. **(National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, Annexation Area Overview Maps, R.pp. 100-101; Hrg. Tr. R.p. 221:24-222:1).** The Nature Conservancy conveyed the National Trust Parcel to the National Trust by deed dated January 28, 1980, recorded in RMC Office for Charleston County in Book O121 at Page 209 (the "National Trust Deed"), for the purpose of protecting the historic character and context of the Historic District and the viewsheds along the historic Ashley River Road. **(Aff. of Forsberg, R.pp. 242-245; Deed into National Trust recorded at 0121/209, R.pp. 255-257; National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, R.pp. 87-88).**

⁵ The Court may take judicial notice of these listings. See National Register of Historic Places, Ashley River Historic District, Charleston County, South Carolina, available at: <http://www.nationalregister.sc.gov/dorchester/S10817718009/S10817718009.pdf> and <http://www.nationalregister.sc.gov/dorchester/S10817718009/S10817710158BI.pdf> (additional documentation and boundary increase); Ashley River Road, available at <http://www.nationalregister.sc.gov/dorchester/S10817718010/S10817718010.pdf>; and Drayton Hall, available at <http://www.nationalregister.sc.gov/charleston/S10817710005/S10817710005.pdf>.

The National Trust Deed conveyed a parcel of 26.53 acres, more or less, more particularly described as “[t]hose certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of 11,556 feet in length....” (**Aff. of Forsberg, Deed into National Trust at 0121/209, R.pp. 255-257**). The National Trust Parcel is located across from the entrance to Drayton Hall and slightly to the north running along the historic Ashley River Road. (**National Trust Mem. In Opp. To Defendant’s Mot. to Dismiss, R.p. 88**). Both of the National Trust’s properties of interest to this appeal (the National Trust Parcel and Drayton Hall) are located within the City of Charleston’s municipal boundaries. The City of Charleston annexed the National Trust Parcel in 2005. (**Order, R.p. 2**). This uncontested fact is pivotal to questions relating to the validity of the attempted annexation by North Charleston.

The National Trust Deed was subject to certain reservations of easements included in the prior deed conveying the National Trust Parcel from Georgia-Pacific Investment Company (“Georgia-Pacific”) to The Nature Conservancy dated January 2, 1980 (the “Nature Conservancy Deed”). (**Aff. of Forsberg, ¶ 6, R.p. 243, and R.pp. 252-254**). The reservation of easements was limited to eighteen easements with the specific purpose “of permitting Grantor, and its successors and assigns, vehicular and pedestrian access from its real property to Highway 61, over and across the [National Trust Parcel], and for installation of utility lines or facilities.” (**Id., Deed into The Nature Conservancy recorded at 0121/206, R.pp. 252-254**). On May 15, 2009, the Whitfield Construction Company recorded a plat in RMC Office for Charleston County in Book L09, Page 228, identifying the easement locations across the National Trust Parcel (the “2009 Plat”). (**Id., Plat L09/0225, R.pp. 264-268**). To the best of its knowledge, the National Trust had no knowledge of the chosen locations of the reserved easements prior to the

recording of the 2009 Plat. **(Order, R.p. 5)**. The National Trust has owned the National Trust Parcel for thirty-nine years, of which fourteen were under (and continue to be under) the jurisdiction of the City of Charleston.

Tim Whitfield Construction and Development LLC (a related entity to the Whitfield Construction Company, which are together hereinafter referred to as “Whitfield”) transferred the Acre, the parcel subject to this annexation challenge, to North Charleston for five dollars on September 12, 2017, by deed recorded in the RMC Office for Charleston County in Book 0673, Page 028 on October 16, 2018 (the “Acre Deed”). **(Aff. of Forsberg ¶ 4(j), R. p. 244; Deed into North Charleston recorded at 0673/028, R.pp. 274-277)**. Whitfield subdivided the Acre from its much larger 2,200-acre tract, which is designated as TMS 301-00-00-005 (the “Whitfield Parcel”) that Whitfield acquired from Georgia-Pacific on July 14, 1989.⁶ The Acre, the Whitfield Parcel, and the National Trust Parcel were originally part of the same tract of land owned by Georgia-Pacific.

The Acre Deed identifies the land conveyed as that property described in the plat for the Acre approved by Charleston County on September 9, 2018, and recorded in Plat Book S17, Page 0224 in the RMC Office for Charleston County on September 22, 2017 (the “Acre Plat”). **(Id., Plat recorded at S17/0224, R.p. 269)**. The Acre Plat shows the northeastern boundary of the Acre that abuts the National Trust Parcel in two separate locations as 99.7’ and 99.69’ from the right-of-way line of S.C. Highway 61, thereby including a total of approximately 62 square feet of the National Trust Parcel for its entire length. **(Id., R.p. 269)**. The Acre Plat describes

⁶ Whitfield desired to have the Whitfield Parcel annexed into North Charleston because it was a condition of the sale of 500 acres of the Whitfield Parcel to a residential developer. See ¶ 50-51 of Whitfield’s Answer and First Amended Counterclaim in Circuit Court Case No. 2018-CP-10-2073, a related case. **(R.p. 347)**.

the Acre and, as a result, TMS 301-00-00-797 to include a portion of the National Trust Parcel.

(Id.).

North Charleston purportedly adopted the Contested Ordinance under the auspices of section 5-3-100 of the South Carolina Code, which provides, in pertinent part:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality.... Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

The Contested Ordinance described the area to be annexed as “one acre identified as parcel designated TMS #301-00-00-797,” that includes a portion of the National Trust Parcel.

(R.p. 294). The National Trust did not consent to the annexation of the Acre, nor does it desire for any portion of the National Trust Parcel to be annexed into North Charleston, particularly since the National Trust Parcel lies within the City of Charleston. **(Order, R.p. 5)**.

Standard of Review

A motion to dismiss under Rule 12 is treated as a motion for summary judgment under Rule 56 if affidavits are considered, as occurred below. Rule 12(b), SCRPC (“If...matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56...”). The circuit court may properly grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). In determining whether any triable issues of fact exist, the lower court must view the evidence and all reasonable inferences that may be drawn from the evidence in the

light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988). “In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla of evidence* in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (emphasis added).

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

Because the ruling below was on a motion for summary judgment and not after a trial on the merits, the lower court was required to accept as true the allegations supporting the National Trust’s ownership of a portion of the land annexed as set forth in the affidavit presented by Respondents/Appellants. Instead, the lower court incorrectly disregarded the averments in that affidavit, ruled as a matter of law that the annexation could only include property owned by North Charleston regardless of the description of the property annexed, and granted North Charleston’s summary judgment motion for lack of standing.

Argument

I. The circuit court erred in not applying the standard for summary judgment and erred in granting North Charleston’s motion for summary judgment on lack of standing where the affidavit submitted by the National Trust created a genuine issue of fact that the property annexed included property owned by the National Trust.

The standing issue was before the circuit court on North Charleston’s motion to dismiss that was converted to a motion for summary judgment by the parties’ submission of affidavits. Here, North Charleston did not provide any evidence in its supporting affidavit or otherwise to contradict the National Trust’s Affidavit of Daniel C. Forsberg, a licensed civil engineer and land

surveyor, that the Acre described in the annexation included a portion of the National Trust's property. (**Aff. of Forsberg, R.pp. 242-245**). This proof established the National Trust's standing or, at a minimum, a genuine issue of material fact as to its standing.

The threshold question is, what property did North Charleston purport to annex? The attachments to the affidavit of Adam McConnell submitted by North Charleston establish that the property annexed was TMS #301-00-00-797 that is in turn described by the survey of the Acre referenced in the deed to North Charleston. (**Aff. of MacConnell, R.pp. 240-241, 293-294**).

As stated in the minutes of North Charleston City Council meeting on December 14, 2017, "The City proposes to annex *one parcel identified as TMS #301-00-00-797* in Charleston County." (**Aff. of MacConnell, Minutes of December 14, 2017, R.p. 279**) (double emphasis added). "The next item on the agenda was the first reading of an Ordinance proposed to annex an area known as 52-P, *identified as Charleston County TMS #301-00-00-797*, and make it part of present City Council District 9, Zoned AG, Agricultural District." (**Id., R.p. 280**) (double emphasis added). "The area proposed for annexation includes *one acre identified as parcel designated TMS #301-00-00-797*." (**Id., Resolution #2017-067, R.pp. 283-284**) (double emphasis added). The dimensions of the Acre that is TMS #301-00-00-797 show that its northeastern boundary along the National Trust Parcel is 99.69' and 99.7' from the right of way of S.C. Highway 61 for a length of 208.71'. (**Id., Plat recorded at S17/0224 dated 9-14-17, R.p. 269**). The Acre necessarily includes a portion of the National Trust Parcel that was established as 100' in width from the right of way of S.C. Highway 61 in the deed from the common Grantor. (**Aff. of MacConnell, Deed into The Nature Conservancy at 0121/206, R.**

pp. 252-254; Deed into National Trust at 0121/209, R.pp. 255-257; Order, R.p. 2; Respondents/Appellants Cons. Mem. On Summ. J. Mots., R.pp. 102-121).

In opposition to North Charleston's motion on standing, Forsberg attested the annexation included a portion of the National Trust Parcel, averring, in part:

The deed to the National Trust for the [National Trust Parcel] was made subject to the right of [Georgia-Pacific] to create 18 easements for access from S.C. Highway 61 across the [National Trust Parcel]. Plats L09/0225-0229 lay out these access easements. Plat S17/0225 also shows Access Easement #3, as shown on Plat L-09/0225, running from Highway 61 across the National Trust's property to [the] Acre. The purported width of the National Trust's property is shown as 99.69 feet on the north side and 99.7 feet on the south side. As a result, 62 square feet of the [National Trust Parcel] appears to have been included in [the] Acre.

(Aff. of Forsberg, ¶ 6, R.p. 244).

Moreover, in light of these uncontroverted facts, Mr. Forsberg concluded:

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that [the] Acre overlaps the [National Trust Parcel], *encroaching on 62 square feet of the [National Trust Parcel]*.

Based on the records I have reviewed to date, it appears, to a reasonable degree of certainty based on my education and experience as a Professional Engineer and Land Surveyor, that, if North Charleston annexed the Acre as described by Plat S17/0224 or as designated by TMS No. 301-00-00-797, then *the land that was annexed included a small portion of the [National Trust Parcel]*.

(Id., ¶¶ 8-9, R.p. 245) (double emphasis added).

Viewing the evidence in the light most favorable to the non-moving party, the National Trust presented far more than the needed scintilla of evidence to withstand the motion for summary judgment on standing. Lord v. D & J Enterprises, Inc., 407 S.C. 544, 558, 757 S.E.2d 695, 702 (2014). At a minimum, because summary judgment is a drastic remedy, and where, as here, discovery was not complete, summary judgment is never appropriate where further inquiry

into the facts of the case would have been helpful to clarify application of the law. Id. at 553, 757 S.E.2d at 699.

North Charleston's mere allegation that "it did not claim any ownership of the strip owned by the National Trust" is irrelevant. (**Order, R.pp. 5-6**). The question is not whether North Charleston asserted title to a portion of the National Trust Parcel as held by the circuit court. (**Id., R.p. 6**). The question is whether the area described in the annexation included any property owned by the National Trust. It did. North Charleston's assertion as to its intent cannot overcome the uncontroverted Affidavit of Forsberg who determined that North Charleston's annexation of the Acre did encroach on the National Trust Parcel and the National Trust's proprietary rights.

The circuit court acknowledged that "the 2009 [P]lat had width variations of a few inches here and there, so too did the 2017 plat of the Acre." (**Id., R.p. 4**). Furthermore, North Charleston has acknowledged the "four-inch discrepancy." (**Hrg. Tr., R.p. 185**). These width variations in the legal description of the plats and cited in the Contested Ordinance as the area to be annexed are sufficient to determine, in the light most favorable to the National Trust, that a portion of the National Trust Parcel was purportedly annexed by North Charleston.

Finally, the circuit court's reliance on what it considered to be a relatively minor encroachment of four inches contradicts the circuit court's earlier finding on page 5 of the Order that no encroachment occurred. (**Order, R.pp. 5, 9**). This acknowledgment, however, is proof of the National Trust's proprietary rights and standing. The circuit court's rejection of this proof in its standing analysis provides another instance of the circuit court misapplying the standard for summary judgment that all evidence be viewed in the National Trust's favor. There was a genuine issue of material fact that the area purportedly annexed included a portion of the

National Trust Parcel, and the circuit court erred in granting North Charleston's motion for summary judgment on the basis of standing.

II. The circuit court erred in determining that the area annexed depended on record title rather than the description of the area annexed in the annexation resolution and in finding the subjective intent of North Charleston overrode its description of the property annexed.

In its analysis of proprietary standing, the circuit court reasoned that North Charleston, the party seeking annexation of the Acre, could not annex property that was not owned by North Charleston. (Id., R.pp. 6-7). The circuit court recognized the discrepancy in the 2009 Plat locating the access easements and the Acre Plat creating the Acre and TMS #301-00-00-797, which included that a small portion of the National Trust Parcel was included in the platted description of the Acre, but found that the discrepancy did not make a difference because North Charleston did not own it (if North Charleston's contentions are true) and did not intend to annex land it did not own. (Id., R.pp. 4, 6-7).

The statutes governing annexation focus on the area to be annexed. These statutes have no provisions that the areas proposed to be annexed can only be property owned by the petitioners for annexation. The statutes also make no reference to the intent of the annexation petitioner. Their focus is entirely on description of the territory or area to be annexed. Section 5-3-100 looks at the "territory proposed to be annexed."⁷ This is akin to S.C. Code Ann. § 5-3-150(3) governing annexation under the 100% rule that refers to "a petition signed by all persons owning real estate in the *area requesting annexation*" and to "the agreement of the governing body to accept the petition and annex *the area....*" S.C. Code Ann. § 5-3-100 (double emphasis added).

⁷ "If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete." S.C. Code § 5-3-100.

For example, in Ex parte State ex rel. Wilson, 391 S.C. 565, 707 S.E.2d 402 (2011) cited by the parties and the circuit court in this case, much of the Supreme Court's opinion there dealt with who had standing to contest the annexation of public trust tidelands that were described in the area annexed. The Supreme Court noted as follows:

The State, which is the presumptive owner of the annexed marshlands, did not sign the petition. Notwithstanding the absence of the State's consent to the annexation, the annexation ordinance recites that the Town received a petition signed 'by all persons owning real estate' in the annexed area....

....Where the State holds title to real property in the area to be annexed, it is a 'person[] owning real estate' within the meaning of section 5-3-150(3) and its signature is required to accomplish an annexation by 100% petition....

By its plain language, section 5-3-150(3) requires the signatures of 'all persons owning real estate in the area requesting annexation.'...

This annexation did not comply with the requirements of the 100% petition method. The State was the presumptive owner of the annexed marshlands and the Town did not provide the State with prior notice of the annexation or obtain the State's signature on the petition. Nevertheless, the State's challenge of the annexation is time-barred.

Id. at 569-78, 707 S.E.2d at 404-409.

The Supreme Court did not hold that the parties to the annexation petition and the governmental body approving the annexation had no ability to annex property the petitions did not own. To the contrary, the Supreme Court found that the annexation petitioners had indeed annexed the tidelands they did not own under the 100% method but that the South Carolina Attorney General, the sole party with standing to challenge the annexation of the public trust tidelines, did not assert its objection in a timely manner under the controlling statutes.

Similarly, in this case, the question of proprietary standing turns on whether the National Trust presented a genuine issue of material fact that the National Trust owned a portion of the area annexed. The area annexed was described in the Contested Ordinance as "TMS 301-00-00-797" and "as shown on a map prepared by the GIS Department for purposes of this annexation,

dated October 4, 2017, being the legend ‘Area Proposed For Annexation By The City Of North Charleston Section 52-P.’” (**Aff. of MacConnell, Ordinance #2017-080, R.pp. 293-295**). The Contested Ordinance goes on to specifically describe the area annexed as the property in the precise survey that includes a portion of the National Trust Parcel:

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 distance being more or less.

(Id., R.p.294).

The TMS parcel reference includes a portion of the National Trust Parcel. Engineer and surveyor Forsberg avers in his affidavit that “[t]he tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat. (**Aff. of Forsberg, ¶ 5, R.p. 244**). The legal description for the Acre references Plat S 17 /0224. As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797.” (**Id., R.p. 244**).

Because, at a minimum, there is a genuine issue of material fact that the territory annexed included property owned by the National Trust, North Charleston was not entitled to summary judgment on the question of the National Trust’s proprietary standing. Whether North Charleston was mistaken about the Acre Plat or only intended to annex the property it owned

does not override the description of the area annexed in the annexation resolution and Contested Ordinance.

Although not determinative of its proprietary standing, the lower court seemed to give weight to its notion that it was incumbent on the National Trust to bring a legal action to clear title if it believed the Acre Plat included a portion of its property. The National Trust would point out that the circuit court apparently overlooked that the question of title has in fact been raised in this litigation. (**Hrg. Tr. R.pp. 209:7-210:12**). North Charleston has counterclaimed against the National Trust in 2018-CP-10-00-851 for a declaration that it has title to all portions of the Acre. (**North Charleston's Answer and Counterclaim, ¶¶ 59-60, R.p. 56**) (“Despite the allegations of the Plaintiffs hereabove, no portion of the North Charleston property encroaches into or upon the property of National Trust. North Charleston owns its property free and clear of the claims of any third parties, including the Plaintiffs.”).

The lower court committed legal error in its concluding that the area purportedly annexed must be determined by the legal title of North Charleston and its expressions of intent in the Contested Ordinance rather than by the actual property description of the annexed area in the Contested Ordinance.

III. The circuit court erred in ruling that the National Trust lacked standing under the public importance exception to challenge the annexation of an area within the Ashley River Historic District.

A. Protection of Historic Preservation Interests

Although the National Trust has proprietary standing based on North Charleston's encroachment of the National Trust's proprietary rights, the circuit court also misapprehended the state of the law, namely Vicary v. Town of Awendaw, 425 S.C. 350, 822 S.E.2d 600 (2018),

and Vicary's application to the National Trust in ruling that the National Trust lacks public importance standing.

First of all, unlike the parties seeking to invoke public importance in the cases cited by the circuit court, the National Trust is clearly invested with advancing the recognized national interest in historic preservation. The National Trust was chartered by the United States Congress in 1949 to advocate on behalf of historic preservation, including places like the Historic District and Drayton Hall, which is, as discussed above, a National Historic Landmark owned by the National Trust and located in close proximity to the National Trust Parcel that was partially annexed by North Charleston. **(54 U.S.C. §§ 312102-312106 (2015); Mem. National Trust in Opposition to Defendant's Mot. to Dismiss, R.pp. 95-96).**

The circuit court's statement that the National Trust only articulated "good deeds" in support of its public importance standing overlooks that these actions were listed as examples of similar advocacy to demonstrate the National Trust's vigilant advancement of the declared national interest in historic preservation that is its charge from the United States Congress. **(Order, R.p. 8; National Trust Mem. In Opp. To Defendant's Mot. To Dismiss, R.pp.96-97).** The circuit court's characterization is especially ironic in light of the fact that the National Trust Parcel was acquired in 1980 in fee simple ownership for the express purpose of protecting the historic context of the entire Historic District in perpetuity, including the portion of the natural Historic District that North Charleston wishes now to convert to sprawling subdivisions, far beyond what Charleston County's zoning would have allowed. **(Id., R.pp. 91-92).** The circuit court also ignored the National Trust's long history of legal engagement in the pursuit of historic preservation and of ownership of historic property in the immediate area. **(Id., R.pp. 95-96).**

Further, the South Carolina Attorney General's interest is far different from the public interests promoted by the National Trust. The South Carolina Attorney General does not have a statutory charter from the United States Congress, which determined that nationally significant historic places should be preserved by the National Trust. There is nothing in the statutes of this state or case law that instills the South Carolina Attorney General with protecting the public interest in historic preservation. Historic preservation is outside of the Attorney General's "job description." The National Trust submits the circuit court erred in holding that the inaction of the South Carolina Attorney General is determinative of whether this case involves a matter of public importance. The circuit court's error is compounded in this case where there is utterly nothing in the record to demonstrate the South Carolina Attorney General was fully apprised of the material facts associated with these annexations and made a deliberate decision not to intercede. Thus, there is a genuine issue of material fact as to the National Trust's standing based on the public interest versus the different interests served by the South Carolina Attorney General.

B. Need for Future Guidance on Requirements of Adjacency and Contiguous under Section 5-3-100.

The circuit court also misapprehended the need for "future guidance," which is inextricably connected to the public need. Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The fact that North Charleston, by the circuit court's own admission, leapfrogged illegally over the City of Charleston's municipal wall—created by the National Trust Parcel that was previously annexed by the City of Charleston in 2005—and attempted an annexation by the 100% owned by a municipality method with a legally flawed definition of contiguity creates an undisputed incentive for other municipalities to follow North Charleston's lead. **(Order, R.p. 13)**. North Charleston's conduct, therefore, creates a dangerous incentive for a messy patchwork

of annexations statewide, as well as harm to the private property and statutory rights of South Carolina residents and property owners throughout the state. Respectfully, these are the type of “unique facts” Justice Hearn suggested in Vicary merited recognition of public importance standing and that the circuit court commented in its Order. (**Id.**, R.pp. 8-9). Therefore, the unusual facts of this case provide a second basis for finding that the National Trust has public importance standing.

Conclusion

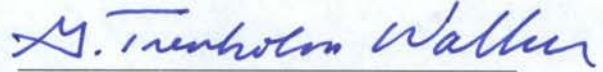
In making the ruling below the circuit court lost sight that the motion for summary judgment required the circuit court to consider the affidavit of the National Trust as to its individualized injury and other allegations of standing in the light most favorable to the National Trust. A genuine issue of fact clearly exists as to whether a portion of the National Trust Parcel was purportedly annexed by North Charleston.

The circuit court also made clear legal errors. Specifically, the lower court erred in holding that North Charleston could only annex area it had legal title to rather than the description of the area annexed in the Contested Ordinance, and in considering the intent of North Charleston as opposed to the property description. The circuit court also erred in ruling against the National Trust on its grounds for standing when the National Trust undoubtedly has statutory standing as an injured property owner and propriety standing as the national organization with a mission to save historic places.

Based on the foregoing, the circuit court erred in finding that there was no genuine issue of material fact and the Respondents/Appellants lacked standing as a matter of law. Accordingly, the circuit court’s decision should be REVERSED.

February 25, 2020

Respectfully submitted,



G. Trenholm Walker
S.C. Bar No. 5777
Walker, Gressette, Freeman, & Linton, LLC
Post Office Box 22167
Charleston, SC 29413
T: (843) 727-2200
F: (843) 727-2238
Walker@wgflaw.com

Anne E. Nelson
Associate General Counsel
National Trust for Historic Preservation
in the United States
2600 Virginia Avenue NW, Suite 1100
Washington, DC 20037
T: (202) 588-6142
anelson@savingplaces.org

Attorneys for Respondent/Appellant
National Trust for Historic Preservation in
the United States

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

Appellate Case No. 2019-000728

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.

February 25, 2020



G. Trenholm Walker

S.C. Bar No. 5777

Walker Gressette Freeman & Linton, LLC

Post Office Box 22167

Charleston, SC 29413

T: (843) 727-2200

Attorney for Respondent/Appellant National Trust
for Historic Preservation in the United States

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Eugene C. Griffith, Jr., Circuit Court Judge

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City of North Charleston,

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RESPONDENT/APPELLANT CITY OF CHARLESTON'S FINAL RESPONDENT'S BRIEF

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 Respondent/Appellant City of Charleston

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT PROPERLY APPLY THE COMMON LAW REQUIREMENT FOR CONTIGUITY TO ANNEXATIONS UNDERTAKEN PURSUANT TO SECTION 5-3-100 OF THE SOUTH CAROLINA CODE?
2. DID THE CIRCUIT COURT PROPERLY CONSTRUE THE PHRASE “ADJACENT TO” IN SECTION 5-3-100 OF THE SOUTH CAROLINA CODE TO REQUIRE MORE THAN THAT THE ANNEXED TERRITORY BE “NEAR” OR “IN CLOSE PROXIMITY WITH” THE ANNEXING MUNICIPALITY?
3. DID THE CIRCUIT COURT PROPERLY CONSTRUE THE PHRASE “ADJACENT TO” IN SECTION 5-3-100 OF THE SOUTH CAROLINA CODE TO PROHIBIT THE ANNEXATION OF TERRITORY SEPARATED FROM THE ANNEXING MUNICIPALITY BY INTERVENING, PRIVATELY-OWNED PROPERTY WITHIN ANOTHER MUNICIPALITY’S CORPORATE LIMITS?

STATEMENT OF THE CASE

This matter arises from multiple notices of appeal challenging the circuit court's decision in an annexation dispute. The present brief addresses the cross-appeal of Appellant/Respondent City of North Charleston ("North Charleston") to the circuit court's "conditional" ruling that North Charleston invalidly attempted to annex property that was neither contiguous nor adjacent to North Charleston's municipal limits. The ruling was conditioned on a finding of standing to challenge the annexation.

On December 21, 2017, North Charleston adopted Ordinance No. 2017-080 (the "Contested Ordinance"), which purports to annex an acre of land (the "Acre"), designated as Charleston County TMS No. 301-00-00-797, located southwest of Highway 61, also known as Ashley River Road. (R. pp. 293-95). North Charleston adopted the Contested Ordinance under the auspices of section 5-3-100 of the South Carolina Code, available when "the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto" (R. pp. 293-95). In the Contested Ordinance, North Charleston represents that the Acre "belongs entirely" to North Charleston. (R. p. 293).

Pursuant to section 5-3-270 of the South Carolina Code, on February 16, 2018, Respondents/Appellants The National Trust for Historic Preservation in the United States (the "National Trust") and the City of Charleston ("Charleston") filed and served a notice of intent to challenge the Contested Ordinance, and, on March 20, commenced an action challenging the Contested Ordinance. (R. pp. 30-46). The complaint sought a determination that the Contested Ordinance was invalid because (1) the Acre did not "belong entirely" to North Charleston; (2) the Contested Ordinance included property owned by the National Trust since 1980 and previously annexed by Charleston in 2005; (3) the Acre was not contiguous or adjacent to North Charleston's

municipal limits; and (4) the Contested Ordinance violated the long-standing public policy against “leap frog” annexations. (R. pp. 40-41, ¶ 38).

North Charleston answered the complaint on April 17, 2018, interposing a general denial and asserting affirmative defenses that the National Trust and Charleston did not have standing and that the complaint failed to state a claim. (R. pp. 47-58). North Charleston also asserted a counterclaim, seeking a declaration that it was the sole owner of the Acre. (R. pp. 55-56, ¶¶ 57-63; p. 57, ¶¶ b, c). Charleston and the National Trust replied to the counterclaims on May 17, 2018, and May 21, 2018, respectively. (R. pp. 59-62; pp. 63-66).

North Charleston moved for partial summary judgment, arguing that the Acre was “adjacent to” its municipal limits, as a matter of law. (R. p. 67). Simultaneously, North Charleston moved to dismiss the complaint pursuant to Rule 12, SCRCF, and Rule 56, SCRCF, arguing that the National Trust and Charleston lacked standing to challenge the Contested Ordinance. (R. p. 68). The National Trust and Charleston later moved for summary judgment based on, among other things, the lack of contiguity or adjacency between the Acre and North Charleston’s municipal limits. (R. pp. 69-72). The circuit court heard these motions on December 10, 2018, and requested that the parties prepare proposed orders. (R. p. 236, line 17-p. 237, line 8). On January 9, 2019, the parties submitted proposed orders to the circuit court. (R. pp. 130-54).

On March 1, 2019, the circuit court entered an order (the “Original Order”) dismissing the complaint and finding that neither the National Trust nor Charleston had standing to challenge the Contested Ordinance. (R. pp. 1-14). However, the circuit court further explained: “In the event that this Court is found to be in error regarding its ruling of lack of standing of the Plaintiffs, this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.” (R. pp. 1-2). As to this issue, the circuit court recognized, in pertinent part:

This Court finds that the annexation under the facts present herein is not valid under that [sic] law of South Carolina. As a matter of law, adjacency under § 5-3-100 of the South Carolina Code is destroyed when privately-owned property lying within another municipality's corporate limits intervenes between the area to be annexed and the existing limits of the annexing municipality. This is true under the common law requirement for contiguity, the statutory definition of "contiguous," or the commonly-applied definition of the term "adjacent" in the context of municipal annexations.

(R. p. 13). The circuit court refiled the Original Order on March 5, 2019 (the "Refiled Order"). (R. pp. 15-28). As used herein, references to the "Order" include the "Original Order" and the "Refiled Order," which are identical.

Charleston received written notice of entry of the Original Order on March 4, 2019, and written notice of the entry of the Refiled Order on March 6, 2019. (R. p. 363). On March 14, 2019, Charleston served a Motion to Reconsider, Alter, or Amend the Original Order and the Refiled Order as they pertained to the issue of standing. (R. pp. 155-166). The circuit court denied Charleston's motion by order entered on May 1, 2019 (the "Reconsideration Order"). (R. p. 29). Charleston received written notice of entry of the Reconsideration Order on May 2, 2019. (R. p. 363).

On April 29, 2019, North Charleston filed a "Notice of Cross Appeal" of the circuit court's decision, conditioned upon the National Trust or the City filing a "primary appeal." (R. pp. 358-62). On May 24, 2019, Charleston served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. (R. pp. 363-67). On May 31, 2019, the National Trust served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. (R. pp. 368-71).¹

¹ Pursuant to the scheduling order adopted by the South Carolina Court of Appeals on October 15, 2019, Charleston has served and filed a separate "Appellant's Brief" challenging the circuit court's

FACTS

On September 12, 2017, North Charleston purportedly acquired title to the Acre, shown as “NEW PARCEL 1,” on that certain plat recorded in Plat Book S17 at Page 0224 (the “Acre Plat”) in the Register of Deeds Office for Charleston County, South Carolina (the “ROD”). (R. p. 244, ¶ 4.j; p. 269; pp. 274-77). Intervening between the Acre and the municipal limits of North Charleston are Highway 61 and land owned by the National Trust (the “National Trust Property”).² (R. p. 269; pp. 293-95). The National Trust Property is 100 feet in width and hugs the southern right-of-way line of Highway 61. (R. p. 243, ¶¶ 4.c, 4.d; pp. 252-57; pp. 293-95).

North Charleston admitted the following allegation in the Complaint: “Lying and intervening between the corporate limits of North Charleston and the Acre are (a) the right-of-way for S.C. Highway 61; and (b) the National Trust Parcel.” (R. p. 37, ¶ 22; p. 50, ¶ 22). Likewise, North Charleston conceded that the National Trust Property has been within Charleston’s corporate limits since 2005. (R. p. 38, ¶ 23; p. 50, ¶ 23).

It is undisputed that the Acre does not share a common border with, or otherwise touch, North Charleston’s municipal limits. (No. Chas App.’s Br., pp. 1-2). It is also undisputed that, to access the Acre from North Charleston municipal limits, it is necessary to cross the privately-

ruling that the National Trust and Charleston lacked standing to challenge the Contested Ordinance. In the present “Respondent’s Brief,” Charleston responds to the “Appellant’s Brief” previously served and filed by North Charleston, in which North Charleston challenges the circuit court’s ruling on contiguity and adjacency. Charleston incorporates the arguments raised in its Appellant’s Brief herein by reference.

² As set forth in Charleston’s “Appellant’s Brief,” Charleston and the National Trust established that the National Trust holds title to approximately 62 square feet of the Acre. (R. p. 245, ¶¶ 8-9). Notwithstanding the foregoing, the Acre is also separated from the municipal limits of North Charleston by the portion of the National Trust Property lying outside the boundaries of the Acre and Highway 61, both of which lie within the municipal limits of Charleston. (R. p. 2, ¶ 5; p. 3, ¶ 8).

owned National Trust Property that is in the corporate limits of Charleston. (No. Chas App.'s Br., pp. 1-2).

STANDARD OF REVIEW

The issue of whether the annexation of the Acre complied with section 5-3-100 of the South Carolina Code was before the circuit court on cross-motions for summary judgment. “Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law.” Weigand v. U. S. Auto. Ass’n, 391 S.C.159, 163, 705 S.E.2d 432, 434 (2011). The interpretation of a statute is a matter of law, which an appellate court reviews without deference to the circuit court. See Vicary v. Town of Awendaw, 425 S.C. 350, 355, 822 S.E.2d 600, 602 (2018) (“[T]he interpretation of a statute is a question of law, which this Court reviews without any particular deference to the circuit 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.”).

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THAT SECTION 5-3-305 OF THE SOUTH CAROLINA CODE DID NOT ABROGATE THE COMMON LAW REQUIREMENT THAT PROPERTY ANNEXED TO A MUNICIPALITY MUST BE CONTIGUOUS TO THE MUNICIPALITY.

Section 5-3-100 of the South Carolina Code provides, in relevant part, as follows:

If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

(Emphasis added). In 1955, the General Assembly enacted the predecessor to section 5-3-100, which remains largely unchanged since that time. See 1955 (49); S.C. Code Ann. § 47-18.1 (1962).

North Charleston maintains that section 5-3-100 only requires the annexed area to be “adjacent,” and thus the Acre can be annexed because it is “near” or “in close proximity” to North Charleston’s borders. North Charleston relies on section 5-3-305 of the South Carolina Code, enacted in 2000, to support its urged construction of section 5-3-100. Section 5-3-305 provides:

For purposes of this chapter, “contiguous” means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

The General Assembly has never attempted to define the term “adjacent” in this Chapter of the South Carolina Code.

To accept North Charleston’s argument that “adjacent to” means something other than contiguous requires this Court to (1) completely disregard how the terms “adjacent,” “adjoining,” and “contiguous” have been interpreted by the courts of this State; (2) hold that section 5-3-305 evinces legislative intent to abrogate the common law as it applies to annexations; and (3) incorporate into annexation law an element of uncertainty by allowing a municipality to become the sole arbiter of what is “close to” or “near” its borders. The shortcomings of North Charleston’s argument are evident.

The requirement that annexed land be “contiguous” to the annexing municipality has been a part of annexation jurisprudence since the 1950s. In the landmark decision of Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961), the Supreme Court held contiguity to be such an inherent element of annexation that its requirement would be read into the law, even if the law was otherwise silent:

The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to ‘adjacent territory’ necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect. McGraw v. Merryman, 133 Md. 247, 104 A. 540; 37 Am. Jur., Municipal Corporations, Section 27; 62 C. J. S., Municipal Corporations, § 46c. Such is ordinarily essential to make the city a collective body having unity and compactness.

Id. at 484, 117 S.E.2d at 876 (emphasis added). While North Charleston characterizes this ruling in Tovey as mere dicta, South Carolina appellate court have repeatedly emphasized the common law requirement for contiguity in municipal annexations. See, e.g., St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 605-06, 564 S.E.2d 647, 649 (2002) (“We reiterate that the sole requirement for annexation is contiguity.”).

Some thirty-five (35) years after Tovey, the Court reaffirmed this premise for areas proposed for municipal incorporation, in Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996), explaining:

Contrary to appellant’s assertion, territory sought to be incorporated must be contiguous. McQuillen, Municipal Corporations, § 3.15(f). See also 1983 Op. Att’y Gen. 83-63 (contiguity requirement applies to incorporations as well as annexations). Further, we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). We find the circuit court correctly held contiguity is required for incorporation.

(Emphasis added).

As annexation jurisprudence evolved, the appellate courts have interpreted the terms “adjacent,” “adjoining,” and “contiguous” as having the same meaning. “Courts have generally held that contiguous is synonymous with the terms ‘adjacent to’ or ‘adjoining.’” St. Andrews Pub. Serv. Dist. v. City Council, 339 S.C. 320, 324-25, 529 S.E.2d 64, 66 (Ct. App. 2000), rev’d on

other grounds by St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002); quoting Erwin S. Barbre, Annotation, What Land is Contiguous or Adjacent to Municipality so as to be Subject to Annexation, 49 A.L.R.3d 589, 599 (1973). The Supreme Court has construed the term “contiguous,” as follows: “The statutory term ‘contiguous’ must be afforded its ordinary meaning of ‘touching.’” Bryant v. Charleston, 295 S.C. 408, 411, 368 S.E.2d 899, 901 (1988).

The evolution of annexation jurisprudence also recognized that annexed areas incidentally separated from the annexing municipality by natural barriers or features, as such roads, waterways or marshlands, do not destroy contiguity. See Tovey, 237 S.C. at 484-85, 117 S.E.2d at 876 (“The plat of the annexed territory introduced in evidence shows area ‘A’ as extending to the eastern bank of the Ashley River. There is, therefore, no intervening space between the annexed areas and the former city boundaries. We do not think the fact that they are separated by a navigable stream breaks the contiguity.”); Bryant, 295 S.C. at 411, 368 S.E.2d at 901 (“We further hold that contiguity is not destroyed by water or marshland within either the annexing municipality’s existing boundaries or those of the property to be annexed merely because it separates the parcels of highland involved.”); St. Andrews Pub. Serv. Dist., 339 S.C. at 325, 529 S.E.2d at 66 (“The Supreme Court has rejected an argument that the annexed parcels must have the additional qualifications of unity, substantial physical touching, or a common boundary However, the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous.”).

North Charleston does not dispute these premises. North Charleston’s position is that the enactment of section 5-3-305 created a distinction between the concepts of “adjacent” and “contiguous” throughout Chapter 3 of Title 5 of the South Carolina Code, and, since the annexation

statute under which North Charleston annexed the Acre only requires the territory be “adjacent to” North Charleston’s municipal limits, the Acre need not touch North Charleston’s municipal borders. North Charleston’s argument is that section 5-3-305 changed the common law of annexation. This argument cannot be countenanced.

Absent clear legislative intent to the contrary, there is a presumption against a change to the common law by way of statutory construction. “Statutes will not be held in derogation of the common law unless the statute itself shows that such was the object and intention of the lawmakers, and the common law will not be changed by doubtful implication.” 16 Jade St., LLC v. R. Design Constr. Co., LLC, 398 S.C. 338, 347, 728 S.E.2d 448, 452-453 (2012), quoting 82 C.J.S. Statutes § 534. As explained in Nuckolls v. Great Atl. & Pac. Tea Co., 192 S.C. 156, 161, 5 S.E.2d 862, 864 (1939):

Regarding the presumption against change of the common law by a statute, it is stated in 25 R. C. L. 1054, that it is not presumed that the Legislature intended to abrogate or modify a rule of the common law by the enactment of a statute upon the same subject; that it is rather to be presumed that no change in the common law was intended unless the language employed clearly indicates such an intention; that the rules of the common law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.

In the context of changes to annexation statutes, the Supreme Court of South Carolina has held:

“It is a rule of construction that changes made by a revision of the statutes will not be construed as altering the law, unless it is clear that such was the intention, and, if the revised statute is ambiguous or susceptible of two constructions, reference may be had to prior statutes for the purpose of ascertaining the intent of the Legislature.” *Dennis v. Independent School Dist.*, 166 Iowa 744, 148 N.W. 1007, 1009. In the case of a general revision or codification of the laws, “it is well settled that neither an alteration in phraseology, nor an omission or addition of words, necessarily indicate an alteration of the construction of the earlier act. Indeed, the rule favoring the

construction borne by the original statutes or sections is applied, even though in the course of revision or consolidation, the language may have been somewhat changed and the revised or consolidated statutes will be construed as bearing the same meaning as the original statutes or sections, unless the language of the revision or consolidation plainly requires a change of construction to conform to the manifest intent of the legislature. These rules are based upon the fact that the new language may be attributed to a desire to condense and simplify the law, or to improve the phraseology.” 50 Am. Jur., Statutes, Section 447.

When the change in phraseology involved in this case is considered in the light of the rule above stated, it certainly does not clearly appear that it was the intention of the legislature to substantially alter the manner in which the corporate limits of a municipality may be extended or restricted. On the contrary, we have a change in phraseology which is ambiguous and the real intent of the legislature can only be gathered by recurring to the original statute.

Forest Acres v. Seigler, 224 S.C. 166, 179-80, 77 S.E.2d 900, 906 (1953).

There is simply no suggestion in the statutory scheme, much less the expressed intent, that the General Assembly, in enacting section 5-3-305, intended to imbue municipalities with new authority to annex in a manner inconsistent with the judicial construction of the annexation statutes as requiring not only “touching” but also the sharing of a continuous border. Significant to this issue is that the General Assembly called out in section 5-3-305 specific types of lands as not affecting an area’s being contiguous, which coincide with the very types of lands the judiciary had theretofore (and since) construed as also not affecting an area’s eligibility for annexation. In enacting section 5-3-305, the General Assembly simply codified the judicial construction of what areas were subject to annexation.

The reasoning in Bd. of County Comm’rs v. City of Cheyenne, 85 P.3d 999 (Wy. 2004), is instructive. There, the City of Cheyenne attempted to annex a parcel of land roughly a quarter of a mile from its borders. Id. at 1001. The annexation statute required an annexed area to be

“contiguous with or adjacent to” the annexing municipality. Id. at 1002. The Wyoming Supreme Court held:

As we will explain further, we conclude that, by limiting annexation to lands that are either contiguous or adjacent, the legislature intended to limit annexation to lands sharing a common boundary with the municipality or touching at some point, with the exception of lands that are separated from the municipality only by those natural or artificial ‘barriers’ listed in Wyo. Stat. Ann. § 15-1-402(b) [providing that contiguity will not be adversely affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way, a lake, stream, reservoir or other natural or artificial waterway located between the annexing city or town and the land sought to be annexed]. This conclusion is consistent with what appears to be the majority rule, it is consistent with what this Court said in In re West Laramie, 457 P.2d 498, 501 (Wyo. 1969) (“under our statute the only requirement with respect to the scope and extent of the area to be annexed is that it must be contiguous to the annexing city or town”), it is consistent with the opinion of the Attorney General of the State of Wyoming, and it is consistent with reason and good sense.

Id. at 1006.

As to the argument proffered by the City of Cheyenne that the property need only be “near” its borders to be adjacent, the Court held:

If the City’s interpretation of the statute—that lands need only be “nearby”—is correct, there would be no reason for the exceptions that are spelled out in Wyo. Stat. Ann. § 15-1-402(b). If “nearby” lands that do not touch the municipal boundaries may be annexed, there is no reason specially to permit annexation of lands separated from the municipality by roads, rivers, and the like. In interpreting statutes, we are to read related laws together and we are to give effect to all the words used

Id. at 1007.

The Wyoming Court’s reasoning resonates here. If “adjacent” means something other than touching, there would have been no need for the General Assembly, like the legislature in

Wyoming, to call out specific types of lands or features that do not destroy contiguity, as it did in section 5-3-305.

A review of other annexation statutes is also noteworthy to this issue. As to the geographic relationship of the annexed territory to the annexing municipality, some statutes require that the territory be “adjacent.” See, e.g., § 5-3-100 (applicable to lands owned by annexing municipality); S.C. Code Ann. § 5-3-140 (applicable to lands belonging entirely to state or federal governments). Others require that the territory be “adjoining.” See, e.g., S.C. Code Ann. § 5-3-250 (applicable to cemeteries). Still others require that the territory be “contiguous.” See, e.g., S.C. Code Ann. § 5-3-150(1) (annexation by “75% method”); S.C. Code Ann. § 5-3-150(3) (annexation by “100% method”); S.C. Code Ann. § 5-3-260 (applicable to church property); S.C. Code Ann. § 5-3-300 (annexation by petition and election). Finally, some annexation statutes have no express geographic requirements at all. See, e.g., S.C. Code Ann. § 5-3-120 (annexation if entire area belongs to a corporation only); S.C. Code Ann. § 5-3-130 (annexation if area proposed to be annexed belongs entirely to a school district).

If North Charleston is correct that section 5-3-305 changed the common law requirement of contiguity, then there would be no geographic limitation on annexing lands of school districts or corporations. Such an interpretation is absurd and would lead to a result that neither the General Assembly nor the appellate courts could ever have intended. See Florence County v. Moore, 344 S.C. 596, 601, 545 S.E.2d 507, 509 (2001) (“Our goal in construing statutes is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”). It is much more likely that, in enacting section 5-3-305, the General Assembly meant what it said, i.e., that the General Assembly simply intended to define the term “contiguous” anywhere it was used within Chapter 3 of Title 5 of the South Carolina Code—not

abrogate the common law requirement for contiguity, redefine the common law contiguity requirement, change the meaning of adjacent, or eliminate *any* geographical limitations on many types of annexations. The term “contiguous” is not used in section 5-3-100, and there is no hint of legislative intent to redefine the term “adjacent,” as used in section 5-3-100.

Though not binding on the Court, the Attorney General of South Carolina has rendered an opinion on the interplay between section 5-3-100 and 5-3-305. In 2005, in facts nearly identical to those here, the Attorney General construed the term “adjacent” in section 5-3-100, rejecting the construction of the term to mean “near,” instead opining that it means “touching.” See S.C. Atty. Gen. Op. (2005 S.C. AG LEXIS 9) p. 4 (filed January 18, 2005). When asked if a city may purchase a property which is one property removed from city limits and annex the property under section 5-3-100 because the property is “near,” the Attorney General opined:

[I]n my opinion, the term “adjacent” as used in Section 5-3-100 should be construed in keeping with the term “contiguous” as set forth by Section 5-3-305 which is defined as “property which is adjacent to a municipality and shares a continuous border.” Therefore, as to your situation regarding purchase of property which is one property removed from the city limits, such property may not be annexed as being “near.” Regardless of the size of any property in between the property, in my opinion, the property to be annexed must be touching the property of the municipality. Similarly, properties “adjacent” should not be construed as two properties separate and still near. Again, in my opinion, the property to be annexed must be touching the property of the municipality.

S.C. Atty. Gen. Op. (2005 S.C. AG LEXIS 9) p. 4 (filed January 18, 2005).

North Charleston’s urged construction of section 5-3-100 introduces an element of uncertainty to areas eligible for annexation, where none now exists. What is “adjacent” or “near” would be left to the whim of the annexing municipality. The bright line created by contiguity, or touching, would be erased. As the presumption is against a statute abrogating the common law,

North Charleston's urged construction of the interplay between sections 5-3-100 and 5-3-305 should be rejected.

Nothing in section 5-3-305 evinces any legislative intent, much less clear and unambiguous intent, to set aside the common law requirement for contiguity in municipal annexations. The circuit court did not add an unwritten requirement of contiguity to section 5-3-100. The court simply, and correctly, interpreted the statute in accordance with longstanding principles pertaining to statutes and the common law.

II. THE CIRCUIT COURT PROPERLY CONSTRUED THE STATUTORY TERM "ADJACENT TO" IN SECTION 5-3-100 OF THE SOUTH CAROLINA CODE AS REQUIRING SOMETHING MORE THAN THAT THE TERRITORY TO BE ANNEXED BE "NEAR" THE ANNEXING MUNICIPALITY.

For the reasons stated, the circuit court properly construed the term "adjacent to," as used in section 5-3-100 of the South Carolina Code, as synonymous with the common law definition of "contiguous," which requires touching except in limited circumstances not present here.

The circumstance of the Acre being separated from North Charleston by only one parcel having a width of "just about the smallest imaginable" is of no moment and begs the question of what about the next annexation undertaken under the device of section 5-3-100? If the annexed area is separated by a single parcel having a width of 200 feet or 2000 feet, does it still qualify as "near?" If the intervening parcel contains several thousand acres, is the territory sought to be annexed still "near?" The problems and chaos resulting from North Charleston's urged construction of section 5-3-100 are self-evident. As noted by the Supreme Court of Wyoming in Bd. of County Comm'rs v. City of Cheyenne, 85 P.3d 999 (Wy. 2004):

The most reasonable interpretation of the words "contiguous with or adjacent to" in this context is that the legislature intended to limit annexation to lands touching a municipality's boundaries. There is no suggestion in the entire statutory scheme that the legislature intended to vest municipalities with the discretion to determine what

land is “adjacent”—meaning “nearby”—on a case-by-case basis. The result of such an interpretation could be “crazy quilt” or “leap frog” annexation that would run counter to the concerns expressed in the statutory mandates.

Id. at 1007.

The circumstance of North Charleston having access rights over the National Trust Property to the Acre is of no moment because how one accesses one’s property has no bearing on the issue of adjacency or contiguity. The imposition of an easement, especially when, as here, the easement area was previously annexed by Charleston in 2005, does not somehow convert Charleston’s annexed territory into unincorporated territory.

The circuit court’s order should be affirmed because South Carolina has never permitted the annexation of property “within close proximity” or “near,” except in very limited circumstances enumerated by the appellate courts and reiterated by the General Assembly in the definition of “contiguous” in section 5-3-305, e.g., circumstances in which the intervening property is a road, easement, or marshland.

III. THE CIRCUIT COURT PROPERLY CONCLUDED, AS A MATTER OF LAW, THAT “ADJACENT TO” IN SECTION 5-3-100 DOES NOT INCLUDE TERRITORY SEPARATED FROM AN ANNEXING MUNICIPALITY BY PRIVATE PROPERTY LOCATED WITHIN ANOTHER MUNICIPALITY’S CORPORATE LIMITS.

Charleston does not agree with North Charleston that “adjacent” means “near” or “in close proximity.” However, Charleston advocated to the circuit court that, whatever “adjacent to” means in section 5-3-100 of the South Carolina Code, it is destroyed when, as here, intervening property lies within the corporate limits of another municipality. (R. pp. 112-15).

The circuit court adopted this argument, concluding that “adjacency under § 5-3-100 of the South Carolina Code is destroyed when privately-owned property lying within another municipality’s corporate limits intervenes between the area to be annexed and the existing limits

of the annexing municipality.” (R. p. 13). North Charleston does not address this ruling, instead reiterating its opinion that adjacent should be interpreted to mean “near” or “in close proximity,” such that no touching is required.

Not only is the Acre separated from North Charleston by privately-owned property, it is separated from North Charleston by privately-owned property in Charleston’s corporate limits. Even if this Court were minded to find that adjacent means something other than contiguous, is it also minded to allow a “leap-frog” over the boundaries of another municipality? Such is precisely what the Court is being asked to condone. The Court should decline that invitation.

South Carolina appellate courts have consistently held that common law contiguity, which is synonymous with adjacency, is destroyed in the context of “leap-frog” annexations, in which one municipality attempts to annex or incorporate territory separated by property within a different municipality. For example, in Glaze v. Grooms, 324 S.C. 249, 253, 478 S.E.2d 841, 844 (1996), the Supreme Court of South Carolina, applying the common law concept of “contiguity” to an attempted municipal incorporation, explained:

We agree with Appellants’ basic proposition that contiguity is not destroyed by water or marshlands which separate parcels of highland. See, e.g., Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961); Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). However, the flaw in Appellants’ argument is that it essentially disregards the fact that the waters/wetlands it seeks to use to establish contiguity have already been annexed by another municipality.

(Emphasis added). In fact, the Court in Glaze emphasized: “It defies the very concept of contiguity to suggest that one municipality may use an adjacent municipality’s annexed territory to establish contiguity.” Id. at 254, 478 S.E.2d at 844 (emphasis added); see also Kizer v. Clark, 360 S.C. 86, 91, 600 S.E.2d 529, 532 (2004) (“[In Glaze, we] agreed that marshlands and creeks do not destroy

contiguity; however, these marshlands and creeks had previously been annexed by other municipalities and therefore could not be used to establish Town's contiguity.”).

More recently, in Sonoco Prods. Co. v. S.C. Dep't of Revenue, 378 S.C. 385, 393, 662 S.E.2d 599, 603 (2008), the Supreme Court of South Carolina parenthetically cited to this passage from Glaze for the proposition that a “town lacked [the] requisite contiguity to incorporate where waters/wetlands it sought to use to establish contiguity had already been annexed by another municipality.”

In Sonoco, the Supreme Court recognized that an intervening public road, owned in fee by Sonoco, could not destroy the contiguity between two developed parcels, also owned by Sonoco, for purposes of a tax law which contained no statutory definition of “contiguity.” Id. at 391, 662 S.E.2d at 602. In looking to the definition of “contiguity” in other cases and statutes, including in the annexation context, the Supreme Court concluded that *the road did not destroy contiguity because there were no intervening landowners*, explaining: “Thus, as in the annexation case, there is no intervening landowner in this case that would destroy contiguity.” Id. at 396, 662 S.E.2d at 604 (emphasis and double-emphasis added).

Likewise, in St. Andrews Pub. Serv. Dist. v. City Council, 339 S.C. 320, 325, 529 S.E.2d 64, 66 (Ct. App. 2000), reversed on other grounds by St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002), the Court of Appeals emphasized that “the Supreme Court has never held that non-adjacent properties not incidentally separated by a road, railway, or waterway are in fact contiguous.” In Sonoco, 378 S.C. at 394, 662 S.E.2d at 603-04, the Supreme Court of South Carolina parenthetically reaffirmed the “general contiguity analysis in municipal annexation cases[s]” articulated by the Court of Appeals in St. Andrews Pub. Serv. Dist.,

explaining that the opinion of the Court of Appeals had been previously reversed only on the issue of standing.

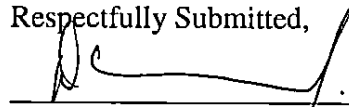
Consequently, in the present case, there is no need to precisely define the term “adjacent” in section 5-3-100 because, whatever the meaning, adjacency is destroyed, as a matter of law, by intervening, privately-owned property, especially when, as in the present case, such intervening property has been annexed to another municipality.

The circuit court’s ruling was supported “under the common law requirement for contiguity, the statutory definition of ‘contiguous,’ or the commonly-applied definition of the term ‘adjacent’ in the context of municipal annexations.” (R. p. 13). The circuit court should be affirmed.

CONCLUSION

For the reasons set forth herein, the circuit court’s decision that the Contested Ordinance invalidly attempted to annex property which was not contiguous or “adjacent to” North Charleston should be affirmed.

Respectfully Submitted,



Susan J. Herdina (S.C. Bar No. 13165)

E-mail: herdinaj@charleston-sc.gov

Frances I. Cantwell (S.C. Bar No. 01121)

E-mail: cantwellf@charleston-sc.gov

Daniel S. (“Chip”) McQueeney, Jr (S.C. Bar No. 06802)

E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street

Charleston, South Carolina 29401

Telephone: (843) 724-3730

Attorneys for the Respondent/Appellant City of Charleston

February 25, 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

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

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SC Court of Appeals

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

Respondents/Appellants,

v.

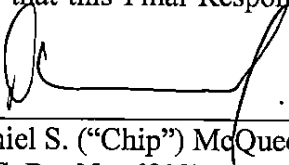
City of North Charleston,

Appellant/Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Respondent's Brief complies with Rule 211(b), SCACR.

February 25, 2020


Daniel S. ("Chip") McQueeney, Jr.
(S.C. Bar No. 6802)
Email: mcqueeneyd@charleston-sc.gov

City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730
Attorney for Respondent/Appellant City of Charleston