THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-000617

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 REPLY BRIEF

May 25, 2017

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INTRODUCTION

Appellants South Carolina Public Interest Foundation and William B. DePass, Jr. submit this Reply Brief to respond to arguments raised by the Respondents. Respondents filed two briefs: one by the Respondents Richland and Fairfield Counties, and another by the Respondent City of Columbia. This is a case of Constitutional and statutory interpretation.

REPLY TO COUNTIES' BRIEF

Respondent Counties attempt to erect artificial procedural barriers to a discussion of the substantive issues. First, the Counties attempt to artificially split the main issue into two separate issues: whether private student dormitories should be placed in the Industrial Park, and whether they should receive 50% Special Source Revenue Credits. The so-called two issues, as articulated by the Counties, are two sides of the same coin. Appellants properly addressed them as such in the Appellants' Brief. Placing the properties into an Industrial Park would be meaningless without the 50% Special Source Revenue Credit. These issues should not be considered in isolation, but rather in conjunction with each other.

Second, the Respondent Counties contend that Appellants have failed to preserve for appellate review the question whether private dormitories (residential properties) for students may be placed in the industrial park. This contention is disingenuous. Appellants' Brief squarely meets this issue throughout. Appellants have adequately and persuasively addressed the issues, and Respondents failed to address them adequately.

REPLY TO CITY'S BRIEF

The City relies almost exclusively on one case which does not address the issue. Second, the City discusses factors and issues that are not related to the central issue: proper interpretation of Constitutional and statutory provisions.

I. APPELLANTS' BRIEF DID CHALLENGE THE SPECIAL SOURCE REVENUE CREDITS.

The Counties contend that "Appellants fail to preserve for appeal the question of whether private dormitories for students are entitled to special source revenue credits." This contention is unfounded. Appellants Brief argues that student dormitories should not be in the Industrial Park, and they should not be awarded Special Source Revenue Credits. These are two sides the same coin. Appellants Brief preserved both sides of this coin. As to Special Source Revenue Credits, Appellants' brief argued:

> "Special Source Revenue Credits . . . also must be 'in the manner and for the purposes set forth in Section 4-29-68.'" Appellants' Brief, p. 4.
>
> "These financial benefits (Special Source Revenue Credits) are afforded only to statutory 'projects'." Appellants' Brief, p. 5.
>
> "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. . . . S.C. Code Ann. § 4-29-10 . . . 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.." Appellants' Brief, p. 5.
>
> 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." Appellants' Brief, p. 6.
>
> "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." Appellants' Brief, p. 8.
>
> "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." Appellants' Brief, p. 9.
>
> "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." Appellants' Brief, p. 9.

"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." Appellants' Brief, p. 14.

"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." Appellants' Brief, p. 15.

"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." Appellants' Brief, p. 15.

Respondent Counties' argument that Appellants did not preserve the issue of whether Special Source Revenue Bonds are illegal and unconstitutional for these private student dormitories, is thoroughly discredited by these quotations from Appellants' Brief.

II. APPELLANTS' BRIEF PRESERVED FOR REVIEW THE QUESTION WHETHER PRIVATE STUDENT DORMITORIES MAY BE PLACED IN THE PARK.

The Counties next attempt to erect a second procedural barrier, which seems to be the exact opposite argument of the first one. This time they contend that the Appellants have failed to preserve the question of whether private dormitories for students may be placed in an Industrial Park. This contention is equally unfounded. Appellants stated the issue as follows:

"Does including residential student housing projects in an Industrial Park violate South Carolina Constitution Article VIII, section 13 and the enabling statutes?"

That statement is about as broad and inclusive as it can be. Rather than reading Appellants' statement fairly, the Respondent Counties focus on one word in the Statement of Issues:

"residential." Appellants argued that including residential student housing projects in an Industrial Park violate South Carolina Constitution Article 8, section 13 and the enabling statutes. Appellants' first point in support of that argument was, "The statutory definition of industrial project does not include residential student housing projects." The focus of the first point was the definition of a "project." Student housing does not meet the definition of a "project." The focus here was not on the word "residential."

Appellants' second point was that student housing projects are not "industry" for Industrial Parks. The second point focused on the statutory definition of "industry." Appellants explained that "industry" did not include student housing. Again, Appellants' focus was **not** on the word "residential;" it was on the definition of "industry," and that student housing projects are not "industry."

Appellants' third point was that student housing fails to bring the economic benefits of "industrial projects." And they don't; but again, the focus was not on the word "residential."

Appellants' fourth point was that the Respondents had stated that the plain meaning of "business and industrial park" excludes housing projects. This argument is based on the plain meaning of the Constitution and statutes, and on the Attorney General's opinions, which were also based on the plain and ordinary meaning of the statutory terms.

Appellants' fifth point under this argument was that student housing projects fail to fulfill the statutory purposes or policies of industrial development projects. Again, this is the statutory interpretation argument and a policy argument based on the purposes of the statute.

Appellants' sixth point under this argument is that the Court should focus on statutory and Constitutional interpretation not political decisions or the wisdom of certain decisions.

Appellants' seventh point was that the statutes must be construed together. Appellants argued that "Respondents have violated Article 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.

Respondents contend that the Appellants focused on one word: "residential." Nothing could be further from the truth. Appellants presented sound arguments based on Constitutional and statutory construction, the policy supporting sound interpretation of the statutes, and the interpretation provided by the South Carolina Attorney General. To contend that Appellants' argument focused on "residential" appears to be an attempt to distract the Court from the real issues in the case, many of which Respondents failed to address.

The Counties refused to meet the substance and heart of Appellants' Brief. Accordingly, 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." Appellants' Brief, p. 19.

III. RESPONDENT COUNTIES FAILED TO ADDRESS SEVERAL ARGUMENTS IN THE APPELLANTS' BRIEF.

The Respondent Counties spent so much of their effort attempting to erect procedural barriers that they failed to adequately address Appellants' arguments. First, they failed to address the repeated and explicit cross-referencing between S.C. Code Ann. § 4-1-170, § 4-29-10, and § 4-29-68. They contend, without statutory support, that the section should not be read together. However, they failed to address the fact that these sections explicitly refer to each other, and they

do so repeatedly. Accordingly the definitions in § 4-29-10 are applicable to the provisions of § 4-1-170, and § 4-29-68.

Second, the Respondent Counties contend in the alternative, and in what seems to be a concession, that the private dormitories meet the definitions of "project" and "industry." In doing so, the Counties failed to address the definition of "mercantile establishments," statutory term that defines and limits the term "commercial business." Private student dormitories or apartments are not a "mercantile establishment." Accordingly, they are not a "commercial business" within the meaning of § 4-29-10.

Furthermore, the definition of "project" incorporates the definition of "industry." Private student dormitories are not "industry," nor did they meet the statutory definition of "project." No matter how Respondents may strain the syntax, private student dormitories simply failed to measure up to "industry" and "project."

The Respondent Counties engaged no meaningful discussion of the Attorney General opinions, but rather they simply dismissed them with a wave of the hand. The Attorney General's opinions were applicable, whether the residential property was taxed at 6% or 4%. The Respondent Counties failed to address this fact. The Attorney General opined that 6% residential property should not be in a Multicounty Industrial Park. His opinion is eminently sound, and based on the plain meaning of the terms. Finally, the Attorney General issued two opinions; but the Respondent Counties quote only one of them, not the one referencing 6% residential property, but only the one referencing 4% property. Although the Attorney General suggested that each party making the inquiry should institute a declaratory judgment action to settle the definition, neither requesting party did so. In addition, the Attorney General was clear and plain that in his opinion

the plain language prohibited the inclusion of residential properties, both 6% property and 4% property, in an Industrial Park.

IV. RESPONDENT CITY OF COLUMBIA RELIES ON ONE CASE, WHICH DOES NOT ADDRESS THE ISSUE.

Respondent City of Columbia spent the bulk of its brief addressing the history of Multicounty Industrial Parks, history the Special Source Revenue Credits, and how high taxes are in the City of Columbia and Richland County. None of these long sections of the City's Brief addresses the issues at hand: whether the Constitution and statutory provisions allow student dormitories in an Industrial Park, and whether they allow Special Source Revenue Credits for private student dormitories.

The City relies on one case: *Horry County School District v. Horry County and the City of Myrtle Beach*, 346 S.C. 621, 552 S.E.2d 737 (2001). The City contends that this case is "entirely dispositive of this litigation." The City grossly overstates the importance of *Horry County*. One can read *Horry County* from one end to the other and never see the issue in this case addressed. *Horry County* was about how to divide up the fees in lieu of taxes that arose from a Multicounty Business Park. The park contained a shopping mall, which meets the definition of a mercantile enterprise. It sells merchandise. S.C. Code Ann. § 49-10(3)(d). Accordingly, it meets the definition of a "commercial enterprise."

However, that issue was never raised or addressed in *Horry County*. The School District brought suit against the County and the City claiming that the School District should receive the same amount of money from the fee in lieu of taxes that it had received from the taxes. The County and the City had decided otherwise, and the School District filed suit. Supreme Court ruled that the statutory language did not require the City and the County to allocate the fee in lieu of taxes in precisely the same manner as they had allocated the taxes. There was no issue about whether a

shopping mall was properly placed in a Multicounty Business and Industrial Park. There was no question about the constitutionality of the Multicounty Business and Industrial Park. It was simply a dispute over how to allocate the fees in lieu of taxes. Accordingly, in this case, City of Columbia's reliance on *Horry County* is misplaced.

Second, like the Counties, the City of Columbia focuses to an extraordinary degree on the word "residential." The focus should be on the statutory language, including "project," and "industry." Private student dormitories satisfy neither definition.

Third, the City's Brief focuses on many things other than statutory interpretation. The City complains that property taxes in Columbia and Richland County are too high. They may be; but the solution is not to grant selective, unauthorized tax breaks. If taxes need to be lowered, they should be lowered for everyone. Granting tax breaks to some taxpayers requires other taxpayers to make up the difference. Finally, the appropriate political solution is always debatable, but this is the case of statutory interpretation, and the statutes, properly interpreted, do not allow tax breaks enacted for and intended for "industry" and "projects" to be used for private student dormitories.

CONCLUSION

Appellants respectfully request the Court to interpret the Constitution and statutes at issue, to rule that private student dormitories do not satisfy the definitions of "project," or "industry." They do not bring the benefits that industrial projects bring; they have no right to be an Industrial Park; and they have no right to 50% Special Source Revenue Credits intended for industrial "projects."

Respectfully submitted,
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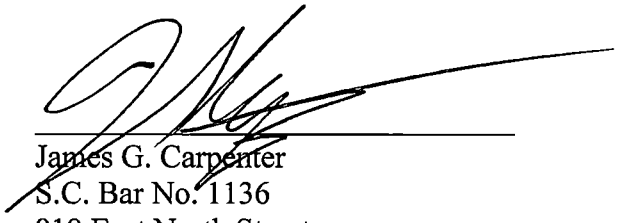

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served a copy of the foregoing Appellants' Initial Reply Brief on opposing counsel by first class mail, postage prepaid, this May 25, 2017, addressed as follows:

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Respectfully submitted,
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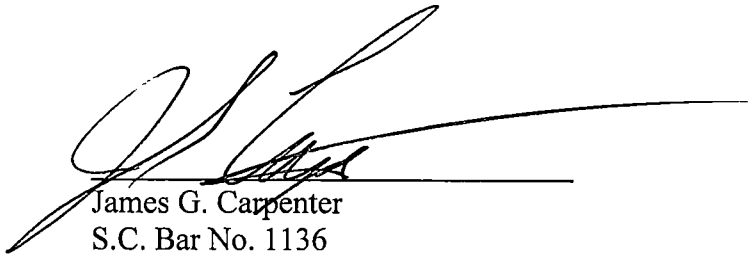

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The Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
PO Box 11629
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Re: *South Carolina Public Interest Foundation et al. vs. The City of Columbia, et al*
Appellate Case No. 2017-000617

Dear Ms. Kitchings:

I enclose an original and one copy of the Appellants' Initial Reply Brief and Certificate of Service in this matter.

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
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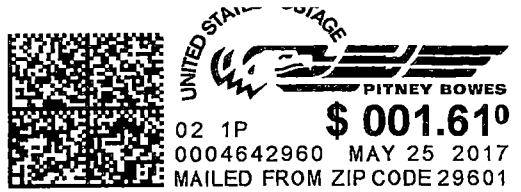

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