THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-000617

South Carolina Public Interest Foundation and William B. DePass, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

The City of Columbia, Richland County, and Fairfield County, ... Respondents.

APPELLANTS' INITIAL BRIEF

April 6, 2017

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Table of Contents

Table of Authorities

Cases

Constitution, Statutes & Rules

Attorney General Opinions

Treatises, Other

STATEMENT OF ISSUES ON APPEAL

I. **DOES INCLUDING RESIDENTIAL STUDENT HOUSING PROJECTS IN AN INDUSTRIAL PARK VIOLATE SOUTH CAROLINA CONSTITUTION ARTICLE VIII, SECTION 13 AND THE ENABLING STATUTES?**

II. **DO THE APPELLANTS POSSESS STANDING?**

STATEMENT OF THE CASE

Appellants, Taxpayers William B. DePass, Jr. and South Carolina Public Interest Foundation ("SCPIF") filed suit against the City of Columbia, Richland County, and Fairfield County, contending that Respondents' including certain residential student housing projects in a multicounty business and industrial park and granting these residential student housing projects a 50% Special Source Revenue Credit is unconstitutional and illegal. After cross-motions for summary judgment, the Circuit Court ruled for the City and Counties.

DePass and SCPIF appeal and ask this Court to rule that the Respondents' inclusion of residential student housing projects in a multicounty industrial park, and the granting of 50% Special Source Revenue Credits to the residential student housing projects, violates the South Carolina Constitution, Art. VIII, § 13 and S.C. Code Ann. § 4-1-170, § 4-29-10, and § 4-29-68.

STATEMENT OF FACTS

On April 15, 2003, Respondents Richland County and Fairfield County created the I-77 Corridor Regional Industrial Park ("Industrial Park") and entered into the "Master Agreement Governing the I-77 Corridor Regional Industrial Park" ("Master Agreement") (Exhibit to the Complaint). The Counties entered into the Master Agreement "in order to promote the economic welfare of their citizens" (Master Agreement, p. 1).

At least five times from March 4, 2014 through May 19, 2015, the City of Columbia, Richland County, and Fairfield County enacted ordinances to transfer into the Industrial Park real estate to be developed as residential student housing projects within the City of Columbia. See Joint Stipulation of Facts filed August 31, 2016, par. 7. The

City and Richland County agreed to grant these projects a 50% reduction in the fee in lieu of taxes ("FILOT"), through Special Source Revenue Credits. *Id.*, par. 5. Other persons who own and manage student housing projects in the City do not receive this 50% Special Source Revenue Credit.

Respondents' ordinances transferring the property into the Industrial Park repeatedly referred to these residential student housing developments as "Projects." *See* Ordinance No. 2014-15, Ordinance No. 2014-19, Ordinance No. 2014-20, Ordinance No. 2014-123, Ordinance 2015-109, and Ordinance No. 2016-017 (Draft). Likewise, the Credit Agreement that Richland County entered into with the residential student housing projects identified the developments as "Projects." *See* Credit Agreements dated March 4, 2014, March 18, 2014, April 15, 2014, and December 9, 2014. Furthermore, the ordinances of Fairfield County also refer to these developments as "Projects." *See* Fairfield County Ordinance Number 624, 632, and 642. Finally, the ordinances for Richland County refer to these developments as "Projects." Ordinance No. 072-14 HR.

ARGUMENT

I. INCLUDING RESIDENTIAL STUDENT HOUSING PROJECTS IN AN INDUSTRIAL PARK VIOLATES SOUTH CAROLINA CONSTITUTION ARTICLE VIII, SECTION 13 AND THE ENABLING STATUTES.

The South Carolina Constitution allows adjacent counties to jointly develop "an industrial or business park."

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

S.C. Constitution, Art. VIII, § 13(D) (emphasis added).

The enabling statute, South Carolina Code Ann. § 4-1-170 allows counties to develop "an industrial or business park with other counties." The property in the industrial parks is exempt from ad valorem taxation, and the projects pay a fee in lieu of taxes ("FILOT"). S.C. Code Ann. § 4-1-170 requires that the City of Columbia must consent before any real estate project within its corporate borders is included in the Industrial Park.

Beginning in the 1970s, the State enacted laws to assist in bringing heavy industry into South Carolina. Initially, such laws and benefits were limited to extremely large industrial projects. Later the statutes were amended to include smaller projects. Initially, Special Source Revenue Bonds (paid from the fees in lieu of taxes) provided infrastructure for the projects in the industrial parks. Eventually, the General Assembly adopted Special Source Revenue Credits as an alternative to Special Source Revenue Bonds, but the Credits also must be "in the manner and for the purposes set forth in Section 4-29-68."

> A county or municipality receiving revenues from a payment in lieu of taxes pursuant to Section 13 of Article VIII of the Constitution of this State may issue **special source revenue bonds** secured by and payable from all or a part of that portion of the revenues which the county is entitled to retain pursuant to the agreement required by Section 4-1-170 **in the manner and for the purposes set forth in Section 4-29-68**. The county or municipality may pledge the revenues for the additional securing of other indebtedness **in the manner and for the purposes set forth in Section 4-29-68**.
>
> A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 13 of Article VIII of the Constitution of this State may use a portion of this revenue **for the purposes outlined in Section 4-29-68 without** the requirement of **issuing** the special source revenue **bonds** or meeting the requirements of Section 4-29-68(A)(4) **by providing a credit** against or payment derived from the revenues received and retained under Section 13 of Article VIII of the Constitution of this State.

S.C. Code Ann. § 4-1-175. (emphasis added).

These financial benefits are afforded only to statutory "projects."

A. The Statutory Definition of Industrial "Project" Does Not Include Residential Student Housing Projects.

In order for a "Project" to be entitled to a Special Source Revenue Credit related to fees in lieu of taxes, it must meet the qualification of a "Project" in Chapter 29 of Title IV. Sections 4-29-67 and 4-29-68 refer repeatedly to "Projects" in Industrial Parks. S.C. Code Ann. § 4-29-10 contains definitions for Chapter 29 of Title IV. That section defines "Projects" and addresses which "Industrial Development Projects" are to be included in Industrial Parks, and for which "Projects" the counties may issue Special Source Revenue Credits.

> **Whenever used in this chapter**, unless a different meaning clearly appears from the context, the following terms, whether used in the singular or plural, shall be given the following meanings:
>
> * * *
>
> (3) "**Project" means** any land and any buildings and other improvements

on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:

(a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;

(b) any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

(c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes;

(d) any enterprise engaged in **commercial business including**, but not limited to, wholesale, retail, or other **mercantile** establishments; **residential** and mixed use **developments of two thousand five hundred acres** or more; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities; and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem; and

(e) any enlargement, improvement, or expansion of any existing facility in subitems (a), (b), (c), and (d) of this item.

S.C. Code Ann. § 4-29-10 (emphasis added).

Qualifying Projects include "any land and any buildings . . . **useful by the following investors** or any combination of them:" . . . "agricultural or manufactured products," . . . . "products of agriculture, mining, or industry," . . . "laundry services" for medical providers, and . . . "enterprise for research." S.C. Code Ann. § 4-29-10. This is a specific and exclusive list of qualified endeavors, without expansive language. The statutory definition of **"Project" does not include residential student housing projects**. Accordingly, the use of Special Source Revenue Credits for residential student

housing projects **fails to meet the statutory definition** of a "Project," and including residential student housing projects in a Multicounty Business and Industrial Park is illegal and unconstitutional.

The City contends that these residential student housing projects qualify under Section 4-29-10(3)(d): "any enterprise engaged in **commercial** business including, but not limited to, wholesale, retail, or other **mercantile** establishments" (emphasis added). In this statute, "mercantile establishment" defines or illustrates what the General Assembly meant by an "enterprise engaged in commercial business." Mercantile establishments **sell merchandise**. Black's Law Dictionary defines "mercantile" as "of or related to **merchants** or trading; commercial <the mercantile system>." Black's Law Dictionary, Seventh Edition, Brian A. Garner, Editor-In-Chief, West Group, St. Paul, Minnesota 1999 (emphasis added).

Black's Law Dictionary also defines "merchant."

> One whose business is buying and selling **goods** for profit; especially a person or entity that holds itself out as having expertise peculiar to the goods in which it deals and is therefore held by the law to a higher standard of expertise that a non-merchant is held. * **Because the term relates solely to goods, a supplier of services is not considered a merchant**.
>
> > "The definition of 'merchant' in [UCC] Section 2-104 (1) identifies two separate but often interrelated criteria: Does the seller 'deal in goods' of that kind, or does the seller 'otherwise by his occupation' hold himself out as having special knowledge with respect to the goods? It should be emphasized that the drafters have placed these two criteria in the alternative by use of the word 'or.' Thus, the definition clearly catches all those who regularly **sell inventory** even though they may have no expertise regarding the particular product. **This would include distributors, wholesalers, and retail dealers.** Dealers who sell prepackaged goods containing a defect over which they have no control might be surprised to learn that they have given an implied warranty of merchantability with respect to the goods, but such is the law." Barcley Clark and Christopher Smith, *The Law of Product Warranties* § 5.02[1], at 5-25 (1984).

Id. (emphasis added).

The definition from Black's Law Dictionary dovetails quite well with the statutory language: "any enterprise engaged in **commercial business** including, but not limited to, **wholesale, retail, or other mercantile** establishments." Section 4-29-10(3)(d). Under these definitions, residential student housing projects would not ordinarily be considered "mercantile establishments."

> Court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

SCANA Corp. v. South Carolina Dep't of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009) (emphasis added). The City's strained construction is not within the "plain meaning" of the statute.

The statutorily qualified "Project" closest in definition to these residential student housing projects is a "residential and mixed-use development," but the statute requires a "residential and mixed-use development of **two thousand five hundred acres** or more." Section 4-29-10(3)(d). *Expressio unius est exclusio alterius* ("The expression of one excludes the alternatives.") These "Projects" at issue are "residential" or "mixed use developments" (some of the projects contain small shops on street level), but they do not contain 2,500 acres or more. They contain just a few acres. (*See* City of Columbia Motion for Summary Judgment, Exhibit E, showing one tract as 4 acres and another tract as 1.8 acres.) These residential student housing projects are statutorily **excluded** from an Industrial Park; and a Special Source Revenue Credits are not authorized for such "Projects." Granting Special Source Revenue Credits for these residential student housing projects is illegal and unconstitutional.

Respondents ask this Court to expand the statutory definition of "projects" by judicial fiat.

B. Residential Student Housing Projects Are Not "Industry" for Industrial Parks.

Section 4-29-67 is entitled: "**Industrial development projects** requiring a fee in lieu of property taxes." That statute refers to such a park as an "**industrial development park** as defined in **Section 4-1-170**." Section 4-29-67(B)(1), (2). Residential student housing does not fall within the "plain meaning" of "industrial development."

In order to qualify under Chapter 29 for inclusion in a Multicounty Business and Industrial Park, and in order to qualify for a Special Source Revenue Credit, a "Project" must be a part of an "Industry" as defined by Section 4-29-10. Section 4-29-10 also defines "Industry."

> (6) "**Industry**" shall mean any person, firm or corporation engaged in any one or more of the **enterprises** identified **in item (3)** of this section or any person, firm or corporation providing facilities constituting a project to be used by any one or more of the **enterprises identified in item (3)** of this section.

Id. Item (3) is the definition of "Project" above. The definitions of "Industry" and "Project" go hand-in-hand. These definitions govern the entire Chapter 29, "Industrial Development Projects." The residential student housing complexes are not "Industrial Development projects," and they do not meet the definitions of Chapter 29 to qualify for inclusion in an Industrial Development Park or qualify for a Special Source Revenue Credit.

C. Residential Student Housing Projects Fail To Bring the Economic Benefits of "Industrial Projects."

The South Carolina Supreme Court upheld the legality and constitutionality of tax breaks for true industrial projects in *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990). Professor Quirk, from the law school, challenged negotiated fees in lieu of taxes related to certain large industrial projects. The Court reasoned that the FILOTs in that case furthered the policies and legislative intent of the statute. Courts have reasoned that the tax benefits granted to industrial development projects benefit the surrounding communities by generating jobs and investments in the community.

In this case, the residential student housing projects do not bring such benefits. Respondents failed to demonstrate that their projects came within the rationale, the holding, and the analysis in *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990):

> The negotiated fee provision was enacted in response to the perceived negative effect that this State's property taxes have upon recruitment of large capital-intensive businesses. It is intended **to induce these large industries to make new or expanded investments in South Carolina**.

Id., 302 S.C. 148, 150, 394 S.E.2d 320, 321 (1990) (footnote omitted) (emphasis added). The *Quirk* Court explained the facts supporting its analysis.

> When completed, the expansion will create 267 new jobs and add an estimated $7.5 million annually to Union Camp's payroll. The State Development Board projects that an additional 400 jobs and $12.8 million in annual income will be added to the local economy as a result of secondary business services.

Id., 302 S.C. 148, 151, 394 S.E.2d 320, 322 (1990).

In *Quirk*, the Court also cited the "established legislative policy of **improving the industrial climate** in South Carolina in order to provide for the welfare and prosperity of its inhabitants." *Id.*, 302 S.C. 148, 151, 394 S.E.2d 320, 322 (1990), *quoting, Elliott v. McNair,* 250 S.C. 75, 89, 156 S.E.2d 421, 428 (1967). The Court in *Quirk* also referred

favorably to the "legislative purpose of **attracting large capital-intensive industries** to this State." *Id.*, 302 S.C. 148, 153, 394 S.E.2d 320, 323 (1990). Residential student housing projects fail to bring such benefits to the Respondent Counties or to the City of Columbia. They do not bring in 667 new jobs or $20.7 million of annual payroll income through primary and secondary development.

Residential student housing projects would not support any "legislative purpose of attracting large capital-intensive industries to this State." *Id.* Respondents failed to demonstrate that the residential student housing projects would "improve[e] the industrial climate of South Carolina in order to provide for the welfare and prosperity of its inhabitants." *Id.*, 302 S.C. 148, 151, 394 S.E.2d 320, 322 (1990), *quoting, Elliott v. McNair,* 250 S.C. 75, 89, 156 S.E.2d 421, 428 (1967). Residential student housing projects would not induce "large industries to make new or expanded investments in South Carolina." *Id.*

Tax breaks to residential student housing projects failed to generate any collateral, societal benefit to the community. Respondents have granted these residential student housing projects a huge financial advantage over their competition, the other student apartment complexes and private student housing providers competing with them in Columbia. These other student apartment complexes and private student housing facilities (along with all the other taxpayers) are required, by their taxes, to offset the financial advantages given to their competition, the favored residential student housing projects.

D. The Attorney General Stated that the Plain Meaning of a "Business and Industrial Park" Excludes Residential Housing Projects.

The Oconee County Attorney asked the Attorney General whether residential housing projects could be included in a Business and Industrial Park, and further asked "does it matter if the end use for the residential property in question is to be owner-occupied (4%) or commercial (6%) residential property." 2010 WL 1370089 (S.C.A.G.) (March 1, 2010).

The Attorney General responded that the **plain meaning** of the Constitution and statutes governing industrial parks precluded the inclusion of residential projects in the industrial park; and despite the explicit question from the Oconee County attorney, the Attorney General did not distinguish between property taxed at 4% and property taxed at 6%. *Id.* The Attorney General concluded that the inclusion of **either** kind of residential property in an Industrial Park was improper. He wrote:

> While section 4-7-170 does not specify what type of property can be included in a multicounty industrial or business park, the statute allows for the creation of an "industrial" or "business" park. According to Webster's New World Dictionary, "industrial" means "having the nature of or characterized by industries . . . ." Webster's New World Dictionary 718 (2nd ed. 1976). The plain and ordinary meaning of the term "business" is "a commercial or industrial establishment; store, factory, etc." Id. at 192. Based on the **plain and ordinary meaning of the terms industrial and business**, one may argue that the Legislature did not intend for residential property to be included in an industrial or business park created pursuant to section 4-7-170.

Id. (emphasis added).

The Supreme Court ruled, "The language of a tax exemption statute must be given its **plain, ordinary meaning** and must be **strictly construed against** the claimed exemption. *John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer,* 276 S.C. 314, 278 S.E.2d 340 (1981)." *TNS Mills, Inc. v. South Carolina Dept. of Revenue,*

331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (emphasis added).

E. Residential Student Housing Projects Fail to Fulfill the Statutory Purposes or Advance the Policies Supporting Industrial Development Projects.

Section 4-29-68 governs Special Source Revenue Bonds. It also governs Special Source Revenue Credits: "To the extent that the bonds **or any credit** or offset **against a fee in lieu of taxes** that is allowed **in lieu of the issuance of the bonds**, ..." *Id.* (emphasis added).

Section 4-29-67 governs industrial development projects requiring a fee in lieu of property taxes. It also contains relevant definitions for the subject. Section 4-29-67(L)(2) governs projects "located in an industrial development park as defined in section 4-1-170." *Id.* (emphasis added). Section 4-29-67(L)(3) governs special source revenue credits:

> (3) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes may use a portion of this revenue **for the purposes outlined in Section 4-29-68** without the requirement of issuing special source revenue bonds or the requirements of Section 4-29-68(A)(4) **by providing a credit against** or payment derived from **the fee due from the sponsor**.

Id. (emphasis added).

Section 4-29-67 (N) addresses "projects" in an "industrial development park" and how that property is to be treated for calculating the total bonded indebtedness burden.

> (N) **Projects** on which a fee in lieu of taxes is paid pursuant to this section are considered taxable property at the level of the negotiated payments for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59-20-20(3). However, for a **project located in an industrial development park as defined in Section 4-1-170,** projects are considered taxable property in the manner provided in Section 4-1-170 for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59-20-20(3). Provided, however, that the computation of bonded indebtedness limitation is **subject to the requirements of Section 4-29-68(E)**.

Id. (Emphasis added).

Thus, Section 4-29-67 governs "projects" in an "industrial development park as defined in section 4-1-170." They must be "in the manner and for the purposes of Section 4-29-68." S.C. Code Ann. § 4-1-175. All these sections are part of the unified statutory scheme.

Accordingly, the definitions in Article IV, Chapter 1 should be applied to the circumstances of Article IV, Chapter 29. In other words, the Industrial Development Projects requiring a fee in lieu of property taxes in § 4-29-67, and the Special Source Revenue Bonds, and Special Source Revenue Credits, governed by § 4-29-68 are subject to the definitions in § 4-29-10. Finally, the jointly developed Industrial or Business Park governed by § 4-1-170, and the Special Source Revenue Bonds authorized by § 4-1-175 are subject to the requirements of § 4-29-68, and they must meet the manner and purposes of § 4-29-68. Accordingly, the "projects" in the business and industrial park must be governed by the definitions in § 4-29-10.

> A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law. *Hinton v. South Carolina Dep't of Prob., Parole, and Pardon Servs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct.App.2004); *Doe v. Roe,* 353 S.C. 576, 580, 578 S.E.2d 733, 735–36 (Ct.App.2003).

Peake v. South Carolina Dept. of Motor Vehicles, 375 S.C. 589, 599, 654 S.E.2d 284, 290 (Ct. App. 2007).

The Respondents chafe at these definitions and restrictions, but instead of offering cogent legal analysis to exempt themselves, they file affidavits asserting that the taxes are too high and addressing how other counties handle economic development projects. But this Court is not asked to decide whether taxes are too high. This Court is not asked to pass on the legality of other economic development projects in other counties. The inquiry for

this Court is the application of the Constitution and the statutes of South Carolina to these facts.

Special Source Revenue Credits, granted under § 4-1-175 must be "for the purposes outlined in Section 4-29-68." S.C. Code Ann. § 4-29-68 establishes the "purposes" to which the bond proceeds may be applied, and they **do not include residential student housing projects**.

> (2)(i) The bonds are issued for the **purpose** of paying the cost of designing, acquiring, constructing, improving, or expanding (a) the **infrastructure serving the issuer** or the project, (b) for improved or unimproved **real estate** and personal property including machinery and equipment **used in the operation of a manufacturing or commercial enterprise**, or (c) **aircraft** which qualifies as a project pursuant to Section 12-44-30(16), which property is determined by the issuer to enhance the economic development of the issuer.

S.C. Code Ann. § 4-29-68(2)(i) (emphasis added). Residential student housing projects do not fulfill the statutory purposes of S.C. Code Ann. § 4-29-68. Residential student housing projects are not "infrastructure serving the issuer." Residential student housing projects are not "used in the operation of a manufacturing or commercial [mercantile] enterprise." *Id.* Third, residential student housing projects are not "aircraft . . . [that] enhance[s] the economic development of the issuer." Accordingly, residential student housing projects do not fulfill the authorized statutory purpose for either Special Source Revenue Bonds or Special Source Revenue Credits.

F. The Issue Is One of Statutory and Constitutional Interpretation, Not Politics.

The Counties argued that the issue in this case is political, and this Court must dismiss this action under Rule 12(b)(1) for lack of subject matter jurisdiction. The City attempted to introduce a discussion of policy reasons supporting this unlawful and

unconstitutional arrangement, as a question of fairness and as a matter of comparison between the City of Columbia and various other cities around the country.

The City argues that because the apartment complexes are taxed at 6%, they qualify for inclusion in a Multicounty Business and Industrial Park. This is an argument based on the City's view of "fairness" in taxation, not statutory interpretation. While it may be beneficial to the favored projects to get a 50% tax break, it's not beneficial to everyone else who is paying the full taxation, and it is particularly "unfair" to those **other** apartment complexes catering to the same demographic and customer and **competing** against the favored projects, who do not receive the 50% tax break. The Respondents' entire argument based on "fairness" omits references to the statute itself and its policy priorities and fails to recognize that the fairest solution is to lower taxes for all taxpayers.

This Court should not involve itself in the second-guessing of political officials over matters of policy and wisdom or right or wrong, but rather should interpret statutory and constitutional law. The South Carolina Supreme Court has ruled,

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed **in light of the intended purpose of the statute**." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). The Court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

SCANA Corp. v. South Carolina Dep't of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009) (emphasis added). S.C. Code Ann. Title IV, Chapter 1 and Chapter 29 must be construed together because they relate to the same subject matter and to each other.

G. Statutes Addressing Several Parts of the Subject Must Be Construed Together.

If two chapters relate to the same subject matter and to each other, they must be construed together. The Supreme Court ruled,

> In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law **must be construed together** and each one given effect. *Higgins v. State,* 307 S.C. 446, 415 S.E.2d 799 (1992).

TNS Mills, Inc. v. South Carolina Dept. of Revenue, 331 S.C. 611, 619, 503 S.E.2d 471, 476 (1998) (emphasis added). Similarly, the Court of Appeals has ruled.

> A law must be interpreted reasonably and practically, **consistent with the purpose and policy of the General Assembly**. *Abell v. Bell,* 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956); *see also Georgia–Carolina Bail Bonds, Inc. v. County of Aiken,* 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct.App.2003) ("A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.").
>
> The terms must be **construed in context** and their meaning determined by looking at the other terms used in the statute. *S. Mut. Church Ins. Co. v. South Carolina Windstorm & Hail Underwriting Ass'n,* 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991); *Dupree,* 354 S.C. at 693, 583 S.E.2d at 446. Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the **purpose of the whole statute and the policy of the law**. *Whitner v. State,* 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997); *see also Stephen v. Avins Constr. Co.,* 324 S.C. 334, 340, 478 S.E.2d 74, 77 (Ct.App.1996) (finding statutory provisions should be given reasonable and practical construction consistent with purpose and policy of entire act). In interpreting a statute, the language of the statute must be construed in a sense which **harmonizes with its subject matter and accords with its general purpose**. *Hitachi Data Sys. Corp. v. Leatherman,* 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992); *Multi–Cinema, Ltd. v. S.C. Tax Comm'n,* 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987); *State v. Hudson,* 336 S.C. 237, 246, 519 S.E.2d 577, 582 (Ct.App.1999). Statutes must be **read as a whole** and sections which are part of the same general statutory scheme must be **construed together** and each given effect, if it can be done by any reasonable construction. *Higgins v. State,* 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services, 357 S.C. 327, 332-33, 592 S.E.2d 335, 338 (Ct. App. 2004) (emphasis added).

The words of the related statutory provisions must be read together, in harmony, and in context. The South Carolina Supreme Court ruled:

> Clearly, words in a statute must be construed in context. *Hancock v. Southern Cotton Oil Co.,* 211 S.C. 432, 45 S.E.2d 850 (1947). According to the doctrine of *noscitur a sociis,* the **meaning** of particular terms in a statute may be ascertained **by reference to words associated with them in the statute**. 73 Am.Jur.2d *Statutes,* § 213 (1974). We have previously stated that "[t]he Court may not, in order to give affect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent." *Creech v. S.C. Public Service Commission,* 200 S.C. 127, 138, 20 S.E.2d 645, 649 (1942).

Southern Mut. Church Ins. Co. v. South Carolina Windstorm, and Hail Underwriting Association, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) (emphasis added).

Similarly, the Court of Appeals ruled:

> When statutes address the same subject matter, they are *in pari material* and **must be construed together**, if possible, to produce a single, harmonious result. *Howell,* 370 S.C. at 509, 636 S.E.2d at 628; *Grant v. City of Folly Beach,* 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001); *Joiner ex. rel. Rivas v. Rivas,* 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000); *see also Foothills Brewing Concern, Inc. v. City of Greenville,* 377 S.C. 355, 363, 660 S.E.2d 264, 268 (2008) ("Moreover, '[a] statute should not be construed by concentrating on an isolated phrase.' "). "'The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense.' " *S.C. Coastal,* 669 S.E.2d 899, 2008 WL 4693075 at *7 (quoting *Pee v. AVM, Inc.,* 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct.App.2001)); *accord Purdy v. Moise,* 223 S.C. 298, 304, 75 S.E.2d 605, 608 (1953); *Powers v. Fid. & Deposit Co. of Md.,* 180 S.C. 501, 509, 186 S.E. 523, 527 (1936); *see also Rorrer v. P.J. Club, Inc.,* 347 S.C. 560, 568, 556 S.E.2d 726, 730 (Ct.App.2001) ("[The Court] should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statutes and the policy of the law.").

Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) (emphasis added). When the definitions and statutes are construed together and construed in light of the purpose and policies of the

statute, it becomes clear that a residential student housing project is not permitted in an Industrial Park, nor is it entitled to the tax benefits for a project in an Industrial Park.

Respondents have violated Art. VIII, § 13 of the South Carolina Constitution by granting Special Source Revenue Credits against the fees in lieu of taxes to unqualified recipients who failed to meet the standards and requirements of the enabling statutes S.C. Code Ann. § 4-1-170, § 4-29-10, and § 4-29-68. This Court should rule that the Respondents' inclusion of residential student housing projects in a multicounty industrial park, and the granting of 50% Special Source Revenue Credits to the residential student housing projects, violates the South Carolina Constitution and the enabling statutes.

II. APPELLANTS POSSESS STANDING.

The Counties also contend that Appellants lack standing. However, Appellants possess both taxpayer standing and public importance standing.

A. Appellants Possess Public Importance Standing.

Appellants' Amended Complaint alleges:

> This Court possesses jurisdiction under the South Carolina Constitution, Art. VIII, § 13(D); and under the following decisions, which address **public importance and taxpayer standing**: ***South Carolina Public Interest Foundation*** *v. South Carolina Transportation Infrastructure Bank,* 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't. of Revenue,* 382 S.C. 572, 677 S.E.2d 16 (2009), ***South Carolina Public Interest Foundation*** *v. Harrell,* 378 S.C. 441, 663 S.E.2d 52 (2008), ***Sloan*** *v. Department of Transportation,* 379 S.C. 160, 666 S.E.2d 236 (2008), ***Sloan*** *v. Hardee,* 371 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County,* 369 S.C. 531, 633 S.E.2d 492 (2006); ***Sloan*** *v. Department of Transportation,* 365 S.C. 299, 618 S.E.2d 876 (2005), ***Sloan*** *v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); ***Sloan*** *v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004); ***Sloan*** *v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), ***Sloan*** *v. School District of Greenville County,* 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County,* 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission,*

> 325 S.C. 79, 480 S.E.2d 72 (1997); and under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.
>
> This action raises Constitutional and statutory **issues of great public importance**, namely the proper interpretation of the South Carolina Constitution and enabling statutes. Plaintiffs ask the Court to grant them standing based upon the **great public importance** of the Constitutional and statutory issues this action raises.

Amended Complaint, par. 6-7 (emphasis added).

The South Carolina Supreme Court has ruled many times that public interest standing should be granted to address issues of great public importance. *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013). This body of case law, in which Plaintiffs have been granted standing in the past informs the case before the Court today.

In *Sloan v. Dept. of Transportation*, the Supreme Court analyzed the public importance exception.

> This Court has noted "the limited nature of the exception for questions of 'imperative and manifest urgency.'" *Sloan v. Greenville County,* 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004) (*Greenville County II*). In *Greenville County II,* we held that **where judicial guidance exists** on the legal issue presented, **there is no imperative and manifest urgency** for an advisory opinion.
>
> **In the instant case, however, there is no case law** specifically addressing the DOT's authorization of an emergency procurement. Because this is a matter of public importance which **could occur** at any time (given the inherent unpredictability of emergencies), we find there is an urgent nature to this issue.
>
> Accordingly, even though the Ladson Road Project was completed in 2005, we will address the other issues raised in the case.

Sloan v. Dept. of Transportation, 379 S.C. 160, 169, 666 S.E.2d 236, 240 (2008).

Similarly, no opinion exists on the issue in the case at bar: whether counties may include residential student housing projects in an "Industrial Park" and grant them a 50%

Special Source Revenue Credit. This issue "could occur at any time."

Twice the Attorney General has been asked for his view of the constitutionality of including residential properties in Industrial Parks, once by the Oconee County Attorney, and once by the Director of the Department of Revenue. To the Oconee County Attorney, the Attorney General gave his opinion that residential property should not be included in a multicounty Industrial Park, but then he advised the Oconee County Attorney: "[W]e believe the County should **institute a declaratory judgment action** in order for a court to decide with finality whether or not residential property may be included in a multicounty park." 2010 WL 1370089 (S.C.A.G.) (March 1, 2010) (emphasis added).

Similarly the Attorney General wrote to the Director of the Department of Revenue:

> [C]onsistent with our prior opinion, we believe **the County should institute a declaratory judgment action** in order for a court to decide with finality whether or not residential property may be included in a multicounty park.

2010 WL 1370094 (S.C.A.G.) (March 17, 2010) p. 2 (emphasis added). Neither party who posed the question to the Attorney General instituted a declaratory judgment action on the issue. Legal research has disclosed no South Carolina case ruling on the question presented in this case: whether the South Carolina Constitution and enabling statutes permit residential student housing projects to be included in an Industrial Park. When there is no South Carolina appellate case addressing an issue, that absence indicates a need for judicial decision.

Further, Respondent City of Columbia alleges that the investment in the favored residential student housing projects **exceeds $200 million** (but yields virtually no jobs and virtually no payroll as the statute anticipates). Accordingly, this is an issue of great public

importance, and Appellants should be granted public importance standing to enable the Court to address this issue.

B. Appellants Possess Taxpayer Standing.

DePass is a Columbia City taxpayer and a Richland County taxpayer, both property taxes and sales taxes, and as such, he is financially affected by the unlawful and unconstitutional tax benefits unconstitutionally granted in this case. Likewise SCPIF has paid City and County sales taxes and therefore possesses taxpayer standing.

> Can it be that, in such case, a number of citizens, tax-payers of a city, cannot be heard against the corporate authorities in a court of equity asking for an injunction against the consummation of the contemplated wrongs, without alleging special damages to themselves individually? There is a certain relation in the nature of agency between the municipal authorities and all tax-payers of the corporation.
>
> * * *
>
> Here **the tax-paying citizens** of Greenville are not the whole public, but comparatively a small part of it. They are not strangers to the municipality. **They, and they alone, are affected by their acts**. As to them this is more in the nature of "a private" than "public" matter.

Mauldin v. City Council of Greenville, 33 S.C. 1, 11 S.E. 434, 435 (1890) (emphasis added). The South Carolina Supreme Court ruled, "We think the plaintiffs had a standing in court, and were entitled to have their case heard on its merits." Id. 11 S.E. at 436. In Mauldin, the South Carolina Supreme Court cited Dillon on Municipal Corporations in support of taxpayer standing. The South Carolina Supreme Court, quoting a case from Maryland, stated,

> [T]he plaintiffs "as **tax-payers** of the city, and others similarly situated, *** **constitute a class especially damaged** by the alleged unlawful act of the corporation, in the alleged increase of the burden of taxation upon their property situated within the city. The complainants have therefore a special interest in the subject-matter of the suit, **distinct from that of the general public**;"

Id., *quoting Mayor, etc., v. Gill*, 31 Md. 375-394 (emphasis added).

In South Carolina, Plaintiffs possess standing to seek an injunction against illegal expenditures.

> The principle is firmly settled in this State that a taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law. *Sligh v. Bowers*, 62 S.C. 409, 40 S.E. 885; *Mauldin v. City Council of Greenville*, 33 S.C. 1, 11 S.E. 434, 8 L.R.A. 291; *McCullough v. Brown*, 41 S.C. 220, 19 S.E. 458, 23 L.R.A. 410; Pom.Eq.Jur., Page 277, Sec. 260; 2 Dill.Mun.Corp., Sec. 736.

Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13, 15 (1939).

The court in *Kirk v. Clark* also noted:

> "Perhaps the most frequent ground of application for relief by injunction against municipal corporations is for the prevention of an illegal or unlawful diversion of public funds. . . . [Courts] will . . . relieve in behalf of citizens and taxpayers against such official acts on the part of such bodies, when they move without authority or warrant of law and in excess of the corporate powers. High on Injunctions, Vol. 2, Sec. 1237."

Id.

The South Carolina Supreme Court has repeatedly acknowledged that a private citizen has standing to contest an illegal action by a governmental body. *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948). In *Shillito*, the plaintiff sued for declaratory and injunctive relief when a tax was illegally collected. Shillito's action was aimed "(a) against the illegality of the tax; (b) against the levying of subsequent assessments under the alleged unlawful tax; and (c) against the disbursement of funds collected from such tax." The Court found that the plaintiff had standing for all three purposes.

> As a rule, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that

> sustained by the public generally. An apparent exception to this rule exists when the Act sought to be enjoined is an unlawful diversion of public funds. 52 Am. Jur., Sec. 3, Page 3. **In such cases, a taxpayer who may be compelled to pay the assessment, or who has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal Act**. The decided preponderance of authority holds that a taxpayer singly or in a class suit, may maintain a suit in equity to **restrain unlawful municipal action** which leads, directly or indirectly, to taxation, and that **a taxpayer**, as specially damaged by the increase of the burden of taxation on his property, **has a special interest**, distinct from the general public, in the subject matter of such a suit **which entitles him to relief**. 52 Am. Jur., Sec. 3, Page 3.
>
> **A citizen and taxpayer has standing as such to contest the expenditure of public funds** under an alleged unconstitutional statute. 52 Am. Jur., Sec. 15, Page 11. Under the foregoing authorities, we are satisfied that the action as brought can be maintained to challenge the validity of this special law **and the alleged unlawful diversion of public funds** to the designated beneficiary.

Id. at 22. (Emphasis added.) Thus, under *Shillito*, the Appellants, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal expenditure.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), two taxpayers sued the Mayor and City Council of Greenwood because they had spent public money for expenses incurred by spouses of the Council members on a trip to the National League of Cities Convention. The taxpayers sought declaratory relief. Council members argued that the taxpayers lacked standing. The court found that the taxpayers had standing to contest the unlawful expenditure. "As in *Lee* [*v. Clark*, 224 S.C. 138, 77 S.E.2d 485 (1953)], respondents, as taxpayers, have an interest in seeing that city officials disburse funds in a lawful manner. They have presented a justiciable controversy under the [Declaratory Judgment] Act, and the demurrer was properly overruled." 285 S.C. at 480.

Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) is a similar holding. A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money

collected for one purpose to a fund set up to address another purpose. The South Carolina Supreme Court ruled, "A taxpayer who . . . has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal act." The Court ruled against the plaintiffs on the merits, but nevertheless found that they had standing as taxpayers to contest the illegal diversion of funds.

These cases finding taxpayer standing were not limited to acts and disbursements which violate some specific provision of the state or federal constitution. These rulings dealt in broad terms with the illegality of the actions, or the unlawful manner in which the funds were spent.

Not only does such a taxpayer have standing; such civil actions are commended by the South Carolina Supreme Court: "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948), q*uoting Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139.

"A taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina." *Sloan v. School District of Greenville County*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Appellants possess standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an illegal act of the Respondents.

Appellants possess both taxpayer standing and public importance standing.

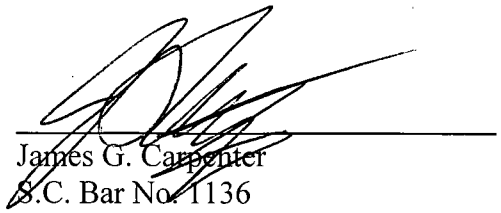
CONCLUSION

Neither the South Carolina Constitution Article VIII, § 13(D), nor the enabling statutes (S.C. Code Ann. § 4-1-170 ff.) authorize Respondents to include residential student housing projects in an Industrial Park, nor do they allow Respondents to grant a Special Source Revenue Credit to residential student housing projects. As the name implies, the I-77 Corridor Regional Industrial Park was created to provide incentives for industry to locate in certain disadvantaged counties and provide an economic stimulus through the creation of high-paying industrial jobs. The statutes contemplate that industry would place qualifying "Projects" in the I-77 Corridor Regional Industrial Park, for the economic betterment of counties.

Including residential student housing projects in the Industrial Park and granting these projects a 50% Special Source Revenue Credit violates Art. VIII, § 13 of the South Carolina Constitution and is unconstitutional and illegal.

WHEREFORE, the Appellants pray the Court to rule that including residential student housing projects in an Industrial Park and that granting them Special Source Revenue Credits violates the South Carolina Constitution, Art. VIII, § 13; and S.C. Code Ann. § 4-1-170 ff.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



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April 6, 2017

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served a copy of the foregoing Appellants' Initial Brief and Designation of Matter to Be Included in the Record on Appeal on opposing counsel by first class mail, postage prepaid, this April 7, 2017, addressed as follows:

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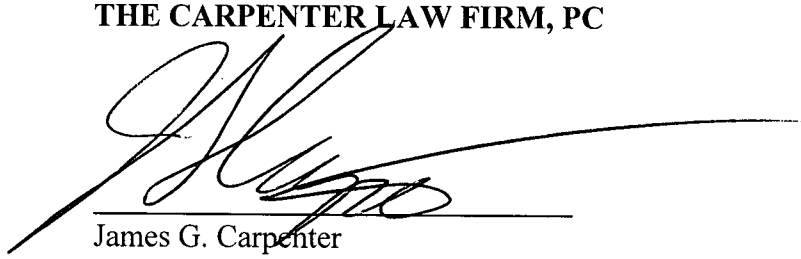
Respectfully submitted,
THE CARPENTER LAW FIRM, PC



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WHEN IT'S WORTH FIGHTING FOR

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April 7, 2017

The Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: *South Carolina Public Interest Foundation et al. vs. The City of Columbia, et al*
Case No. 2017-CP-40-00617

Dear Ms. Kitchings:

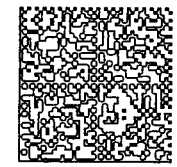
I enclose an original and one copy of the Appellants' Initial Brief, Designation of Matters to Be Included in the Record on Appeal, and Certificate of Service in this matter. Please file-stamp the extra copy and return it to me in the enclosed postage paid envelope.

Thank you very much. If you need anything else, please telephone me.

Sincerely yours,
THE CARPENTER LAW FIRM, PC

James G. Carpenter

Enclosures
CC w/ enclosures: Ray N. Stevens
Burnet R. Maybank III



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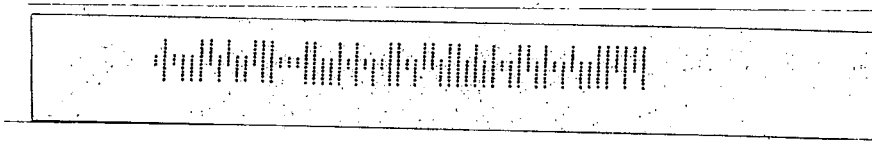

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