

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
Case No. 2016-CP-40-00946

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.

BRIEF OF RESPONDENT CITY OF COLUMBIA

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	2
ARGUMENT.....	10
I. INCLUDING COMMERCIAL STUDENT HOUSING PROJECTS IN A MULTI-COUNTY BUSINESS PARK DOES NOT VIOLATE THE SOUTH CAROLINA CONSTITUTION ART. VIII, SECTION 13 AND THE ENABLING STATUTES	10
CONCLUSION.....	26

TABLE OF AUTHORITIES

CASES

<i>Brandt v. Gooding</i> , 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006)	10
<i>Elliott v. McNair</i> , 250 S.C. 75, 156 S.E.2d 421 (1967)	12
<i>George v. Fabri</i> , 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).....	10
<i>Harris v. Rose’s Stores, Inc.</i> , 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).....	10
<i>Horry County School District v. Horry County and the City of Myrtle Beach</i> , 346 S.C. 621, 552 S.E.2d 737 (2001)	<i>passim</i>
<i>Moore v. Weinberg</i> , 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007)	10
<i>S.C. Tax Comm’n v. South Carolina Tax Bd. of Review</i> , 287 S.C.414, 339 S.E.2d 131 (Ct. App. 1985).....	18
<i>Quirk v. Campbell</i> , 302 S.C. 148, 394 S.E.2d 320 (1990).....	11

STATUTES

S.C. Code Ann. § 4-1-170	<i>passim</i>
S.C. Code Ann. § 4-1-175	<i>passim</i>
S.C. Code Ann. § 4-29-68	12
S.C. Code Ann. § 12-6-3660.....	20
S.C. Code Ann. § 12-6-3665.....	20
S.C. Code Ann. § 12-37-220(A)(5)	<i>passim</i>
S.C. Code Ann. § 12-37-220(B)(35).....	23
S.C. Code Ann. § 12-37-220(B)(47)(a).....	20
S.C. Code Ann. § 12-43-220(c)(1).....	18

OTHER AUTHORITIES

Black’s Law Dictionary	22
City of Columbia Ordinance 17-54.....	20
City of Columbia Ordinance 17-321.....	<i>passim</i>
City of Columbia Ordinance 2014-015	1
City of Columbia Ordinance 2014-019	1
City of Columbia Ordinance 2014-020	1
City of Columbia Ordinance 2014-123	1
City of Columbia Ordinance 2015-109	1
City of Columbia Ordinance 2016-017	1
City Ordinance Art. V	24
City Private Dormitory Ordinance section 17- 321	21

Lincoln Institute, <i>50-State Authority Property Tax Comparison Study</i>	5, 6
Lindsey v. Nirenblatt, Nirenblatt and Hoffman, 1997 WL 436049 (1997).	20
Location Matters: The State Tax Costs of Doing Business, The Tax Foundation and KMPG (2015).....	7
Resolution No. 2014-024.....	2, 3
Resolution No. 2014-045.....	3, 9
Resolution No. 2015-049.....	9
Richland County Council Ordinance 004-14HR	1
Richland County Council Ordinance 005-14HR	1
Richland County Council Ordinance 011-14HR	1
Richland County Council Ordinance 072-14HR	1
SC DOR PLR #97-3.....	<i>passim</i>
South Carolina Property Tax Rates by County (2015).....	4
South Carolina Property Taxes (2016)	20
University of South Caroling Student Headcount / FTE Report.....	7
South Carolina Tax Incentive for Economic Development (2016)	24
Webster’s New World Dictionary (2nd Ed. 1976).....	22
Wordnet.....	22

RULES

Rule 56(c), SCRCP.....	10
Rule 56(e), SCRCP.....	10

CONSTITUTIONAL PROVISIONS

S.C. Const. Art. VIII § 13	<i>passim</i>
S.C. Const. Art. XVI § 1	13
S.C. Const. Art. X § 3(a)	7
S.C. Const. Art. X § 3(b)	7
S.C. Const. Art. X § 3	<i>passim</i>
S.C. Const. Art. X, § 1	<i>passim</i>

STATEMENT OF ISSUE ON APPEAL

DOES INCLUDING LARGE COMMERCIAL STUDENT HOUSING PROJECTS IN A MULTI-COUNTY BUSINESS PARK VIOLATE SOUTH CAROLINA CONSTITUTION ART. VIII, SECTION 13 AND THE ENABLING STATUTES?

STATEMENT OF THE CASE

The instant action involves a lawsuit filed against Richland County and the City of Columbia involving the constitutionality of S.C. Code Ann. §§ 4-1-170 and 4-1-175 and of Richland County Council Ordinance Nos. 004-14HR, 005-14HR, 072-14HR, 011-14HR and City of Columbia Ordinances 2014-015, 2014-019, 2014-020, 2014-123, 2015-109 and 2016-017 arising out of the County's inclusion of certain large student housing projects in a multi-county business park ("the Park") in Richland County, South Carolina. The Park is located in Richland County and all the student housing projects are in the City of Columbia. Richland County had entered into the Multi-County Business Park Agreement with the contiguous County of Fairfield.

The instant action was commenced by the South Carolina Public Interest Foundation, and William B, DePass, Jr., individually, and on behalf of all others similarly situated (hereinafter the "Appellants") on February 16, 2016, seeking declaratory relief and seeking to have the County's Ordinances creating the Park declared unconstitutional or unlawful. The City filed its Answer and Counterclaim, denying that the Ordinances and statutes were unconstitutional. The City, in its Counterclaim, requested the Circuit Court declare that the Richland County and City of Columbia Ordinances creating the multi- county business park and including the student housing projects discussed below were lawful and constitutional. Richland County also filed an answer and asserted additional defenses including standing. The Appellants and Respondents then entered into a Stipulation of Facts and moved for summary judgment and oral arguments were

heard by the Circuit Court, who issued an Order ruling in favor of Respondents. Appellants then filed this appeal.

STATEMENT OF FACTS

The Parties entered into a Stipulation of Facts (R. pp. 354-362), as follows:

1. On or about April 15, 2003, Richland County entered into a Master Agreement governing the I-77 Corridor Regional Industrial Park with Fairfield County, which consolidated all multi-county parks, and any prior agreement governing those multi-county parks, between Richland County and Fairfield County into the I-77 Corridor Regional Industrial Park (“the Park”).
2. Richland County and Fairfield County have added numerous new projects to the Park pursuant to the terms of the Master Agreement and have amended the Master Agreement three times to alter the internal distribution of Richland County’s Park Revenues.
3. On March 4, 2014, The City of Columbia passed Resolution No. R-2014-024.
4. Richland County passed several ordinances which, together with Fairfield County ordinances, included certain student housing projects in the Park. The Ordinances are as follows:

Developer	Project	City Ordinance	Richland County Ordinance	Fairfield County Ordinances
Park 7 Group	Park Place Columbia (Park I)	<u>2014-015</u>	<u>004-14HR</u>	624
Edwards Communities	Greene Crossing (University Residences)	2014-019	011-14HR	632
Park 7 Group	University SC Towers (Park II)	<u>2014-020</u> <u>2015-109</u>	<u>005-14HR</u> <u>051-15HR</u>	<u>624</u> <u>659</u>
Peak Campus	Station at Five Points (Project Peak)	<u>2014-123</u>	<u>072-14HR</u>	642

5. Richland County, by the ordinances referenced above, further authorized a 50% Special Source Revenue Credit (the “Credit”) to the student housing projects located in the Park pursuant to

the terms and conditions of the agreements between Richland County and each of the developers of the student housing projects.

6. The City of Columbia utilized Resolution No. 2015-049 “to sunset the tax credit on December 31, 2015 for previously approved projects or projects submitted.”
7. Following the passage of the City of Columbia’s Resolution No. R-2014-024, several developers obtained approval from the City for their projects in subsequent ordinances (Ordinances Nos. 2014-015, 2014-019, 2014-020, 2014-123, and 2015-109) which provided the City consent to the inclusion of the properties in the Park.
8. After the City consented to the inclusion of the projects in the Park through these adopted ordinances by the City of Columbia, Fairfield County, and Richland County, as detailed below four student housing projects were built or are in the process of being built in the City.
9. The “Park I” development, located at Blossom and 500 Huger Street, consists of a 482,000 square feet of private dormitory development. The project consists of approximately 237 units with 640 bedrooms. The project also includes 480 structured parking spaces.
10. The “University Residences” development is located on the 620 Blossom, 708 Pulaski, and 810 Pulaski Streets. At 347,000 square feet, the project consists of 247 units with 726 bedrooms. The project also includes an 85,000 square feet parking garage with approximately 300 spaces.
11. The “Project Peak” development is located at 2015 Gervais Street, 1225 Harden, and 2000 Lady Street. The project is approximately 367,000 square feet private dormitory development with a 212,000 square feet parking garage. The development consists of 218 units with 660 bedrooms and 574 structured parking spaces.
12. The “Park II” development is located 1001 and 1011 Assembly Street at 1016 Park Street. It

comprises 490,000 square feet of private dormitory development. The development will have 227 units with 684 bedrooms and a 177,000 square feet parking garage with 518 dedicated spaces.

13. All of the projects engage in the continuous activity of letting beds to students through the entering of a lease or other contractual arrangements between the student and the developer or other property manager. **[End of Stipulation]**

A large portion of the City of Columbia's tax base includes exempt properties that pay no property taxes.¹ These include federal, state, county and city properties as well as several colleges and universities. The colleges and universities include the University of South Carolina, Allen University, Benedict College, Columbia College, and Columbia International University. In addition, several large churches are in downtown Columbia (Trinity Cathedral, Greek Orthodox, Washington Street Methodist, St. Peters), as are several Museums and the Richland County Public Library. Richland County includes the large federal military facilities at Fort Jackson and McCrady Training Center.

Richland County has the 19th highest millage rate in South Carolina.² Taxpayers in the City also pay millage imposed by the City of Columbia as well as Richland County School District I and other school districts. As may be seen in the DOR publication, *South Carolina Property Tax Rates by County* (2015), the very large percentage of exempt properties in Columbia as well as Act 388 results in Columbia having one of the highest combined millages in South Carolina. The millage for the City of Columbia (.09610) is actually only slightly above Charleston (.08160) and Greenville (.08530), but the Richland

¹ Exhibit B to Defendant's Motion for Summary Judgment, R. p. 136.

² Exhibit A to Defendant's Motion for Summary Judgment, R. pp. 107-30.

County millage is .12310, whereas Charleston County is .0593 and Greenville is .06640. The combined millage (which includes the school district) for Columbia, however, is 528.2³, versus 403 for the City of Greenville⁴ and 267.6 for the City of Charleston.⁵

Columbia Metropolitan magazine published an article, “Why is it more Expensive here” (Exhibit B to Defendant’s Motion for Summary Judgment, R. pp. 133-38) in November 2014. The article noted that “In 2010, the state Commerce Department prepared a report showing comparable commercial property tax rates among the state’s largest cities. On a central business district worth \$2 million, a Columbia business would have paid about \$52,000 in property taxes at the time of the report, versus \$37,000 in Greenville and about \$28,000 in Charleston.” The article noted that, as stated above, the millage for the cities are similar but the combined millage is much higher in Richland County.

The subject Student Housing Projects are taxed as commercial in South Carolina. Taxes on commercial property in the state of South Carolina are amongst the highest in the United States. The South Carolina Taxation and Realignment Commission (TRAC) noted in December 2010 that property taxes on manufacturers located in the City of Columbia were the highest in the United States.⁶ (TRAC used a study which compared the property taxes on manufacturers located in the capital city of all 50 states as well as three other taxing jurisdictions.) The TRAC report noted that South Carolina has “some of the highest national tax rates on commercial and industrial property, and the lowest tax rates on

³ County Millage of .09560, Richland County School District of .33650 and City millage of .09610.

⁴ County Millage of .06640, Greenville School District millage of .18490 and City millage of .08530.

⁵ County Millage of .05930, Charleston School District millage of .12670 and City millage of .08160.

⁶ Final Report of the South Carolina Taxation Realignment Commission at 14 (December 2010), available at <http://www.scstatehouse.gov/Archives/CitizensInterestPage/TRAC/FinalDocuments/TRACFinalReport.pdf> (hereinafter “TRAC Report”).

residential.”⁷

The study that TRAC utilized, the Lincoln Institute, *50-State Authority Property Tax Comparison Study*, //www.lincolnst.edu// has been updated. The updated study (2016) looked at commercial property tax rates in Columbia and 52 other taxing jurisdictions. (The study looked at the combined millages.) A rank of 1 is the highest property tax rate, and a rank of 53 is the lowest. Columbia was ranked the 8th highest for commercial with \$1 million valued property.⁸

The updated study also looked at the tax differential between residential, commercial and apartments. Page 4 contains a chart for “Preferential Treatment of Homeowners: Ratio of Effective Tax Rate on Commercial and Apartment Properties to the Rate on Homestead Properties (2015).” Columbia was the third highest in the country for Commercial vs. Homestead Ratio.⁹ Stated another way, only residents in New York City and Boston pay more on a \$1 million commercial property relative to the taxes owing on a median-value primary residence than residents of Columbia.

Columbia was second highest in the Apartment vs. Homestead Ratio. Only NYC had a higher ratio. The new study also has a chart for Apartment Property taxes for the largest city in each state. Columbia ranked 8th. Columbia was number 1 (i.e. the highest in the country) for Industrial Property Taxes for largest city in each state payable in 2015.¹⁰

⁷ Id. at 15, 182 (citing South Carolina Department of Commerce, *Property Tax, A Review of Issues in South Carolina* (Bert Shuler)).

⁸ Lincoln Institute, *supra*, Figure 3, p. 23.

⁹ Lincoln Institute, *supra*, Figure 6a, p. 37.

¹⁰ Lincoln Institute, *supra*, Figure 4, p. 28.

The new study also looked at Property taxes on median valued primary residences (homestead) for the largest city in each state.¹¹ The new study broke it out for (1) effective tax rate and (2) tax bill. Columbia had the 46th lowest effective tax rate and the 51st lowest tax bill.¹²

One other study looked at the total state and local taxes imposed upon commercial properties in South Carolina. *Location Matters* is an annual study done by KPMG and the Tax Foundation. It looks at all state taxes (including for example, unemployment insurance) for all 50 states. In addition to ranking manufacturers, the 2015 study looked at 3 entities taxed as commercial, as are the subject student housing projects. These were retail stores, call centers and warehouse facilities. The total taxes on a new retail store in South Carolina was ranked 49th – the second highest in the country.¹³ A mature call center was ranked 41st.¹⁴ A mature distribution center was ranked 49th, with a new distribution center ranked 50th – the highest in the country.¹⁵

The five properties at issue are student housing projects, built to house students at the University of South Carolina as well as Allen University, Benedict College, Midlands Tech, etc. By way of background, the University of South Carolina has some 31,027 students in Columbia.¹⁶ Many live in on-campus dormitories the largest of which include 650 Lincoln (900 students), Capstone (579), Patterson Hall (544) and Bates House (531). Others live in fraternities and sororities. The USC dormitories, being state owned property, are exempt from

¹¹ Figure 2, page 18.

¹² Lincoln Institute, *supra*, Figure 2, p. 181.

¹³ *Location Matters: The State Tax Costs of Doing Business*, The Tax Foundation and KPMG (2015), page 18, available at http://taxfoundation.org/sites/taxfoundation.org/files/docs/TF_LocationMatters_2015.pdf.

¹⁴ *Id.* At 21.

¹⁵ *Id.* At 22.

¹⁶ University of South Carolina Student Headcount / FTE Report, available at <http://ipr.sc.edu/enrollment/prel2016/spring/prelim/pr031016.pdf>.

property taxes.¹⁷ Fraternities and sororities are also exempt from property taxes.¹⁸ The dormitories at Allen University and Benedict and Columbia Colleges are also exempt from property taxes.¹⁹

Given that the above dormitories are completely exempt and pay no property taxes whatsoever, the city sought to recruit private sector developers to construct dormitories which would pay property taxes. The city passed a student housing Resolution No. R-2014-024 (R. pp. 358-59), in part to “slow the growth of tax exempt real property.” *Id.*

The Resolution adopted in March 2014 contained a policy and criteria to consider the inclusion of student housing real property in the Richland County Multi-County Business Park in order to apply Richland County’s Special Source Revenue Credit of 50% to properties located in the city. In order to qualify a project had to have:

1. A minimum private investment of \$40 million;
2. A minimum investment of \$5 million per usable acre;
3. Owe a minimum of \$750,000 in property taxes prior to the application of the Special Source Credit; and
4. Structured parking and infrastructure with no use of public funds.

The Resolution was amended twice and sunsetted on December 31, 2015.²⁰ Section 2 of the Multi-County Business Park Agreements required the developers to “operate the

¹⁷ S.C. Const. Art. X§ 3(a); section 12-37-20(A)(1).

¹⁸ SC DOR Private Letter Ruling #97-3.

¹⁹ S.C. Const. Art. X§ 3(b); section 12-37-220(A)(2). See 1968-9 Op. Atty. Gen. No. 2753 (private colleges and universities are entitled to the exemption.)

²⁰ Resolution No. R-2014-045 and Resolution No. R-2015-049. (R. p. 360-62).

facility as a private dormitory pursuant to the terms of and in compliance with section 17-321 of the Code of Ordinances of the City of Columbia.” Failure to qualify as a private dormitory is an act of default under the agreement.

Student Housing is much more expensive than traditional apartment complexes. Sec. 17-321 – Private Dormitory, places a number of restrictions not found in traditional apartment complexes rented by students, including limiting occupancy to one person per bedroom, an onsite manager available 24 hours a day, seven days a week, and strict on-site parking requirements (0.75 vehicle/0.25 bicycle per person.)

The Resolutions done for each of the developers (identified at R. p. 355) included the terms above, and further required the developers to “operate the facility in a manner which satisfies the requirements applicable to private dormitories under Section 17-321” of the City of Columbia Ordinances. Failure to so operate is an act of default.

The City met with several national housing developers, including Park 7 who pointed out that the property taxes on student housing in Columbia would be amongst the highest of any college or university town in the United States. A Powerpoint presented to City Council by the first developer, Park 7 compared the property taxes in Columbia versus other College towns including Norman, OK, Columbia, MS, Harrisonburg, VA, San Antonio, TX and Tallahassee, FL.²¹ The combined property taxes per-bed in Columbia were higher (in some cases considerably higher) than all the other college towns.

As a result, City Council passed the Resolution referenced above which provided its consent to the 50% Special Source Credit authorized by the county for any student housing

²¹ Exhibit E to Defendant’s Motion for Summary Judgment, R. pp. 146-47.

project which meet the above criteria.

Three national student housing developers, CD/Park 7 Columbia SC Owner, LLC, CD/Park7 Columbia SC High Rise Owner, LLC, Blue Atlantic Columbia, LLC and University Residences Columbia, LLC decided to build student housing projects in Columbia. All three went before Richland County Council as well as Columbia City Council. (As discussed more fully below, under the applicable statute, a city is required to consent to the granting of any SSRC on property located within the city.) Richland County ultimately passed four Ordinances which amended an existing Multi-County Business Park, to include these student housing projects, together with the 50% Special Source Credit. (R. p. 355) The City of Columbia passed four ordinances consenting to the Special Source Credits for each project. (Park 7 had two separate projects.) (*Id.*)

The use of Special Source Credits in Multi-County Business Parks to recruit projects in South Carolina is common. There are currently hundreds of such projects in South Carolina.

ARGUMENT

I. INCLUDING COMMERCIAL STUDENT HOUSING PROJECTS IN A MULTI-COUNTY BUSINESS PARK DOES NOT VIOLATE SOUTH CAROLINA CONSTITUTION ART. VIII, SECTION 13 AND THE ENABLING STATUTES

A. Standard of Review

Summary judgment is appropriate in a case when it appears that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *see also, e.g., Brandt v. Gooding*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). The purpose of summary judgment is to dispose of cases, which do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When faced with a motion for summary judgment, the “adverse party may not rest upon the mere allegations

or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRCF; *see also, e.g., Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party’s case. *Harris v. Rose’s Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993). The subject case was particularly appropriate for Summary Judgment as it involved a single narrow legal issue.

B. Background for Code Sections 4-1-170 and 4-1-175

The ordinances establishing the student housing projects were based on two sections of the South Carolina Code, sections 4-1-170 and 4-1-175, which authorize Multi-County Business Parks. A history of this legislation is found below.

The 1988 Session of the South Carolina General Assembly was one of the most productive in history in terms of laying the statutory framework for modernizing the South Carolina industrial economy which for many years had been so dependent on the textile industry. This General Assembly created the Multi County Business Park incentive (discussed below) as well as Fee-in-Lieu of Taxes. The rationale for both incentives is found in footnote 3 of *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990): “A South Carolina Tax Commission study indicates that South Carolina’s property taxes are second highest among twelve southeastern states.” The *Quirk* opinion noted “the perceived negative effect that this State’s property taxes have upon recruitment of large capital-intensive businesses.” *Id.* at 321.

In 1988, the General Assembly amended the Industrial Bond Act to include the

first Fee-in-Lieu of Taxes Act. The General Assembly subsequently enacted two other forms of fee-in-lieu. This incentive allows a manufacturer, for example, to lower its property tax bill by lowering the assessment ratio on its property from 10.5% to 6%. (Article X, § 1 provides that manufacturers must pay an assessment ratio of 10.5%). The Act accomplished this objective, not by amending the assessment ratio found in Art. X, § 1 (which would have required a constitutional amendment), but rather by providing a procedure whereby the manufacturer transfers title to its plant to the County and then leases it back. The Plant is then exempt from taxation under Art. X, § 3 as county owned property.

USC Law School Professor Bill Quirk subsequently brought a taxpayer's suit alleging that the Fee-in-Lieu Act violated the uniformity provisions of Art. X. Following the earlier case of *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967), the Supreme Court summarily disposed of this argument by noting: "Respondents contend that § 4-29-67 does not violate Article X because the property which is the subject of the negotiated fee is exempt from *ad valorem* taxation under Article X, § 3(a). We agree." The Supreme Court also rejected Quirk's Equal Protection argument.

C. Multi-County Business Parks ("MCBP")

1. Purpose

The major purpose of the MCBP is found in Section 4-1-175, which allows a County to Issue Special Source Revenue Bonds payable from the MCBP Revenues for the purposes set forth in Section 4-29-68. Section 4-29-68 allows the Bond proceeds to be used for the "purpose of paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the issuer and for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the

economic development of the issuer and costs of issuance of the bonds.”

Because the issuance of bonds is expensive and complex, the General Assembly subsequently authorized the use of a Special Source Revenue Credit in lieu of bonds.

Section 4-1-175 now includes:

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.* (Emp. added.)

Counties now authorize the credit-rather than issuing bonds-in the vast majority of South Carolina projects. Richland County, with the consent of the city, utilized this Code section to provide the credits to the subject student housing.

2. Legal Mechanism

In addition to the Fee-in-Lieu Act in 1988, the General Assembly also created the Multi-County Business Park when it ratified Joint Resolution No. 690, which proposed an amendment to Article VIII, Section 13 of the South Carolina Constitution, in accordance with Article XVI, Section 1 of the South Carolina Constitution. The discussion below is taken from the South Carolina Supreme Court’s decision in *Horry County School District v. Horry County and the City of Myrtle Beach*, 346 S.C. 621, 552 S.E.2d 737 (2001) which involved the identical issue in this case, i.e., the constitutionality of including commercial property (a large mall) in a MCBP. The Court’s Opinion noted that the ballot question asked whether Article VIII, Section 13 should be

amended:

[T]o provide that counties, subject to the General Assembly first providing by law for bonded indebtedness and school fiscal ability considerations, may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties where the area comprising the parks and all property having a situs therein is exempt from all *ad valorem* taxation because the owners or lessees of any property situated in the park must pay an amount equivalent to the property taxes or other in-lieu-of payments that would have been payable except for the above exemption[.]

Acts and Joint Resolutions of the General Assembly of South Carolina of 1988, Joint Resolution No. 690 § 2 (emphasis added). This question was subsequently submitted to the qualified electors at the 1988 general election and passed by a majority vote.

Thereafter, on February 8, 1989, the General Assembly passed Act. No. 6 of 1989, which ratified this amendment to S.C. Const. Art. VIII, § 13 of the South Carolina Constitution. In particular, Article VIII, § 13 was amended to read, in its entirety, as follows:

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.

The participating counties shall reduce the agreement to develop and share expenses and revenues of the park to a written instrument which is binding on all participating counties. Included within expenses are the costs to provide public services such as sewage, water, fire, and police protection. Notwithstanding the above provisions of this subsection, before a group of member counties may establish an industrial or business park as authorized herein, the General

Assembly must first provide by law for the manner in which the value of the property in the park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any provision of law which measures the relative fiscal capacity of a school district to support its schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of the taxable property in all school districts of this State.

S.C. Const. Art. VIII, § 13 (Supp. 2015) (emphasis added).

This Constitutional Provision accordingly provided for several major items. First, it completely exempted property in the business park from *ad valorem* taxation, similar to the numerous complete property tax exemptions found in Art. X, § 3 and § 12-37-220. Second, unlike the complete exemptions found in Art. X, § 3 and § 12-37-220, the Provision substituted a fee payment in the amount of the property taxes which would otherwise have been due. The property taxes which would otherwise have been due consist of the millage imposed by the various political subdivisions in which the taxpayer resides. These would always include millage imposed by the County and the local School District. It would also include millage imposed by a City or other political subdivision, as in this case.

Four months later, on June 8, 1989, the General Assembly passed Act No. 139 of 1989, which amended the Code to enable the provisions of new S.C. Const. Art. VIII, § 13, in particular by adding § 4-1-170. This new § 4-1-170, which has been amended three times since 1989, closely tracked the language of the Constitutional Amendment and provides that if the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality prior to the creation of the multi-county industrial park.

D. Are the Use of these two Code sections to create Special Source Credits for Commercial Properties Constitutional?

1. General

Appellants' Brief is based upon a single narrow issue -- whether the subject Ordinances are unconstitutional because they create a Multi-County Business Park and provide Special Source Credits for student housing, which they contend is "residential."

By way of background, S.C. Const. Art. X, § 1 divides all property for property tax purposes into 5 categories: (1) manufacturing; (2) transportation; (3) residential; (4) agricultural; and (5) all other, which is typically referred to as commercial. "Residential" is defined as a person's primary residence as discussed below. A person's second home is taxed as commercial, with a 6% assessment ratio. As discussed below, apartment complexes, including private student housing are taxed as commercial.

The inclusion of commercial property in a Multi-County Business Park with a Special Source Credit is common in South Carolina. The South Carolina Supreme Court held that the inclusion of commercial property (the Mall of South Carolina) in a Multi-County Business Park with a Special Source Credit was constitutional in *Horry County School District v. Horry County and the City of Myrtle Beach*, 346 S.C. 621, 552 S.E.2d 737 (2001). The Horry County School District in that case filed an action alleging that the inclusion of the Mall of South Carolina in a Multi-County Business Park with a Special Source Credit violated several school funding statutes as well as Equal Protection and Due Process. Unless student housing is deemed residential, the Supreme Court's decision in *Horry County School District* is entirely dispositive of this litigation. Both involved the creation of a Multi-County Business Park. Both involved the county granting, and the City consenting to, a Special Source Credit. Both involve non-

manufacturers. Both include entities taxed as commercial.

2. Can “Residential” Properties be included in a MCBP?

The Attorney General has twice been asked to opine whether residential properties may lawfully be included in a MCBP. In Opinion dated March 17, 2010, the Attorney General was asked if “Multi-County Parks may include owner-occupied residential property.” In Opinion dated March 1, 2010, the Attorney General was asked if “residential property ...[which] is to be owner-occupied (4%) or commercial (6%) [i.e. second homes] residential property” may be included in a MCBP.

The March 1st Opinion stated:

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. Nonetheless, because the type of property that may be included in a multicounty park is not specified in section 4-7-170, an argument can also be made that residential property is not prohibited from being included in a multicounty park. Accordingly, we believe the County should institute a declaratory judgement action in order for a court to decide with finality whether or not residential property may be included in a multicounty park.

Appellants’ Brief (p. 12) obviously overstates the opinion by declaring that “The Attorney General concluded that the inclusion of either kind of residential property [primary residences or second homes] in an industrial park was improper.” A declaratory judgment was not filed in either situation. Both opinions are irrelevant, however, as this action does not involve “owner-occupied residential” property.

3. Are the Subject Student Housing Projects “Commercial” or “Residential?”

Appellants’ Brief repeatedly alleges that the subject properties are “residential” and therefore the subject Ordinances are invalid and unconstitutional. That apartment complexes, including student housing, are taxed as commercial and treated as commercial for all purposes, including, e.g., zoning, is so obvious that neither the General Assembly nor the DOR in their various publications have seen fit to explicitly define it as such.

Two Administrative Law Judge decisions dealt with the valuation of apartment complexes. Neither developer claimed that it should be taxed as residential. In both ALC Decisions, the ALC noted, “The income capitalization approach is an accepted means for valuing *commercial property*. *S.C. Tax Comm’n v. South Carolina Tax Bd. of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985). *This approach has been specifically accepted as a reliable method for valuing apartment complexes. See Property Assessment Valuation*, International Association of Assessing Officers, p. 204.”²² As the Circuit Court noted, the uncontroverted affidavit from the Richland County Assessor classified the subject student housing projects as commercial.

4. Property Tax Definition of “Residential”

A legal residence for property tax requires the real property be “owned totally or in part in fee or by life estate and occupied by the owner of the interest.” S.C. Code Ann. § 12-43-220(c)(1). The occupants of the Student Housing Apartment Complexes are renters, not owners. Further, even when the “residence is located on leased or rented property,” the 4% ratio is not available unless “the residence is *owned and occupied* by the owner of a residence on leased property.”

²² Lindsey v. Nirenblatt, Nirenblatt and Hoffman, 1997 WL 436049 (1997) (emphasis added). See also W.O. Brisben Companies v. York County Assessor, 1997 WL 436197 (1997).

§ 12-43-220(c)(1) (emphasis added). The DOR Publication, South Carolina Property Taxes (2016)

summarizes the rules as follows:

§217. Legal Residence. The legal residence and not more than 5 contiguous acres, when owned totally or in part in fee simple or by life estate and occupied by the owner of the interest, is taxed based on an assessment ratio of 4%. The residence must be the domicile of the owner at some time during the tax year.***When the legal residence, including a mobile home, is located on leased or rented property, and the residence is owned and occupied by the owner, the 4% assessment ratio applies for the residence (the assessment ratio for the land is 6%).***The 4% assessment ratio does not apply to any mobile home or residence that is rented.****The 4% assessment ratio does not apply to any business for profit located on the residential property.* See SC Code §§12-43-220(c) and 12-43-221. (Emp. added)

5. Tax Differences between Residential and Commercial Properties

As outlined below, there are major differences between the taxation of residential and commercial, and these differences were amplified by Act 388 of 2006. The equation to calculate property taxes in South Carolina is as follows:

$$\begin{array}{r} \text{(FMV of tax base * Assessment Ratio * Combined Millage)} \\ - \text{(Credits)} \\ \hline \text{Property Tax Bill} \end{array}$$

FMV and combined millage are calculated the same for residential and commercial. There are significant differences, however, in the assessment ratio, credits and the tax base.

a. Assessment Ratio

The assessment ratio for the primary legal residence is 4%.²³ The assessment ratio for apartment complexes and other commercial, as well as second homes and primary residences rented for more than 70 days is 6%.²⁴ The assessment ratio for commercial real

²³ Art. X, § I; and S.C. Code § 12-43-220(c)(7).

²⁴ Art. X § I (5). See section 12-43-220(c)(7) relative to second homes and primary residences rented for more than 70 days.

property is 6% and the assessment ratio for business personal property in a commercial business is 10.5%.²⁵

b. Credits/Exemptions

(i) School Operating

Primary residences, as result of Act 388, no longer pay taxes for school operating expenses.²⁶ Owners of second homes and commercial property do not enjoy this exemption.

(ii) Homestead Exemption

Persons over the age of 65, totally and permanently disabled or blind, receive a \$50,000 Homestead exemption as well as a 4% assessment ratio on their residences.²⁷ Owners of second homes and commercial property receive no such exemption.

(iii) Household Furnishings

Art. X, § 3 exempts from property taxation all household goods and furniture in the home of the owner of the goods and furniture.²⁸ Section 3 goes on to state that this exemption “shall not apply to household goods used in hotels, rooming houses, apartments or *other places of business.*” (Emp. added). Commercial businesses, including student housing, accordingly pay business personal property taxes on their personal property at a ratio of 10.5%.²⁹

(iv) Insurance Premiums

The General Assembly provides various tax credits to owners of primary residents which it does not provide to commercial properties. *See* §§ 12-6-3660 and 12-6-3665 (hurricane retrofit income tax credits for primary residences) and § 12-6-3670 (credits for excess property insurance

²⁵ See generally, DOR, *South Carolina Property Tax* (2015) at section 219.

²⁶ S.C. Code § 12-37-220(B)(47)(a).

²⁷ S.C. Const. Art. X, § 3U) and sections 12-37-220, -250, -252 and -290.

²⁸ Section 12-37-220(A)(5).

²⁹ *South Carolina Property Tax*, supra at section 219.

premiums).

6. Other Differences

The City of Columbia, like virtually every city, has different zoning for residential and commercial buildings. City of Columbia Ordinance 17-54 (R. p. 156) defines both “residential”³⁰ and “commercial” districts.³¹ The City Private Dormitory Ordinance section 17-321 (R. p. 141) provides that private dormitories are permitted in the following zoning districts:

C-3- General Commercial District

C-4 - Central Area Commercial District

C-5- Central Business District

M-1 - Light Industrial District

M-2- Heavy Industrial District

MX-2- Mixed Use Urban; and

RG-3- Townhouse and High-Rise Residential District II³²

They are not permitted in RS-1, Single Family Residential, RS-2, Single Family Residential District, RG-1, General Residential District or RG-2, General Residential District.

The City of Columbia, again like virtually every other city, charges different water rates depending upon the type and amount of usage. See City Ordinance Art. V- Water and sewer rates. The Ordinance establishes three rate classes - Residential, Irrigation and “All Others.” Apartment Complexes pay under “All Others.”

Section 23-148 of Art. V establishes nine categories for sewer tapping fees, including Single Family Residence, Single Family mobile home, hotels and motels and “All Others.”

³⁰ Ordinance Sec. 17-54 (i)(i)

³¹ *Id.* at (i)(2).

³² These Districts are defined in Ordinance Sec. 17-231, District Enumerated, Exhibit C.

Apartment Complexes fall under “All Others.”

Sewer Service Rates, per section 23-149, are separately charged according to whether the facility is a single family residence, “Apartments and trailer parks,” or “Hotels, motels dormitories and rooming houses.”

In summary, as the Circuit Court order notes, apartment complexes are not treated as residential for either zoning, water or sewer rates.

7. Is Student Housing a “Business?”

Appellants’ Brief references manufacturers locating in Multi-County Industrial Parks and the thrust of his argument is that only manufacturers may receive the benefits of a MCBP, and that student housing is “residential.” However, the Constitutional Amendment and section 4-1-170 reference “industrial *or business park.*” (Emp. added.) Appellants’ Brief necessarily assumes that for-profit student housing is not a “business.”

While section 4-7-170 does not specify what type of property can be included in a park, the Constitution and the statute allow for the creation of a “business” park. Black’s Law Dictionary defines “business” as “a commercial enterprise carried on for profit.” According to Webster’s New World Dictionary (2nd Ed. 1976), the plain and ordinary meaning of the term “business” is “a commercial...establishment; store, factory, etc.” *Id.* at 192. Law.com defines “business” as “any activity or enterprise entered into for profit.” Webster’s also defines “business” as “the activity of making, buying, or selling goods or providing services in exchange for money.” Wordnet defines “business” in part as “the activity of providing goods and services involving financial and commercial and industrial aspects.”

Art. X § 3(e) of the South Carolina Constitution, which exempts from property taxation “all household goods and furniture used in the home of the owner of such goods and furniture,” specifically excludes from the exemption, “household goods used in hotels, rooming houses, *apartments or other places of business.*” (Emp. added.) *See also* §§ 12-37-220(A)(5) and (B)(35).

The subject student housing projects involve the for-profit renting of rooms to students and others. The major difference between the subject properties and any apartment complex is that the buildings must conform with the City’s stricter student housing ordinance. Obviously, apartment complexes owned and leased to tenants by private sector for profit businesses are “businesses.”

Apartment complexes including student housing are required to file “business” personal property tax returns with the DOR as well as pay municipal “business” licenses.

As stated above, apartment complexes, including student housing are not treated as residential for either zoning, water or sewer services by the City of Columbia.

8. Student Housing Capital Investment

Appellants’ Brief (pp. 10-11) alleges that “residential student housing projects fail to bring the economic benefits of ‘Industrial Projects.’” Specifically, Appellants allege that “[r]esidential student housing projects would not support any ‘legislative purpose of attracting large capital-intensive industries to this state’” and that “[r]esidential student housing projects would not induce ‘large industries’ to make new or expanded investments in South Carolina.” (*Id.* at 11).

Regarding “large industries” and “Industrial projects,” attached as **Exhibit A** is the 2016 Annual Report of the Coordinating Council for Economic Development. It lists all the industrial projects which received state incentives in 2016. Of the 63 projects listed in the Annual Report,

47 (or 74%) had a smaller projected capital investment than the minimum \$40 million required by the City of Columbia Student Housing Ordinance.

Appellants' Brief also repeatedly cites employment figures but the Record does not include Student Housing job totals.

9. Impact of Chapter 29, Title IV

The thrust of Appellants' argument is that "In order for a 'project' to be entitled to a Special Source Revenue Credit..., it must meet the qualification of a 'Project' in Chapter 29 of Title IV."

South Carolina has so many economic development incentives that they get confusing. The two major property tax incentives are MCBP and fee-in-lieu. This case involves a MCBP but not a fee-in-lieu. They are often used together (but not in this case). MCBP and fee-in-lieu are two separate incentives. The DOR publication, *South Carolina Tax Incentive for Economic Development* (2016), at p. 201, discusses MCBP as follows:

Multi-County Industrial Parks

South Carolina Code §4-1-170 provides that a joint industrial or business park (referred to as a multi-county industrial park) can be established by two or more counties pursuant to a written agreement between those counties, as provided in Section 13 of Article VIII of the South Carolina Constitution.

The multi-county park area is exempt from property tax. The owners of any property in the park will pay a fee in the amount equal to the property taxes that would have been due and payable if the property was not in a multi-county industrial park, *unless the parties agree to a negotiated fee-in-lieu of property tax*. The fee is treated like a property tax for purposes of collection and enforcement and the owners must file returns as if the fee were a property tax. *See Negotiated Fees in Lieu of Property Taxes, Chapter 6 for a detailed discussion of negotiated fees in lieu of property taxes.* (Emp. added).

The above discussion references the separate fee-in-lieu incentive, which is discussed on

page 214 of the DOR's publication as follows:

Negotiated fees in lieu of Property Taxes and Comparison Chart

1. Introduction

General Information. Under Article X of the South Carolina Constitution, manufacturers' real or personal property is assessed at 10.5% of its fair market value. Commercial personal property is assessed at 10.5%, while commercial real property is assessed at 6%. To promote the growth of manufacturing within this state, the Legislature enacted three Fee in Lieu of property tax statutes (referred to as "Fee in Lieu" or "Fee").

The first Fee in Lieu statute was enacted in South Carolina Code §4-29-67 and is commonly referred to the "Big Fee." The second statute is contained in Chapter 12 of Title 4 and is commonly referred to as the "Little Fee." The third statute is contained in Chapter 44 of Title 12 and is referred to as the "Simplified Fee." (Emp. added).

Appellants' entire discussion of "Industrial Development Projects" relates to Title IV, Chapter 29. This Title and Chapter consists of the state's Industrial Revenue Bond Act which was passed in the 1960s. As the DOR publication explains above, when the General Assembly enacted the first fee-in-lieu provision, it amended Chapter 29 to incorporate the "Big Fee." The General Assembly subsequently adopted two other forms of fee-in-lieu in Title 12, the state tax act.

This litigation does not involve either industrial revenue bonds or the "Big Fee." (As stated above, the student housing projects are not in a fee-in-lieu.)

The subject Ordinances were passed pursuant to sections 4-1-170 and -175 – not Chapter 29 of Title IV. Section 4-1-175 does cross-reference "the manner and for the purposes set forth in Section 4-29-68." Section 4-29-68 authorizes the issuance of bonds or Special Source Credits for "the operation of a manufacturing or *commercial* enterprise." (Emp. added).

Section 4-29-10 contains definitions. It defines an "eligible project" as an "enterprise engaged in commercial business, including, but not limited to, wholesale, retail, or other

mercantile establishments.” It’s not clear what application – if any – section 4-29-10 has to MCBPs formed under sections 4-1-170 and -175, but it’s hard for the statute to be much broader. It includes “but not limited to” (1) commercial; (2) wholesale; (3) retail; and (4) mercantile establishments. The student housing projects are commercial.

Appellants’ Brief makes much over the fact that this statute also includes residential and mixed use developments of two thousand five hundred acres or more. True, the subject properties in this litigation are not 2,500 acres or more – but nor are they residential or mixed use.

Interestingly, neither the Attorney General in its two Opinions nor the South Carolina Supreme Court in the Horry County decision have even cited Chapter 29 of Title IV. In any event, the subject projects meet those requirements.

CONCLUSION

The SC Constitution and Sections 4-1-170 and -175 authorize counties with the consent of any municipality to create Multi-County Business Parks and provide Special Source Credits for any businesses included in the Park. The South Carolina Supreme Court has already ruled that it was constitutional and valid for a county to include a mall taxed as commercial in such a park and receive a Special Source Credit.

In order to distinguish this case from the Horry County Supreme Court decision, Appellants’ allege that the subject student housing projects are “residential.” While people spend the night in such facilities – as they do in hotels and apartment complexes – student housing, hotels and regular apartment complexes are treated as commercial for all purposes (e.g. taxes, zoning, etc.).

The South Carolina Supreme Court decision in *Horry County School District v. Horry County and the City of Myrtle Beach*, 346 S.C. 621, 552 S.E.2d 737 (2001) is entirely on

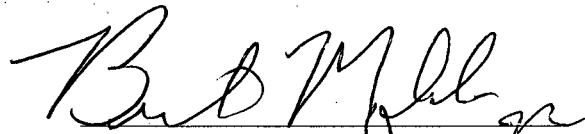
point and disposes of this litigation.

Were the Court to rule otherwise (i.e., that student housing is residential) it would create a torrent of litigation, including the filing of property tax appeals and refund claims by the owners of every hotel, motel and apartment complex in South Carolina. It will create numerous other issues including zoning, and even water and sewer rates, which have different rate schedules for residential versus commercial use.

It is obviously entirely appropriate for the City and County to slow down the growth of exempt properties which pay no property taxes whatsoever and replace it with private sector dormitories which will pay property taxes.

This Respondent asks the Court to affirm the Circuit Court's Ruling that the inclusion of commercial student housing projects in a Multi-County Business Park does not violate South Carolina Constitution Art. VIII, Section 13.

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December 4, 2017

Attorneys for Respondent City of Columbia

EXHIBIT A

**2016 ANNUAL REPORT OF THE COORDINATING COUNCIL FOR ECONOMIC
DEVELOPMENT**



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Robert M. Hitt III
Secretary

**TO: Michael McInerney, Director of External Affairs
South Carolina Department of Commerce**

**FROM: Alan D. Young, Executive Director,
South Carolina Coordinating Council for Economic
Development
South Carolina Department of Commerce**

DATE: March 11, 2017

**SUBJECT: Economic Development Set-Aside Fund,
Governors Closing Fund and
Rural Infrastructure Fund Activity for 2016**

On behalf of the South Carolina Coordinating Council for Economic Development, I am pleased to submit the 2016 Annual Report of Fund Activity. In accordance with Sections 12-10-85(D) and 12-28-2910(E), this report details activities of the Council regarding the Economic Development Set-Aside Fund, the Governor's Closing Fund and the Rural Infrastructure Fund. These funds are managed by the South Carolina Department of Commerce's Grants Administration Division. Please forward to the Governor's Office, the Budget & Control Board, the Senate Finance Committee and the House Ways & Means Committee.

I am available at 803-737-0448 should you have questions or need additional information.

cc: The Honorable Robert M. Hitt III, Secretary, SC Department of Commerce
Chairman, Coordinating Council for Economic Development
Hartley Powell, Director, SC Department of Revenue
Chairman, Coordinating Council Enterprise Committee
The Honorable Hugh E. Weathers, Commissioner, SC Department of Agriculture
Ralph A. Odom, Jr., Chairman, State Board for Technical and Comprehensive
Education
William M. Blume, Jr., Chairman, SC Research Authority
Michael W. Nix, Chairman, Jobs Economic Development Authority
W. Leighton Lord III, Chairman, Santee Cooper
Duane N. Parrish, Director, SC Department of Parks, Recreation and Tourism
Patrick W. McKinney, Chairman, State Ports Authority
Cheryl M. Stanton, Director, SC Department of Employment and Workforce
Christie A. Hall, Secretary, SC Department of Transportation

Enclosure

**South Carolina
Coordinating Council for
Economic Development**

**2016 Annual Report of
Economic Development Set-Aside Fund,
Governor's Closing Fund and
Rural Infrastructure Fund Activity**

March 2017

**SC Coordinating Council for Economic Development
2016 Report of Economic Development Set-Aside Fund,
Governor’s Closing Fund and Rural Infrastructure Fund Activity**

Table of Contents

Overview of the Coordinating Council for Economic Development 2

 Council Responsibilities and Membership 2

 2016 Administrative Changes..... 3

Coordinating Council for Economic Development State Grant Funds 5

 Overview of State Grant Funds 5

 Economic development Set-aside 5

 Governor’s Closing Fund..... 5

 Rural Infrastructure Fund..... 6

 Types of Projects Funded 6

 Applicant Eligibility 7

 2016 Jobs Tax Credit Designations 7

 Funding Process 8

 Funding Considerations 8

 Funding Guidelines for Business Development Grants 9

 Funding Process 9

 Eligible and Ineligible Activities 10

Set-Aside 10

Rural Infrastructure Fund..... 11

2016 Coordinating Council Funding Activity And Accomplishments 13

 Business Development 13

 Community Development 17

Grant Program Compliance 18

 Monitoring 18

 Procurement 18

OVERVIEW OF THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT

The Coordinating Council for Economic Development (“Council”) was formed in response to a general need for improved coordination of efforts in the area of economic development by those state agencies involved in the recruitment of new business and the expansion of current enterprises throughout the State. Formally established in 1986 by the General Assembly (SC Code § 13-1-1710), the purpose of the Council is to enhance economic growth and development in the State through strategic planning and coordination. As such, the Council is chaired by the Secretary of Commerce. Ten additional members are drawn from other state agencies involved in economic development, and the member agency heads are either board chairmen or cabinet officials.

The Council’s administrative staff is housed in the Grants Administration Division of the South Carolina Department of Commerce (“Department of Commerce”), which manages the Council’s state grant funds as well as the Enterprise Zone programs. Grants Administration also manages two federal grant programs, the Community Development Block Grant and Appalachian Regional Commission programs.

The Department of Commerce Division of Small Business and Rural Development assists with projects that are eligible for the Rural Infrastructure Fund (“RIF”) program. If the Council approves a RIF grant award, the Grants Administration Division administers the funds and the Small Business and Rural Development Division works with the county to ensure successful implementation of the project.

COUNCIL RESPONSIBILITIES AND MEMBERSHIP

By statute, the full body of the Council is required to meet at least quarterly. Its responsibilities include: establishing guidelines and procedures for all Council programs; implementing the state’s strategy for economic development; reviewing and approving all applications for grants from the Economic Development Set-Aside, Rural Infrastructure, Governor’s Closing and Tourism Infrastructure Funds; and reviewing and approving all applications for Enterprise Zone Job Development Credit and all applications for International Trade Incentives. The Council also certifies economic development projects as representing “significant economic impact” on areas surrounding them for the purposes of qualifying for income tax apportionment and income tax moratoriums. In addition, the Council provides recommendations to the South Carolina Infrastructure Bank regarding projects that will have a positive impact on economic development in the State.

Following enactment of the Enterprise Zone legislation in 1995, the Council formed a specialized, five-member subcommittee (“Enterprise Committee”) to handle the substantial volume of new activity and related policy decisions. This committee meets monthly to review and approve

applications for Enterprise Zone incentives and applications for International Trade incentives, and to respond to issues and recommend policies for adoption by the full Council at its quarterly meetings. Current membership of the Council is shown below.

AGENCY MEMBERS OF THE COORDINATING COUNCIL

SC Department of Commerce	*SC Department of Revenue
Santee Cooper	*SC Department of Agriculture
SC Department of Transportation	*SC Department of Parks, Recreation and Tourism
SC Research Authority	*State Ports Authority
Jobs Economic Development Authority	*State Board for Technical & Comprehensive Education
SC Department of Employment and Workforce	

**Denotes Enterprise Committee member*

2016 ADMINISTRATIVE CHANGES

Robert M. Hitt III, who was appointed Secretary of Commerce by Governor Haley in January 2011, acted as Chairperson of the Council throughout 2016. Rick Reames III was appointed Director of the SC Department of Revenue by Governor Haley in July 2014 and chaired the Enterprise Committee for the remainder of 2014 and through 2016.

Council membership in calendar year 2016 was as follows:

Robert M. Hitt III	Secretary, SC Department of Commerce Chairman, Coordinating Council for Economic Development
Rick Reames III	Director, SC Department of Revenue Chairman, Coordinating Council Enterprise Committee
Cheryl M. Stanton	Director, SC Department of Employment and Workforce
Hugh E. Weathers	Commissioner, SC Department of Agriculture
Ralph A. Odom, Jr.	Chairman, State Board for Technical and Comprehensive Education
William M. Blume, Jr	Chairman, SC Research Authority
Michael W. Nix	Chairman, Jobs and Economic Development Authority
W. Leighton Lord III	Chairman, Santee Cooper
Patrick W. McKinney	Chairman, State Ports Authority
Duane N. Parrish	Director, SC Department of Parks, Recreation and Tourism
Christie A. Hall	Secretary, SC Department of Transportation

Current Council staff:

Alan D. Young	Executive Director, Coordinating Council
Cynthia S. Turnipseed	Legal Counsel, Coordinating Council
Dale Culbreth	Senior Program Manager, CCED Grant Programs
Marcella Forrest	Senior Program Manager, Enterprise Zone Program

COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT STATE GRANT FUNDS

OVERVIEW OF STATE GRANT FUNDS

ECONOMIC DEVELOPMENT SET-ASIDE

In 1987, the General Assembly passed a bill that provided for an additional 3 cents per gallon tax on the sale of gasoline in the State. The General Assembly charged the Council with administering this new initiative known as the Economic Development Set-Aside Program (“Set-Aside”). The Set-Aside Fund is dedicated to improving the economic well-being of the State by providing funds to local government to develop the infrastructure necessary for new and expanding business. At inception, the fund was created from the first \$10 million received through State gas tax revenues. The annual \$10 million appropriation was later increased to \$18 million, and then in July 2006, to \$20 million. The funding source was also changed to be split between utility and gas tax revenues. By 2008, utility taxes were the sole funding source and Set-Aside revenue was capped at \$20 million.

During calendar year 2016, the Set-Aside Fund received \$18 million in utility tax receipts toward both the FY 15-16 and FY 16-17 appropriations. Transfers out of the fund for program administration and GIS totaled \$460,000.

GOVERNOR’S CLOSING FUND

The Governor’s Closing Fund (“Closing Fund”) was created in 2006 when additional, more flexible funding was needed to assist with high impact economic development projects. Funding was originally dependent on annual appropriations from the General Assembly, which included an initial \$7 million for FY 06-07 and a second \$7 million for FY 07-08, but additional appropriations were limited in some years. To meet the need for adequate funding for economic development projects, and “to provide maximum flexibility to encourage the creation of new jobs and capital investment,” the General Assembly voted to give the Council the authority to “transfer economic development funds at its disposal to the Closing Fund.” This provision was first included in the General Appropriations Bill for Fiscal Year 2009-2010 in Proviso 40.30. Transfers must be approved by a majority vote of the Council members in a public meeting.

For Fiscal Year 2015-2016, the Council received \$11 million in appropriations and the Council transferred \$11 million to the Closing Fund out of the Set-Aside Fund, the Rural Infrastructure Fund and the RIF Reserve to assist with major economic development projects. An additional \$5 million was recaptured or repaid, bringing total funding for the year to \$29 million. Partially offsetting these receipts was an interagency loan to Public Railways that will be repaid in future years.

RURAL INFRASTRUCTURE FUND

The South Carolina Rural Development Act was enacted by the legislature in 1996 (SC Code § 12-10-80). This act established the Rural Infrastructure Fund (“RIF”) with the purpose of providing financial assistance to local governments, primarily in rural counties, for infrastructure and other economic development activities. The goal of the RIF program is to promote and encourage economic growth and prosperity in the State’s rural areas.

Enabling legislation gave the Council responsibility for funds generated by the provisions of the Rural Development Act, as well as for developing policies and procedures. Funding comes from companies participating in an Enterprise Zone Revitalization Agreement with the Council, which permits companies to claim a refund for a portion of the employee state payroll tax withholding sent to the Department of Revenue each quarter. This refund is designated as a Job Development Credit (“JDC”) and may be used by the company to offset certain eligible company expenses, such as real property expenses, associated with its new or expanded operation.

Participating companies located in Tier IV counties, which are generally the least developed counties in the state, are eligible to claim a refund of 100% of the JDCs to which they are entitled under their Revitalization Agreement. Participating companies in Tier III and II counties may claim only 85% and 70%, respectively, of the JDCs for which they are otherwise eligible, and in the most developed Tier I counties participating companies may claim only 55%.

The JDC funds which participating companies cannot claim as a result of being located in a Tier I, II or III county are the source of funding for the RIF grant program. The Department of Revenue collects and transfers these monies to the RIF each quarter. During Fiscal Year 2015-2016, deposits received from the Department of Revenue for the RIF fund totaled \$18 million, plus \$2.7 million received that was in excess of \$10 million and reserved for developed counties as required (per SC Code § 12-10-85). Transfers out of the fund included \$600,000 for program administration, and \$500,000 to satisfy a legislative mandate.

TYPES OF PROJECTS FUNDED

The purpose of both the Set-Aside and Closing Funds is to assist companies in locating or expanding in South Carolina. Together, these programs provide funding necessary to encourage competitive projects to locate or expand in South Carolina. Generally, “but for” or without Council participation, these projects would not locate or expand in South Carolina. Set-Aside grants are used primarily to fund land acquisition, road improvements, water and sewer infrastructure and site preparation costs related to business location and expansion. Closing Fund grants are more flexible and can be used to meet a wider variety of economic development project needs.

For counties that are eligible for RIF funding, RIF can be used for economic development project assistance, as well as assistance needed to prepare the state’s most rural areas to support economic development. Initially, RIF funds were used primarily for “product development,” but in 2005 the Council adopted a formal investment strategy that broadened the use of RIF funds to other types of activities necessary to improve economic competitiveness.

Accomplishments for RIF are described both in terms of grants used for business development assistance, which are tied to jobs and investment, and for more general community development, encompassing product development activities such as industrial parks and sites, as well as community revitalization and workforce development.

APPLICANT ELIGIBILITY

The Council can approve Set-Aside and Closing Fund assistance for projects anywhere in the state, regardless of location or county status. RIF, on the other hand, is geographically targeted according to the program's enabling legislation. Generally, only local governments located in counties designated as Tier III or Tier IV for Jobs Tax Credit purposes are eligible for RIF funds, except that when annual deposits exceed \$10 million, up to 25% of the amount over \$10 million must be made available to counties qualified as Tiers I or II for projects that will benefit underdeveloped areas of those counties (SC Code of Laws §12-10-85).

The four-tier "development level" of counties for the "Jobs Tax Credit" is a ranking determined by the Department of Revenue and published at the beginning of each calendar year. The criteria for this determination was established by the legislature (SC Code of Laws §12-6-3360.) The rankings for 2016 are shown below.

2016 JOBS TAX CREDIT DESIGNATIONS

TIER IV 100%	TIER III 85%	TIER II 70%	TIER I 55%
Allendale	Abbeville	Anderson	Aiken
Bamberg	Cherokee	Calhoun	Beaufort
Barnwell	Chester	Edgefield	Berkeley
Clarendon	Chesterfield	Florence	Charleston
Dillon	Colleton	Georgetown	Dorchester
Hampton	Darlington	Greenwood	Greenville
Lee	Fairfield	Kershaw	Lexington
Marion	Horry	Newberry	Richland
Marlboro	Jasper	Oconee	Saluda
Orangeburg	Lancaster	Pickens	York
Union	Laurens	Spartanburg	
Williamsburg	McCormick		
	Sumter		

FUNDING PROCESS

FUNDING CONSIDERATIONS

For competitive economic development projects, the Council considers funding for projects on an individual basis and evaluates each of the following when determining whether funding is an appropriate and effective use of state grant funds:

- Competitiveness of the project;
- Number and type of jobs created;
- Type of industry (e.g., manufacturing, distribution, corporate headquarters, research and development);
- Unemployment rate in county where the project locates;
- Total invested dollars (land, building, machinery and equipment costs);
- Cost of the project;
- Cost-effectiveness of the project;
- Future tax revenues anticipated;
- Time frame for completion of construction of the facility;
- Infrastructure needs of the region;
- Funding sought from other sources;
- Financial viability of the company; and
- Company status as a good corporate citizen.

For RIF community development and product development grants, the Council considers a variety of factors, including:

- Economic viability of the project;
- Cost effectiveness of the project activities;
- Benefit to the state/region/county/municipality;
- Ability of local government(s) to carry out and maintain the project; and
- Ability to proceed to completion within a reasonable period of time.

The RIF project must also support the implementation of a county's strategic development plan, or be directly related to economic development in the area, and must demonstrate local political and public support. The Council also looks for significant community financial support and will typically not approve 100% of any request for RIF assistance. To ensure this, projects are considered for RIF funding only once all other available sources of funding have been committed. There generally must be a demonstrable shortfall that cannot be met without RIF assistance.

FUNDING GUIDELINES FOR BUSINESS DEVELOPMENT GRANTS

- Council business development funding approval is tied directly to specific economic development projects with new job creation and capital investment.
- As a general rule, funding is limited to \$10,000 per new job created, but assistance may be higher where more substantial economic benefit is anticipated.
- A Department of Commerce Business Development project manager must be actively involved in the recruitment of the economic development project for which funding is requested.
- Without Council funding, the project will not locate or expand in South Carolina.
- Performance Agreements are required for all Council grant funds used as economic development tools to help recruit new or expand existing employers in the state. If the company fails to meet either the job or the capital investment guarantee, the use of Performance Agreements provides the Council with the ability to recapture funding by requiring pro-rata repayment of grant funds.

FUNDING PROCESS

For business development grants awarded from any funding source, the process is integrated with the Business Development project activities and functions of the Department of Commerce.

1. The Department of Commerce Business Development Division works with local governments to identify specific funding needs for projects. In rural counties where RIF funding may be used for business development purposes, the Small Business and Rural Development Division may liaison with the county. Preliminary details such as cost estimates, project scope, company financials and number of jobs and level of investment expected are submitted to Business Development.
2. Preliminary information is reviewed by the Council staff, and if it is determined that the project is consistent with the economic development goals of the State and meets established evaluation criteria, the local government is invited to submit a formal application for funding.

The remainder of the process is similar for both business development and non-business development grants:

3. Applications are submitted to the Department of Commerce Grants Administration Division and processed by staff. The related requests for funding are presented to the Council at its quarterly meetings.
4. The Council has the discretion to approve or disapprove all funding requests and may negotiate funding terms and amounts as it sees fit.
5. If funding is approved, approval letters and grant award agreements are sent to the local government. The grant award agreements must be signed by representatives with the authority to enter into contracts on behalf of the local government. Once signed, the agreement becomes an executed contract between the Council and the local government, containing the specific requirements and provisions associated with the grant award.

6. For business development projects, performance agreements are also required. These are contracts between the company, the local government applicant and the Council, and as such, they must be signed by company representatives that have the legal authority to enter into contracts on behalf of their respective entity. Performance agreements contain specific requirements for job creation and new capital investment.
7. The Council staff reviews all signed agreements and maintains copies in its grant files.
8. Once all agreements have been signed, Council grants may be used to reimburse approved project costs. Cost estimates provided at application serve as the project budget, and only those approved budget items and amounts are eligible for reimbursement.
9. Grant recipients submit paid invoices to Grants Administration to request reimbursement of approved project costs. Council staff monitors compliance with grant terms and budgets and reserves the right to deny payment for ineligible project costs or for failure to comply with grant requirements.
10. Once projects are complete, grantees notify the Council in writing and the Council staff initiates grant financial closeout.
11. For business development grants, final closeout does not occur until the company on whose behalf the project was undertaken submits documentation related to its performance under the grant. Jobs and investment are evaluated to determine whether they are sufficient to satisfy the terms of the agreement, and where appropriate, the Council reserves the right to require pro-rata repayment of grant funds.
12. In all cases, once all required closeout documentation has been submitted to the Council, and has been reviewed and determined to be in compliance with all terms and conditions of the grant award agreement and the performance agreement, if applicable, grants are officially closed.

ELIGIBLE AND INELIGIBLE ACTIVITIES

SET-ASIDE

Effective July 1, 2001, a proviso defining eligible uses of Set-Aside funds was passed by the legislature. Specifically, the proviso limited the use of Set-Aside funds to road construction improvement projects, water and sewer projects and site preparation, and it further defined allowable site preparation activities. In July 2006, the legislature passed a second proviso expanding eligible activities to include fiber optic cable, rail spurs and the purchase of land. Next, in 2010, the Economic Development Competitiveness Act added additional eligible activities that went into effect on January 1, 2011. Finally, also effective January 1, 2011, the proviso terms defining eligible activities for Set-aside grants were moved to SC Code § 12-28-2910 (E).

Below is a list of eligible and ineligible activities.

Eligible Activities

- Public Improvements - Roads, Water and Wastewater Infrastructure
 - Planning
 - Engineering – *limited to 10%*
 - Right-of-way
 - Drainage
 - Curb and gutter – *only when necessary for drainage*

- Construction
- Cantilevered flashing light signals and/or gates at railroad crossings *when necessary*
- Road re-surfacing or widening
- Turn lanes and acceleration and deceleration lanes
- Site preparation
 - Surveying
 - Environmental and geotechnical study and mitigation
 - Clearing, filling and grading
- Fiber optic cable
- Rail spurs
- Land acquisition
- Relocation expenses for employees paid at least two (2) times the lower of the State or county per capita income
- Acquiring and improving real property
- Pollution control equipment

Activities *Not* Eligible for Set-Aside Funding

- Speculative projects
- Opening up access to undeveloped property
- State government funded projects
- Maintenance of industrial/research parks
- Shopping centers/strip malls
- Signage (*except project signs required as part of the grant award agreement or permanent construction signs required by the Department of Transportation*)
- Paving of parking lots or lighting
- Civic centers and/or auditoriums, except that road improvements for civic centers may be funded (up to \$1,000,000) if associated with substantial economic development projects
- Curb and guttering for aesthetic purposes
- Concrete loading docks or pads
- Equipment and moving expenses
- Residential developments

RURAL INFRASTRUCTURE FUND

Eligible activities generally include infrastructure and economic development activities. Examples are listed below:

- Engineering – *limited to 10%*
- Right-of-way acquisition
- Drainage
- Roads
- Rail spurs
- Economic development program enhancement
- Speculative building assistance
- Training costs and facilities
- Improvements to regionally planned public and private water and sewer systems
- Fixed transportation facilities including highway, rail, water and air

- Improvements to both public and private electricity, natural gas and telecommunications systems
- Environmental studies
- Feasibility studies
- Community revitalization
- Marketing for counties (studies, materials)
- Small business incubators
- Industrial park development and improvement
- Relocation expenses for employees paid at least two (2) times the lower of the State or county per capita income
- Site preparation
- Acquiring or improving real property

2016 COORDINATING COUNCIL FUNDING ACTIVITY AND ACCOMPLISHMENTS

BUSINESS DEVELOPMENT

During calendar year 2016, the Council awarded 63 new business development grants from the Set-Aside Fund, the Closing Fund and the Rural Infrastructure Fund. A total of \$37.2 million was awarded to 26 county governments. Projected capital investment from the associated projects is \$3.4 billion, and projected new jobs total 8,996. Commitments were also made for an additional 62 additional projects which are not yet decided. If won, these projects will represent over 10,000 additional jobs and \$2.2 billion in additional investment.

On the following pages are tables that outline the distribution of funds awarded between counties of different development status or tiers, project type (i.e., economic development projects associated with companies new to South Carolina or existing companies expanding in South Carolina) and funding source. Also included is a table that provides specifics on all projects approved during calendar year 2016. The totals shown on these charts only represent new grants awarded in 2016 and do not reflect amendments made to previously approved grants or funds committed by the Council.

Funding for business development projects was awarded out of Set-Aside, RIF and the Closing Fund, with the majority awarded out of Set-Aside.

2016 BUSINESS DEVELOPMENT GRANT AWARDS - BY FUNDING SOURCE -

FUNDING SOURCE	# GRANTS	TOTAL AWARDED
Set-Aside Fund	41	\$14,730,000
Rural Infrastructure Fund	13	\$6,975,000
Governors Closing Fund	9	\$15,500,000
TOTAL	63	\$37,205,000

**2016 BUSINESS DEVELOPMENT GRANT AWARDS
- BY COUNTY CLASSIFICATION -**

COUNTY CLASSIFICATION	NUMBER OF PROJECTS	PROJECTED INVESTMENT	PROJECTED JOBS
Tier I	27	\$1,252,158,543	3,792
Tier II	23	\$1,604,297,948	2,753
Tier III	8	\$171,152,500	1,814
Tier IV	5	\$398,315,000	637
TOTALS	63	\$3,425,923,991	8,996

**2016 BUSINESS DEVELOPMENT GRANT AWARDS
- BY PROJECT TYPE -**

PROJECT TYPE	FIRMS	PROJECTED INVESTMENT	PROJECTED JOBS
Existing/Expanding	38	\$1,962,597,129	3,815
New	24	\$1,463,326,862	5,181
TOTALS	62*	\$3,425,923,991	8,996

* Rather than benefitting a specific company, one additional project will provide infrastructure development to support significant economic development projects.

**COORDINATING COUNCIL GRANT ACTIVITY & ACCOMPLISHMENTS
NEW BUSINESS DEVELOPMENT AWARDS
CALENDAR YEAR 2016**

Grant Number	Funding Source	Grant Recipient	County	Tier	Scope of Work	Grant Amount	Projected New Jobs	Projected Capital Investment
C-15-2437	Setaside	York County	York	Tier 2	Real Property Improvements	100,000	23	14,076,000
C-15-2489	Setaside	Berkeley County	Berkeley	Tier 1	Real Property Improvements	50,000	25	7,204,125
C-16-2574	Setaside	Greenville County	Greenville	Tier 1	Real Property Improvements	250,000	150	9,432,700
C-16-2576	RIF	Orangeburg County	Orangeburg	Tier 4	Real Property Improvements	200,000	25	29,000,000
C-16-2584	RIF	Abbeville County	Abbeville	Tier 3	Real Property Improvements	200,000	50	2,750,000
C-16-2593	RIF	Colleton County	Colleton	Tier 3	Real Property Improvements	250,000	82	9,450,000
C-16-2595	Setaside	York County	York	Tier 2	Real Property Improvements	150,000	71	1,269,875
C-16-2598	RIF	Orangeburg County	Orangeburg	Tier 3	Roads	100,000	15	32,600,000
C-16-2604	Closing	Georgetown County	Georgetown	Tier 2	Real Property Improvements	400,000	152	5,375,000
C-16-2605	Closing	York County	York	Tier 1	Real Property Improvements	200,000	105	36,500,000
C-16-2606	Closing	Oconee County	Oconee	Tier 2	Real Property Improvements	200,000	89	19,500,000
C-16-2610	Closing	Berkeley County	Berkeley	Tier 1	Real Property Improvements	500,000	300	80,000,000
C-16-2613	Setaside	Aiken County	Aiken	Tier 1	Roads	125,000	37	36,000,000
C-14-2344	Setaside	Anderson County	Anderson	Tier 2	Real Property Improvements	2,000,000	200	350,000,000
C-14-2380	Setaside	Pickens County	Pickens	Tier 2	Real Property Improvements	200,000	137	30,800,000
C-16-2551	RIF	Bamberg County	Bamberg	Tier 4	Real Property Improvements	200,000	57	3,665,000
C-16-2561	Setaside	Berkeley County	Berkeley	Tier 1	Real Property Improvements	500,000	55	129,420,000
C-16-2579	RIF	Colleton County	Colleton	Tier 3	Real Property Improvements	75,000	24	2,252,500
C-16-2611	Closing	York County	York	Tier 1	Real Property Improvements	100,000	10	14,000,000
C-16-2612	Setaside	York County	York	Tier 1	Real Property Improvements	100,000	26	2,900,000
C-16-2616	Setaside	Spartanburg County	Spartanburg	Tier 2	Multiple (site, infrastructure, roads)	500,000	103	45,080,000
C-16-2621	Setaside	York County	York	Tier 1	Real Property Improvements	300,000	83	5,000,000
C-16-2623	Setaside	Anderson County	Anderson	Tier 2	Real Property Improvements	100,000	29	5,015,200
C-16-2624	RIF	Laurens County	Laurens	Tier 3	Real Property Improvements	350,000	35	35,000,000
C-16-2626	Setaside	Oconee County	Oconee	Tier 2	Real Property Improvements	100,000	26	2,500,000
C-16-2627	Setaside	Pickens County	Pickens	Tier 2	Real Property Improvements	100,000	73	1,350,000
C-16-2628	Setaside	Pickens County	Pickens	Tier 2	Real Property Improvements	100,000	45	3,360,000
C-16-2629	Setaside	Pickens County	Pickens	Tier 2	Real Property Improvements	100,000	56	3,400,000
C-16-2637	Setaside	Anderson County	Anderson	Tier 2	Real Property Improvements	200,000	100	21,357,430
C-16-2641	Setaside	Greenville County	Greenville	Tier 1	Real Property Improvements	250,000	50	5,891,732
C-16-2617	Setaside	Berkeley County	Berkeley	Tier 1	Real Property Improvements	150,000	16	110,430,000
C-16-2619	Setaside	Beaufort County	Beaufort	Tier 1	Real Property Improvements	300,000	35	1,408,688
C-16-2625	Closing	Berkeley County	Berkeley	Tier 1	Real Property Improvements	1,100,000	130	50,500,000
C-16-2632	Closing	Greenwood County	Greenwood	Tier 2	Real Property Improvements	4,000,000	220	600,000,000
C-16-2636	Setaside	Spartanburg County	Spartanburg	Tier 2	Real Property Improvements	250,000	50	27,031,813
C-16-2643	Setaside	Greenville County	Greenville	Tier 1	Building Upfit/Improvements	100,000	575	1,175,000
C-16-2650	Setaside	Edgefield County	Edgefield	Tier 2	Real Property Improvements	100,000	17	11,500,000
C-16-2653	RIF	Laurens County	Laurens	Tier 3	Real Property Improvements	150,000	68	8,100,000
C-16-2658	Closing	Richland County	Richland	Tier 1	Multiple (site, infrastructure, roads)	7,000,000	800	400,000,000
C-16-2683*	Setaside	Dorchester County	Dorchester	Tier 1	Roads	3,440,000		
C-15-2394	Setaside	Spartanburg County	Spartanburg	Tier 2	Roads	1,300,000	327	119,650,000
C-15-2464	Closing	Spartanburg County	Spartanburg	Tier 2	Site Preparation	2,000,000	300	275,000,000

COORDINATING COUNCIL GRANT ACTIVITY & ACCOMPLISHMENTS
NEW BUSINESS DEVELOPMENT AWARDS
CALENDAR YEAR 2016

Grant Number	Funding Source	Grant Recipient	County	Tier	Scope of Work	Grant Amount	Projected New Jobs	Projected Capital Investment
C-15-2529	Setaside	Berkeley County	Berkeley	Tier 1	Real Property Improvements	750,000	480	35,000,000
C-16-2305	Setaside	Greenville County	Greenville	Tier 1	Real Property Improvements	750,000	450	21,058,412
C-16-2601	Setaside	York County	York	Tier 2	Real Property Improvements	200,000	132	13,000,000
C-16-2607	RIF	Lancaster County	Lancaster	Tier 3	Real Property Improvements	1,000,000	1500	36,000,000
C-16-2622	Setaside	Calhoun County	Calhoun	Tier 2	Building Construction	50,000	42	230,000
C-16-2638	RIF	Dillon County	Dillon	Tier 4	Site Preparation	3,000,000	400	85,500,000
C-16-2639	Setaside	Dorchester County	Dorchester	Tier 1	Building Upfit/Improvements	500,000	150	175,000,000
C-16-2646	Setaside	Anderson County	Anderson	Tier 2	Real Property Improvements	250,000	60	20,000,000
C-16-2656	Setaside	Spartanburg County	Spartanburg	Tier 2	Real Property Improvements	400,000	480	30,700,000
C-16-2660	Setaside	York County	York	Tier 1	Real Property Improvements	200,000	58	24,100,000
C-16-2663	RIF	Chesterfield County	Chesterfield	Tier 3	Site Preparation	600,000	40	45,000,000
C-16-2677	Setaside	Greenville County	Greenville	Tier 1	Building Upfit/Improvements	100,000	30	78,421,177
C-16-2678	Setaside	Richland County	Richland	Tier 1	Building Upfit/Improvements	50,000	27	2,158,549
C-16-2684	RIF	Union County	Union	Tier 4	Real Property Improvements	750,000	130	273,300,000
C-16-2687	Setaside	Beaufort County	Beaufort	Tier 1	Building Upfit/Improvements	100,000	20	2,117,510
C-16-2694	RIF	Hampton County	Hampton	Tier 4	Real Property Improvements	100,000	25	6,850,000
C-16-2695	Setaside	Greenville County	Greenville	Tier 1	Site Preparation	100,000	19	11,300,000
C-16-2699	Setaside	Greenville County	Greenville	Tier 1	Building Upfit/Improvements	100,000	46	5,625,000
C-16-2700	Setaside	Saluda County	Saluda	Tier 1	Building Upfit/Improvements	115,000	72	576,650
C-16-2703	Setaside	Aiken County	Aiken	Tier 1	Real Property Improvements	100,000	43	6,939,000
C-16-2706	Setaside	Greenwood County	Greenwood	Tier 2	Building Upfit/Improvements	100,000	21	4,102,630
Totals						37,205,000	8,996	3,425,923,921

* Additional infrastructure development to support significant economic development projects.

Please note: this table only includes grants that have been formally approved by the Council and accepted by the company involved. Contingent commitments are not included.

COMMUNITY DEVELOPMENT

During 2016, the Council awarded \$2.7 million to nineteen (19) local governments for twenty-three (23) projects involving certified site development, small business assistance, infrastructure or product development, including spec building acquisition and/or construction. The majority of these funds were awarded out of the Rural Infrastructure Fund but 11% was awarded out of the RIF developed county reserve. Generally, only local governments located in counties designated as Tier III or Tier IV for Jobs Tax Credit purposes are eligible for RIF funds, except that when annual deposits exceed \$10 million, up to 25% of the amount over \$10 million must be made available to counties qualified as Tiers I or II for projects that will benefit underdeveloped areas of those counties (SC Code of Laws §12-10-85). The Council refers to this amount as the RIF Reserve Fund.

RIF grants awarded for community development during 2016 are detailed below.

NEW COMMUNITY DEVELOPMENT ACTIVITY RURAL INFRASTRUCTURE FUND & RURAL INFRASTRUCTURE FUND DEVELOPED COUNTY RESERVE CALENDAR YEAR 2016					
Grant Number	Funding Source	Recipient	County Tier	Scope of Work	Grant Amount
RIF-SCP-47	RIF Reserve	Oconee County	Tier 2	Certified Sites	33,579
RIF-SCP-48	RIF	Darlington County	Tier 3	Certified Sites	47,000
RIF-SCP-49	RIF Reserve	Kershaw County	Tier 2	Certified Sites	33,512
RIF-SCP-50	RIF Reserve	Lexington County	Tier 1	Certified Sites	61,000
RIF-SCP-51	RIF	Williamsburg County	Tier 4	Certified Sites	51,625
RIF-SCP-52	RIF	Union County	Tier 4	Certified Sites	52,080
RIF-SCP-53	RIF Reserve	Oconee County	Tier 2	Certified Sites	35,605
RIF-SCP-54	RIF Reserve	Aiken County	Tier 1	Certified Sites	61,000
RIF-SCP-55	RIF Reserve	Greenwood County	Tier 2	Certified Sites	34,108
RIF-SCP-56	RIF	Dillon County	Tier 4	Certified Sites	42,125
RIF-SCP-58	RIF	Chesterfield County	Tier 3	Certified Sites	58,100
RIF-SCP-57	RIF	Clarendon County	Tier 4	Certified Sites	57,298
C-16-2609	RIF	Abbeville County	Tier 3	Spec Building	50,000
RIF-SCP-59	RIF Reserve	Berkeley County	Tier 1	Certified Sites	23,925
RIF-SCP-60	RIF	Orangeburg County	Tier 4	Certified Sites	50,375
RIF-SCP-61	RIF	Orangeburg County	Tier 4	Certified Sites	53,750
RIF-SCP-62	RIF	Williamsburg County	Tier 4	Certified Sites	56,600
C-16-2618	RIF	Marion County	Tier 4	Infrastructure	200,000
RIF-SCP-63	RIF Reserve	Greenville County	Tier 1	Certified Sites	10,500
RIF-SCP-64	RIF	Clarendon County	Tier 4	Certified Sites	64,625
RIF-SCP-65	RIF	Jasper County	Tier 3	Certified Sites	45,350
C-16-2659	RIF	McCormick County	Tier 3	Spec Building	1,500,000
C-16-2696	RIF	Richland County	Tier 1	Small Business	70,000
Totals					\$2,692,157

GRANT PROGRAM COMPLIANCE

Grants from any of the funds managed by the Council, including the Set-Aside Fund, Rural Infrastructure Fund and Governor's Closing Fund, are made under and in accordance with the laws of the State of South Carolina. The federal and state courts within South Carolina have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with these grants.

Failure to comply with any of the terms and conditions of the grant can cause the Council to take, in addition to any relief that it is entitled to by law, any or all of the following actions:

- Require repayment of all or a portion of any grant funds provided; and/or cancel, terminate, or suspend the grant, in whole or in part.
- Refrain from extending any further assistance or grant funds until such time as the grantee is in full compliance with the terms and conditions of the grant agreement.

MONITORING

The portion of projects to be funded in whole or in part with grant funds must generally be completed by the grantee within 18 months of the date of award of the grant. Completion is defined as the final documentation by the grantee to the Council of grant funds expended and issuance by the Council of a notification in writing of the financial closure of the grant. The Council may grant extensions to the completion period requirement at its discretion.

All projects must generally begin within three (3) months of the date of award of the grant. If the grantee does not begin the project within three (3) months of the date of award of the grant, the Council reserves the right to rescind the grant, require the repayment of any grant funds provided to the grantee and terminate the agreement.

After financial closeout, final closeout of economic development grants does not occur until the terms of the performance agreement are satisfied.

PROCUREMENT

Records for property purchased totally or partially with grant funds must be retained for a period of three (3) years after its final disposition. The grantee will maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three (3) years. All other pertinent grant and project records including financial records, supporting documents and statistical records will be retained for a minimum of three (3) years after notification in writing by the Council of the closure of the grant.

The grantee will certify, to the best of its knowledge, information and belief, that the work on the project for which reimbursement is requested has been completed in accordance with the terms

and conditions of the grant agreement. The grantee will return surplus grant funds that result from project cost underruns and commit and provide monies from its own resources for cost overruns that are required to complete the project.

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

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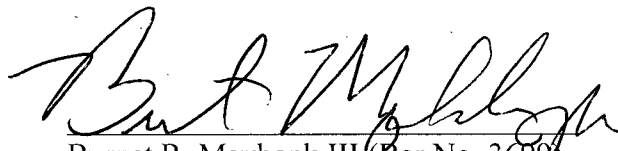
South Carolina Public Interest Foundation, and William B. DePass, Jr. individually, and on behalf of all others similarly situated, Appellants,

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent City of Columbia complies with Rule 211(b), SCACR.



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December 4, 2017

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