

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-000617

RECEIVED
OCT 27 2017
SC Court of Appeals

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

v.

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

RECORD ON APPEAL
VOLUME II

THE CARPENTER LAW FIRM, P.C
James G. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellants

Burnet R. Maybank III (Bar No. 3699)
James Rourke (Bar No. 79879)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29201
803-771-8900
bmaybank@nexsenpruet.com
jrourke@nexsenpruet.com

Attorneys for Respondent City of Columbia

Ray N. Stevens (SC Bar No. 5342)
Ray E. Jones (SC Bar No. 11322)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com

Counsel for Respondents
Richland County and Fairfield County

Index to Record on Appeal

Form 4 Judgment and Order filed February 15, 2017.1

Summons and Complaint filed February 16, 2016.18

Answer and Counterclaims of the City of Columbia served March 23, 2016.45

Defendant Richland County’s Motion to Dismiss served March 24, 2016.50

Defendant City of Columbia Motion to Dismiss served April 12, 2016.60

Reply to Counterclaims of the City of Columbia.68

Amended Complaint with Exhibits.71

Motion for Summary Judgment Filed by City of Columbia on or about
May 11, 201682

Defendant Richland County’s Motion to Dismiss filed on or about
May 13, 2016.181

Defendant Richland County’s Answer to Amended Complaint served
May 16, 2016.187

Answer and Counterclaim of Defendant City of Columbia to Amended Complaint.194

Four Affidavits filed by the City of Columbia on or about June 9, 2016.198

Form 4 Order that Defendant’s Motion to Dismiss has been withdrawn,
June 8, 2016.207

Defendant Fairfield County Motion to Dismiss on or about June 23, 2016.208

Defendant Fairfield County Answer filed on or about June 23, 2016.214

Defendant City of Columbia’s Supplemental Memorandum of Law served on or
about June 23, 2016.221

Plaintiffs’ Memorandum of Law served on or about June 23, 2016.333

Rule 56(f) affidavit of Carpenter dated June 29, 2016.351

Joint Stipulation of Facts filed August 31, 2017.354

Plaintiffs’ Motion for Summary Judgment and Memorandum of Law served on or about
September 19, 2016363

Richland County’s and Fairfield County’s Motion for Summary Judgment and Memorandum of Law served by on or about September 20, 2016.387

Richland County’s and Fairfield County’s Opposition to Plaintiffs’ Motion for Summary Judgment and Memorandum of Law served on or about October 4, 2016. ...411

City of Columbia’s Response to Plaintiff’s Memorandum of Law in Support of Motion for Summary Judgment served on or about October 4, 2016.447

Plaintiffs’ Reply Memorandum of Law in Support of Motion for Summary Judgment served on or about October 11, 2016.457

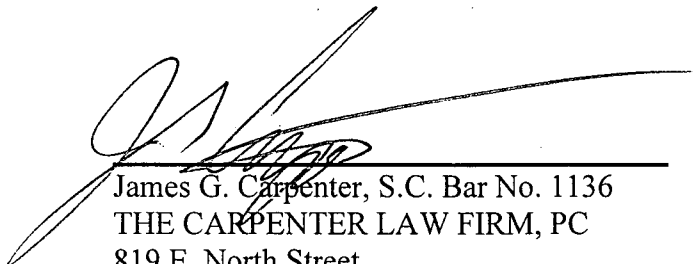
Richland County’s and Fairfield County’s Surreply to Plaintiffs’ Reply Memorandum served on or about October 18, 2016.472

Transcript of Summary Judgment Hearing January 17, 2017.481

Certificate of Counsel

The undersigned Counsel for the Appellants certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

THE CARPENTER LAW FIRM, P.C



James G. Carpenter, S.C. Bar No. 1136
 THE CARPENTER LAW FIRM, PC
 819 E. North Street
 Greenville, South Carolina 29601
 (864) 235-1269
 Attorneys for Appellants

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
South Carolina Public Interest Foundation,)
and William B. DePass, Jr., individually,)
and on behalf of all others similarly)
situated,)
Plaintiffs,)
v.)
The City of Columbia, Richland County,)
and Fairfield County,)
Defendants.)

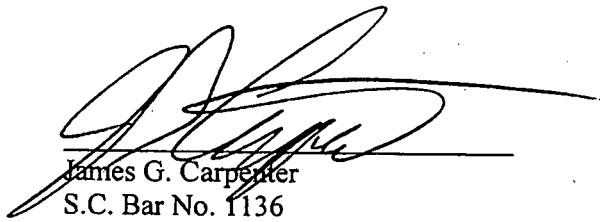
IN THE CIRCUIT COURT
CASE NO: 2016-CP-40-00946

**PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

2016 SEPT -4 AM 11:59
JENNIFER W. MCBRIDE
S.C.P. & G.S.
RICHLAND COUNTY
FILED

NOW COME the Plaintiffs, by their undersigned attorney, and move the Court pursuant to SCRCP 56 for summary judgment, and by the attached Memorandum of Law would show the Court that there is no genuine issue of material fact, and that the Plaintiffs are entitled to judgment as a matter of law.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



James G. Carpenter
S.C. Bar No. 1136
Jennifer J. Miller
S.C. Bar No. 11361
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

September 19, 2016

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
 Plaintiffs,)
 v.)
 The City of Columbia, Richland County,)
 and Fairfield County,)
 Defendants.)

IN THE CIRCUIT COURT
 CASE NO: 2016-CP-40-00946

**PLAINTIFFS' MEMORANDUM
 OF LAW IN SUPPORT OF MOTION
 FOR SUMMARY JUDGMENT**

2016 OCT 14 AM 11:59
 FILED
 RICHLAND COUNTY
 CLERK OF COURT
 W. MCBRIDE
 & G.S.

NOW COME the Plaintiffs, by their undersigned attorney, and submit this Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment and in opposition to the dispositive motions filed by the Defendants.

STATEMENT OF FACTS

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

At least five times from March 4, 2014 through May 19, 2015, the City of Columbia, Richland County, and Fairfield County have enacted ordinances to include in the Park property expected to become student housing located within the City of Columbia. The City agreed to grant these owners and developers a 50% reduction in the FILOT,

through Special Source Revenue Credits. Other persons who own and manage student housing property in the City do not receive this Special Source Revenue Credit.

STATEMENT OF THE CASE

Plaintiff William B. DePass, Jr. is a citizen, resident, taxpayer, and registered elector of the City of Columbia and Richland County. DePass possesses standing to bring this lawsuit as a City of Columbia taxpayer and a Richland County taxpayer. He brings this action individually and on behalf of all others similarly situated.

Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper application and enforcement of the South Carolina Constitution and statutes. It is also a City of Columbia taxpayer and a Richland County taxpayer, having paid sales tax in the City of Columbia and Richland County.

Plaintiffs are also entitled to standing based on the public importance of the issues that this case addresses.

Defendants include the City of Columbia, Richland County, and Fairfield County.

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

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

S.C. Constitution, Art. VIII, § 13(D) (emphasis added). Similarly, South Carolina Code Ann. § 4-1-170 allows counties to develop “an industrial or business park with other counties.” As the Constitution indicates, the property in the industrial parks is exempt from ad valorem taxation, and the property owners pay a fee in lieu of taxes (FILOT). S.C. Code Ann. § 4-1-170 requires that the City of Columbia must consent before any real estate within its corporate bounds is included in the Industrial Park.

Plaintiffs contend that including student housing projects in the Park and granting their owners and developers a 50% Special Source Revenue Credit is illegal and unconstitutional.

LEGAL DISCUSSION

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

I. SPECIAL SOURCE REVENUE CREDITS ARE UNLAWFUL FOR STUDENT HOUSING.

S.C. Code Ann. § 4-1-175, authorizes counties to receive revenues from FILOTs and to issue Special Source Revenue Bonds for "Industrial Development Projects," but only "for the purposes outlined in Section 4-29-68."

Section 4-29-67 addresses "Industrial Development Projects" using FILOTs, and § 4-29-68 addresses Special Source Revenue Bonds. Both sections are part of Title IV, Chapter 29, entitled "Industrial Development Projects."

Section 4-29-67 governs Industrial Development Projects allowing a FILOT, and provides terms and conditions, and definitions. It authorizes the issuance of Special Source Revenue Bonds, which are paid back with the FILOT. The bonds are to be used for infrastructure and other expenditures related to the Industrial Project.

Eventually, counties realized that the administrative difficulties of Special Source Revenue Bonds made the bonds unattractive, and the General Assembly amended § 4-1-175 to allow Special Source Revenue Credits, as an alternative to the Special Source Revenue Bonds, but the Credits also must be “for the purposes outlined in Section 4-29-68.”

A. The Statutory Definition of Industrial “Project” Does Not Include Student Housing.

In an apparent attempt to qualify the student housing “Projects,” the Defendants’ ordinances regularly referred to these student housing developments as “Projects.” *See* Ordinance No. 2014-15, Ordinance No. 2014-19, Ordinance No. 2014-20, Ordinance No. 2014-123, Ordinance 2015-109, and Ordinance No. 2016-017 (Draft). Likewise, the Credit Agreement that Richland County entered into with these developers identified the developments as “Projects.” *See* Credit Agreements dated March 4, 2014, March 18, 2014, April 15, 2014, and December 9, 2014. Furthermore, the ordinances of Fairfield County also refer to these developments as “Projects.” *See* Fairfield County Ordinance Number 624, 632, and 642. Finally, the ordinances for Richland County refer to these developments as “Projects.” Ordinance No. 072-14 HR.

The closest possible candidate for a qualified statutory “Project” is a unique endeavor called a “residential and mixed-use development.” Such a development must contain 2,500 acres or more. The “Projects” at issue in this case encompass only 1-5 acres. Therefore, they are excluded from a Multicounty Business and Industrial Park, and a Special Source Revenue Credit is not authorized for such “Projects.”

Sections 4-29-67 and 4-29-68 refer repeatedly to “Projects” in Industrial Parks. S.C. Code Ann. § 4-29-10 contains definitions for Chapter 29 of Title IV. That section

defines "Projects" extensively and provides legislative insight into which works are included in the definition of the "Industrial Development Projects" to be included in Industrial Parks, and for which the counties may issue Special Source Revenue Credits.

Whenever used in this chapter, unless a different meaning clearly appears from the context, the following terms, whether used in the singular or plural, shall be given the following meanings:

* * *

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

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

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

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

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

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

The term "project" does not include facilities for an enterprise primarily engaged in the sale or distribution to the public of electricity, gas, or telephone services. A project may be located in one or more counties or

incorporated municipalities. The term "project" also includes any structure, building, machinery, system, land, interest in land, water right, or other property necessary or desirable to provide facilities to be owned and operated by any person, firm, or corporation for the purpose of providing drinking water, water, or wastewater treatment services or facilities to any public body, agency, political subdivision, or special purpose district. This definition is for purposes of industrial revenue bonds only.

Notwithstanding another provision hereof, the term "project" shall include any recovery zone property as defined in Section 1400U-3(b) of the Internal Revenue Code and any "Qualified Conservation Purpose" as defined in Section 54D(f) of the Internal Revenue Code or other purposes set forth in Section 54D(e) of the Code. No restriction herein relating to the user or use of a project shall apply to any recovery zone property.

Id. (emphasis added).

In order for a "Project" to be entitled to a Special Source Revenue Credit related to fees in lieu of taxes, it must meet the qualification of a "Project" in Chapter 29 of Title IV. Qualifying Projects include "agricultural or manufactured products," "products of agriculture, mining, or industry," "laundry services" for medical providers, and "enterprise for research."

The statutory definition of "Project" does not include student housing. This is a specific and exclusive list of qualified endeavors, without expansive language. Accordingly, the use of Special Source Revenue Credits for student housing, and their inclusion in a Multicounty Business and Industrial Park is illegal and unconstitutional.

B. Student Housing Is Not "Industry" for Industrial Parks.

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

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

Id. Item (3), referenced in the definition of "Industry" is the definition of "Project" above. The definition of "Industry" and the definition of "Project" in Section 4-29-10 go hand-in-hand. These definitions govern the entire Chapter 29 of Title IV, which is dedicated to "Industrial Development Projects." The student housing complexes are not "Industry" and do not meet the definitions of Chapter 29 to qualify for inclusion in an Industrial Park, or a Special Source Revenue Credit.

C. The "Purposes" of Section 4-29-68 Exclude Student Housing.

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

(2)(i) The bonds are issued for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding (a) the infrastructure serving the issuer or the project, (b) for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise, or (c) aircraft which qualifies as a project pursuant to Section 12-44-30(16), which property is determined by the issuer to enhance the economic development of the issuer. Costs of issuance of the bonds also may be paid from bond proceeds. Bonds issued pursuant to this section to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property.

S.C. Code Ann. § 4-29-68(2)(i) (emphasis added). Placing student housing projects in the Industrial Park and granting them Special Source Revenue Credits (or Bonds), do not fulfill

the purposes of S.C. Code Ann. § 4-29-68. Student housing projects are not “used in the operation of a manufacturing or commercial enterprise.” *Id.*

D. The Attorney General Has Said That Residential Property Should Not Be Included in an Industrial Park.

Twice the Attorney General has been asked for an opinion on this question, once by the Oconee County Attorney, and once by the Director of the Department of Revenue (copies attached).

In the first opinion, in response to the Oconee County Attorney, the Attorney General said that based on the “plain and ordinary meaning” of a multicounty industrial or business park, residential uses would be excluded.

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.

2010 WL 1370089 (S.C.A.G.) (March 1, 2010) (emphasis added).

Similarly in response to the Director of the Department of Revenue, a couple weeks later, the Attorney General repeated his analysis and his conclusion:

Based on the **plain and ordinary meaning** of the terms industrial and business, as described above, **it does not appear that the Legislature intended for residential property to be included in an industrial or business park** created pursuant to §4-1-170.

2010 WL 1370094 (S.C.A.G.) (March 17, 2010) p. 2 (emphasis added).

The reasoning of the Attorney General is sound and in keeping with the statutory definitions referenced above. Accordingly, this Court should declare the award of FILOT status to these student housing projects unconstitutional.

II. STUDENT HOUSING PROJECTS DO NOT BRING THE ECONOMIC BENEFITS OF "INDUSTRIAL PROJECTS."

The South Carolina Supreme Court upheld the legality and constitutionality of tax breaks for industrial projects in *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990). Professor Quirk, from the law school, challenged negotiated fees in lieu of taxes related to certain large industrial projects. The Court reasoned that the facts of that case furthered the policies and legislative intent supporting the FILOTs. The Court reasoned:

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

Id., 302 S.C. 148, 150, 394 S.E.2d 320, 321 (1990) (footnote omitted) (emphasis added).

The Court discussed the facts supporting its analysis.

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

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

of attracting large capital-intensive industries to this State.” *Id.*, 302 S.C. 148, 153, 394 S.E.2d 320, 323 (1990).

Student housing projects do not bring such benefits to the counties. They do not bring in 667 new jobs or \$20.7 million of annual payroll income. They do not support any “legislative purpose of attracting large capital-intensive industries to this State.” *Id.* They do not “improve[e] the industrial climate of South Carolina in order to provide for the welfare and prosperity of its inhabitants.” *Id.*, 302 S.C. 148, 151, 394 S.E.2d 320, 322 (1990), quoting, *Elliott v. McNair*, 250 S.C. 75, 89, 156 S.E.2d 421, 428 (1967). They do not induce “large industries to make new or expanded investments in South Carolina.” *Id.*

Including student housing projects in industrial parks only serves to provide tax breaks to favored developers, most of whom are out-of-state, and many of whom want to fill up the apartments quickly and sell them to cash in on their windfall, at the expense of the other taxpayers.

Defendants have granted these favored developers a huge financial advantage over their competition, the other owners of apartment complexes and private student housing competing against them in the Columbia market. These owners of other apartment complexes and private student housing facilities (along with all the other taxpayers) are required, by their taxes, to offset the financial advantages given to their competition, the favored developers.

The Constitution and statutes limit the Special Source Revenue Bonds to “Projects” as defined in the statute. These fancy student housing projects are not industrial Projects; they have no place in an Industrial Park; they are not entitled to the

tax breaks created by the General Assembly for the purpose of “attracting large capital-intensive industries to this State,” and they do not “improve[e] the industrial climate of South Carolina in order to provide for the welfare and prosperity of its inhabitants.” They are illegal and unauthorized, and this Court should declare them unconstitutional.

III. DEFENDANT COUNTIES’ MOTION TO DISMISS SHOULD BE DENIED.

Defendant Counties suggest four theories in support of their Motions to Dismiss:

1. Failure to state facts sufficient to constitute a cause of action;
2. City-owned property is not taxable;
3. Plaintiffs lack standing; and
4. The issue is a political question.

None of these four grounds is sufficient to grant Defendants’ Motions to Dismiss.

A. Plaintiffs Have Stated Sufficient Facts to Constitute a Cause of Action.

Plaintiffs alleged the facts articulated in the Statement of Facts above. Plaintiffs brought this action for declaratory judgment asking the Court to rule that the Defendants’ inclusion of student housing in a multicounty business and industrial park, and the granting of tax credits arising therefrom, violates the South Carolina Constitution, Art. X § 1, and Art. 8, § 13; and S.C. Code Ann. § 4-1-170 ff. Plaintiffs ask that this Court interpret the South Carolina Constitution and South Carolina statutes. Plaintiffs submitted sufficient facts supporting their claim, by alleging that the Defendants had enacted ordinances including student housing in a statutory “Multicounty Business and Industrial Park.” Plaintiffs contend that including these properties and granting them tax breaks was both contrary to the statute, and contrary to the South Carolina Constitution. Accordingly,

Plaintiff has stated sufficient facts to constitute a cause of action, and the Counties' Motions to Dismiss on this basis must be denied.

B. Plaintiffs Did Not Allege That the Property Was City-Owned, but Rather Located within the City.

Second, the Counties misstate the allegations in the Complaint, arguing that the Plaintiffs alleged that the real estate in question was City-owned, when in fact, Plaintiffs allege that the real estate was located within the corporate boundaries of the City. The specific allegation is this: "At least five times from March 4, 2014 through May 19, 2015, the City of Columbia, in conjunction with Richland County and Fairfield County, has enacted ordinances to include City property expected to become student housing and residential apartments in the Park." A fair and plain reading of this allegation indicates that the property is within the municipal boundaries of the City of Columbia, not that it is owned by the City. Furthermore, Defendants have indicated that the real estate in question is privately owned and developed by private investors. This argument borders on the frivolous, and the Motion on this basis should be denied.

C. Plaintiffs Possess Standing Based on the Public Importance of the Issues They Raise and As Taxpayers.

The Counties inaccurately allege that Plaintiffs lack standing. Plaintiffs possess both taxpayer standing and public importance standing. Plaintiffs' Amended Complaint alleges:

This Court possesses jurisdiction under the South Carolina Constitution, Art. VIII, § 13(D); and **under the following decisions, which address public importance and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663**

S.E.2d 52 (2008), Sloan v. Department of Transportation, 379 S.C. 160, 666 S.E.2d 236 (2008), Sloan v. Hardee, 357 S.C. 495, 640 S.E.2d 457 (2007); Cornelius v Oconee County, 369 S.C. 531, 633 S.E.2d 492 (2006); Sloan v. Department of Transportation, 365 S.C. 299, 618 S.E.2d 876 (2005), Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005); Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), Sloan v. School District of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), Baird v. Richland County, 333 S.C. 519, 511 S.E.2d 69 (1999), Newman v. Richland County Historic Preservation Commission, 325 S.C. 79, 480 S.E.2d 72 (1997); and under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.

This action raises Constitutional and statutory issues of great public importance, namely the proper interpretation of the South Carolina Constitution and enabling statutes. Plaintiffs ask the Court to grant them standing based upon the great public importance of the Constitutional and statutory issues this action raises.

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

Plaintiffs have brought many such actions listed above and many times have been granted standing based on the public importance of the issues they raise. This case fits squarely within that body of case law, in which Plaintiffs have been granted standing based on the public importance of the issues.

Plaintiffs' legal research disclosed no South Carolina case ruling on the question presented in this case: whether the South Carolina Constitution and enabling statutes permit student housing to be included in an Industrial Park. When there is no South Carolina appellate case addressing an issue, that absence indicates a need for judicial decision.

In the *Ladson Road* case, the Supreme Court analyzed the public importance exception this way:

This Court has noted "the limited nature of the exception for questions of 'imperative and manifest urgency.'" *Sloan v. Greenville County*, 361 S.C.

568, 571, 606 S.E.2d 464, 466 (2004) (*Greenville County II*). In *Greenville County II*, we held that where judicial guidance exists on the legal issue presented, there is no imperative and manifest urgency for an advisory opinion.

In the instant case, however, there is no case law specifically addressing the DOT's authorization of an emergency procurement. Because this is a matter of public importance which could occur at any time (given the inherent unpredictability of emergencies), we find there is an urgent nature to this issue.

Accordingly, even though the Ladson Road Project was completed in 2005, we will address the other issues raised in the case.

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

Similarly, there is no case law on the issue in the case at bar: whether Counties may include student housing in an "Industrial Park" and grant them a 50% Special Source Revenue Credit. This issue "could occur at any time."

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

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

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

2010 WL 1370094 (S.C.A.G.) (March 17, 2010) p. 2 (emphasis added). To the knowledge of the Plaintiffs, neither party who posed the question to the Attorney General instituted a declaratory judgment action on the issue.

The City of Columbia alleges that the investments involved in this case exceed \$160 million (but yield virtually no jobs and virtually no payroll). Accordingly, this is an issue of great public importance, and Plaintiffs should be granted public importance standing to enable the Court to address this issue.

In addition, Plaintiff Rusty DePass is a City taxpayer and County taxpayer, and as such, he is financially affected by the unlawful and unconstitutional tax breaks at issue in this case. Likewise SCPIF has paid City and County sales taxes and therefore possesses taxpayer standing. Accordingly, Plaintiffs possess standing, both taxpayer standing and public importance standing, and the Counties' Motions to Dismiss on this basis must be denied.

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

Finally, the Counties argue that the issue in this case is a political issue, which this Court must not address. Nothing could be further from the truth. Plaintiffs have intentionally and openly addressed this issue, not from a standpoint of political wisdom or policy, but rather as a matter of statutory and constitutional interpretation. The City, in its Motion for Summary Judgment, has attempted to introduce a discussion of policy reasons supporting this unlawful and unconstitutional arrangement, as a question of fairness and as a matter of comparison between the City of Columbia and various other cities around the country.

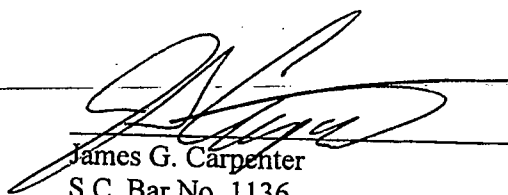
Plaintiffs agree with the Counties that this Court should not involve itself in the second-guessing of political officials over matters of policy and wisdom or right or wrong, but rather should interpret statutory and constitutional law. Accordingly, the Counties' Motion to Dismiss on this basis must be denied.

CONCLUSION

WHEREFORE, Plaintiffs pray the Court to:

1. Grant the Plaintiffs' Motion for Summary Judgment;
2. Deny the Defendants' Motions to Dismiss and for Summary Judgment;
3. Rule that including student housing projects in an Industrial Park and granting them Special Source Revenue Credits violates the South Carolina Constitution, Art. 8, § 13; and S.C. Code Ann. § 4-1-170 ff.;
4. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



James G. Carpenter
S.C. Bar No. 1136
Jennifer J. Miller
S.C. Bar No. 1361
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

September 19, 2016

2010 WL 1370089 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 1, 2010

*1 Thomas L. Martin, Esquire
McNair Law Firm, P.A.
Post Office Box 4086
Anderson, South Carolina 29622

Dear Mr. Martin:

We understand from your letter that as the Oconee County Attorney, you would like to request an opinion of this Office on behalf of the Oconee County Council concerning “whether real property anticipated to be used for residential purposes can be placed into a joint county industrial and business park (a ‘Multi-County Business Park’) created pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina, as implemented by Section 4-1-170, *et seq.*, Code of Laws of South Carolina, 1976, as amended (the ‘Joint County Industrial and Business Park Act’).” Specifically, you pose the following two questions to us:

I. Can a Multi-County Business Park, created pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina and the Joint County Industrial and Business Park Act, contain residential property; and,

II. If the answer to question I is “Yes”, does it matter if the end use for the residential property in question is to be owner-occupied (4%) or commercial (6%) residential property, so long as there is a business purpose to the development, construction, sales and/or lease of such property?

Law/Analysis

Section 4-1-170 of the South Carolina Code (Supp. 2009) allows counties to enter into a written agreement to jointly develop an industrial or business park. This provision states as follows:

(A) By written agreement, counties may develop jointly an industrial or business park with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State. The written agreement entered into by the participating counties must include provisions which:

(1) address sharing expenses of the park;

(2) specify by percentage the revenue to be allocated to each county;

(3) specify the manner in which revenue must be distributed to each of the taxing entities

within each of the participating counties.

(B) For the purpose of bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3), allocation of the assessed value of property within the park to the participating counties and to each of the taxing entities within the participating counties must be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties. Misallocations may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of Section 4-29-68(E).

(C) 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.

*2 S.C. Code Ann. § 4-1-170. In addition, section 4-1-172 of the South Carolina Code (Supp. 2009) provides: "All multicounty parks must consist of contiguous counties."

As you mentioned in your letter, neither section 4-1-170, nor any of the provisions pertaining to multicounty industrial and business parks, specifically state the type of property that may be included in such a park. Thus, we must employ the rules of statutory interpretation in order to determine whether such a park may include residential property. Our Supreme Court recently stated in SCANA Corp. v. South Carolina Dep't of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009):

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

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.

Very Truly Yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

2010 WL 1370089 (S.C.A.G.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S.
Government Works.

2010 WL 1370094 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 17, 2010

*1 Ray N. Stevens
Director
Department of Revenue
P. O. Box 125
Columbia, South Carolina 29214

Dear Mr. Stevens:

We received your letter requesting an opinion of this Office concerning Owner-Occupied Residential Property Located in a Multicounty Park. You asked if multi-county parks may include owner-occupied residential property, and if so, "whether such property may receive the [property tax] exemption contained in Code Section 12-37-220(B)(47)." Additionally, you asked how reimbursements paid to school districts and deposited in the Homestead Exemption Fund are to be distributed. As noted in your request, on March 14, 1990, this Office issued an opinion addressing the manufacturing exemption contained in Code Section 12-37-220(A)(7) for property located in a multicounty park. Additionally, on March 1, 2010, this Office issued an opinion specifically addressing your question regarding residential property. The March 1, 2010 opinion is enclosed for your convenience.

Law/Analysis

Article VIII, Section 13(D) of the South Carolina Constitution provides that counties have the authority to develop industrial or business parks with other counties, and that such multicounty parks are "exempt from all ad valorem taxation." However, the "owners and lessees of any property situated in the park shall pay an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for the exemption herein provided."

S.C. Code Ann. § 4-1-170 also provides that participating counties, "by written agreement . . . may develop jointly an industrial or business park with other counties within the geographical boundaries." The written agreement should explain 1) how expenses will be shared, 2) the percentage of revenue allocated to each county, and 3) the manner in which revenue must be distributed

In an opinion of this Office dated March 14, 1990, we stated as follows:

[M]unicipalities only have such powers as are granted them by the state in their characters or by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E. 586 (1950). These powers may be expressly granted or may be fairly implied from or necessarily incidental to those powers expressly granted. Marshall v. Rose, 213 S.C. 428, 49 S.E.2d 720 (1948).

In an opinion of this Office dated March 1, 2010, we stated as follows:

S.C. Code Ann. § 4-1-170 does not specifically state the type of property that may be included in such a park. Thus, we must employ the rules of statutory interpretation in order to determine whether such a park may include residential property. Our Supreme Court recently stated in SCANA Corp. V. South Carolina Dep't of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) . . . The Court should give words their plain and ordinary meaning . . . Sloan v. S.C. Bd. Of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). . . .

*2 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.

Conclusion

Since S.C. Code Ann. § 4-1-170 does not specifically address what type of property can be included in a multicounty industrial or business park, one must look to the plain and ordinary meaning. Based on the plain and ordinary meaning of the terms industrial and business, as described above, it does not appear that the Legislature intended for residential property to be included in an industrial or business park created pursuant to § 4-1-170. Nevertheless, consistent with our prior opinion, we believe the County should institute a declaratory judgment action in order for a court to decide with finality whether or not residential property may be included in a multicounty park.

Unless the court determines that residential property may be included in a multicounty park, it is unnecessary to address the tax exemption and Homestead Exemption Fund distribution questions.

Sincerely,

Henry McMaster

Attorney General

By: Leigha Blackwell

Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Deputy Attorney General

2010 WL 1370094 (S.C.A.G.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

v.

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

IN THE CIRCUIT COURT
CASE NO: 2016-CP-40-00946

CERTIFICATE OF SERVICE

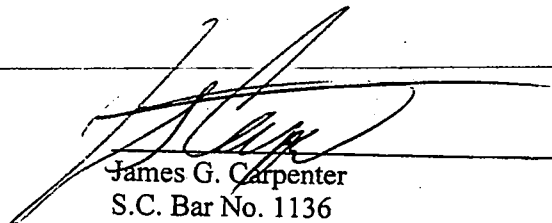
RICHLAND COUNTY
FILED
2016 OCT 4 AM 11:59
JEANETTE W. MCBRIDE
C.S.P. & G.S.

The undersigned attorney hereby certifies that he served a copy of the foregoing Plaintiffs' Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment on opposing counsel by first class mail, postage prepaid, this September 20, 2016, addressed as follows:

Burnet R. Maybank III
Post Office Drawer 2426
Columbia, SC 29202

Ray N. Stevens
PO Box 1509
Columbia, SC 29202

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

September 20, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 The City of Columbia, Richland County,)
 and Fairfield County.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-00946

**RICHLAND COUNTY'S AND
 FAIRFIELD COUNTY'S
 MOTION FOR SUMMARY JUDGMENT**

JEANNETTE W. NEBRIDGE
 C.C.P. & G.S.
 2016 SEP 20 PM 4:38
 RICHLAND COUNTY
 FILED

Through counsel and under SCRCF, Rule 56, Richland County and Fairfield County ("Richland" or "Fairfield" individually and "Counties" collectively) move this Court for summary judgment in favor of the Counties as a matter of law on all claims alleged in the Plaintiffs' Amended Complaint (the "Complaint") for Declaratory Judgment.

In addition, and for the Court's awareness as well as the Plaintiffs, the Counties previously submitted Motions to Dismiss. Those motions have been briefed, but not yet heard by the Court. For purposes of this Motion for Summary Judgment, and for the sake of brevity, the Counties hereby incorporate each of the following arguments addressed in their Motions to Dismiss as arguments to be evaluated by the Court for summary judgment. These prior arguments, *inter alia*, are:

1. Plaintiffs fail to allege the student housing projects at issue are not Businesses.
2. Plaintiffs allege the City of Columbia owns the Property at issue in the Multicounty Park, and such allegation removes any controversy over the nature and use of the Property at issue.

3. The Court lacks jurisdiction to review or overturn discretionary policy judgments constitutionally or statutorily committed to other political bodies.

For the Motion for Summary Judgment, the grounds are more fully set forth in the accompanying Memorandum of Law and express the position that Richland County's and Fairfield County's Multi-County Business Park Ordinances are lawful and present no violation of the South Carolina Constitution or statutes enacted by the S.C. General Assembly.

This Motion is based on the pleadings, applicable law, the Counties' Memorandum of Law in Support of its Motion for Summary Judgment incorporated herein, Affidavit and related exhibits incorporated and served contemporaneously herewith.

For the foregoing reasons and for those set forth in the accompanying Memorandum of Law, Richland County and Fairfield County respectfully request the Court grant their Motion for Summary Judgment and grant such other and further relief as it may deem appropriate.

Respectfully submitted,



Ray N. Stevens (Bar N. 5342)
Ray E. Jones (Bar No. 11322)
Court E. Walsh (Bar No. 72723)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com
courtwalsh@parkerpoe.com

*Counsel for Defendants
Richland County and Fairfield County.*

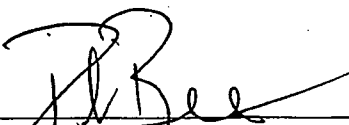
September 20, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 20, 2016, she caused the foregoing *Richland County's and Fairfield County's Motion for Summary Judgment and Supporting Memorandum* with exhibits to be served on all parties of record via U. S. mail delivery, postage prepaid, addressed as follows:

James Carpenter, Esquire
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, South Carolina 29601

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202



Randi M. Berlin

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 The City of Columbia, Richland County,)
 and Fairfield County.)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-00946

**RICHLAND COUNTY'S AND
 FAIRFIELD COUNTY'S
 MEMORANDUM IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT**

2016 SEP 20 PM 4:32
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

I. Introduction

Richland County and Fairfield County ("Richland" or "Fairfield" individually and "Counties" collectively) submit this Memorandum in Support of its Motion for Summary Judgment to the Amended Complaint for Declaratory Relief (the "Complaint") filed by Plaintiffs South Carolina Public Interest Foundation and William B. DePass, Jr. (the "Plaintiffs"). The Motion for Summary Judgment should be granted for four reasons:

First, as a matter of law, the Counties are authorized by Art. VIII, § 13(D) and S.C. Code Ann. § 4-1-170 to include Student Housing Apartment Complexes in the Multicounty Park regardless of whether the properties have any element of residential character.

Second, as a matter of law, no violation of the uniformity provisions of Art. X § 1 occur by inclusion of Student Housing Apartment Complexes in the Multicounty Park since the exemption of the property from *ad valorem* taxation (as is the case here) removes any uniformity issue.

Third, as a matter of law, no violation of South Carolina Constitution Article VIII, § 13(D) or of S.C. Code Ann. § 4-1-170 occurs by inclusion of Student Housing Apartment

Complexes in the Multicounty Park since the plain language of the provisions allow inclusion and the powers granted to Counties under Home Rule must be liberally construed in favor of Counties.

Fourth, on two separate grounds, the Court lacks subject matter jurisdiction because the i) the Plaintiffs bringing this action lack standing to seek a declaratory judgment and ii) Plaintiffs deprive this Court of jurisdiction by asking the Court to review policy judgments constitutionally committed to other legal bodies, not the judiciary. Each of these positions is more fully developed below.

II. Background and Standard of Review

The Plaintiffs assert in their Complaint at paragraph 19 that the Counties have “include[ed]. . . student and residential housing complexes in the Park.” Plaintiffs then allege in paragraph 20 “[n]either the South Carolina Constitution Article VIII, § 13(D), nor the enabling statutes (S.C. Code Ann. § 4-1-170 ff.) authorize Defendants to include residential projects in a Multicounty Business and Industrial Park.” The prayer for relief asserts “inclusion of residential properties in a multicounty business and industrial park, and the granting of tax credits arising therefrom, violates the South Carolina Constitution, Art. X § 1, and Art. 8, § 13; and SC Code Ann. § 4-1-170.”¹ Each assertion raises a challenge to the meaning of a statute or constitutional provision.

A challenge to the meaning of a statute or constitutional provision raises a question of law. *Eagle Container Co. v. County of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894

¹ It is elementary the prayer of a complaint is no part of the cause of action and cannot give character to it. *Williams v. Workman*, 113 S.C. 487, 101 S.E. 833; *Gardner v. Nash*, 225 S.C. 303, 82 S.E.2d 123. Hence, the allegations of the prayer should be ignored. However, in an abundance of caution and for the Court’s analysis, the allegations listed in the prayer are addressed for completeness.

(2008) (“The determination of legislative intent is a matter of law.”). Challenges raising questions of law for which no material disputed facts exist are suitable for summary judgment. Rule 56(c), SCRCPP; *see also, e.g., Brandt v. Gooding*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). The dispute here is ripe for summary judgment.

Given the Plaintiffs allegations, Plaintiffs assert the Counties 1) have no authority to include Student Housing Apartment Complexes in the Park since such properties are residential properties, and 2) if the Counties include such properties in the Park, that act, as well as granting such properties tax credits, violate specific constitutional and statutory provisions. Each assertion is incorrect and is addressed below.

III. Plaintiffs Wrongly Assert the Constitution and Statutes Do Not Authorize Counties to Include in a Multicounty Business and Industrial Park Properties Used as Student Housing Apartment Complexes.

Plaintiffs assert Counties are not “authorize[d] . . . to include residential projects in a Multicounty Business and Industrial Park” and argue the Student Housing Apartment Complexes are residential. Plaintiffs are incorrect for two reasons. First, in all events, Student Housing Apartment Complexes are not “residential” in a property tax sense. Second, even if using the property is for residential purposes, the authority granted by Article VIII, § 13(D) and the enabling statute of S.C. Code Ann. § 4-1-170 allow any investment (whether “residential” or otherwise) designed to enhance economic development in the Counties.

A. Student Housing Apartment Complexes Are Not Residential and Are Treated as Commercial Properties for Tax Valuation Purposes.

The properties under review are real properties used as Student Housing Apartment Complexes. Plaintiffs seek to classify the property as residential to the exclusion of “industrial or business.” Such is incorrect. The S.C. Constitution classifies real property for property tax purposes in Article X, § 1 by assigning assessment ratios for properties by classification.

Article X, § 1 classifies real property into 5 categories. Manufacturers are classified and assessed at a 10.5% ratio,² transportation at 9.5%,³ legal residences at 4%,⁴ agricultural at 4%,⁵ and “all other real property” at 6%.⁶ The affidavit of the Assessor for Richland County, attached hereto as Exhibit A, discusses the classification of the Student Housing Apartment Complexes at issue as “other real property” assessed at a 6% ratio.

The Assessor does not assess the real property as a “legal residence.” Indeed, she cannot. 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.” S.C. Code Ann. § 12-43-220(c)(1) (emphasis added). Here, again, the party occupying the property is a student renting the property as a lessee, not an “owner of a residence.”

The relationship of the occupants of the Student Housing Apartment Complexes to the real property they occupy is uncontested. In the Joint Stipulation of Facts (the “Stipulation”), the parties agree “[a]ll of the projects engage in the continuous activity of letting beds to

² “[a]ll real . . . property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility or mining operation, in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property.” *Id.*

³ “[a]ll real . . . property owned by or leased to companies primarily engaged in transportation for hire of persons or property and used by the company in the conduct of such business shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.” *Id.*

⁴ “[t]he legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.” *Id.*

⁵ “[a]gricultural real property which is actually used for such purposes shall be taxed on an assessment equal to . . . four percent of its value for such purposes.” *Id.*

⁶ “[a]ll other real property not herein provided for shall be taxed on an assessment equal to six percent of the fair market value of such property.” *Id.*

students through the entering of a lease or other contractual arrangements between the student and the developer or other property manager.” [Stipulation, ¶ 13] Hence, all occupants of the apartments are students and/or renters, but certainly not owners. Thus, no basis exists for finding the real property used as Student Housing Apartment Complexes should be classified as residential for property tax purposes.⁷

Not being residential, the Student Housing Apartment Complexes are plainly not manufacturing, plainly not transportation, and plainly not agricultural. Thus, for real property taxation purposes, the only classification applicable for the Student Housing Apartment Complexes is “other real property” at 6%. That classification, “other real property,” is the same classification used for traditional apartment complexes and other commercial properties. [See Exhibit A, Affidavit of Assessor] Commercial property is the applicable classification for the Student Housing Apartment Complexes.

- B. Regardless of Whether the Use Is Residential, the Student Housing Apartment Complexes Are Authorized by S.C. Code Ann. § 4-1-170 and Art. VIII, § 13(D) Because the Properties Are Within the Meaning of “Business or Industrial Park.”

The Plaintiffs appear to assert neither S.C. Code Ann. § 4-1-170 nor Art. VIII, § 13(D) authorizes Counties to develop an “industrial or business park,” if the properties within the Park will have a residential use. Such an assertion is incorrect. On the contrary, the Student Housing Apartment Complexes are well within the meaning of the authorized “industrial or business” properties, regardless of whether the property is used for residential purposes.

⁷ If any doubt exists on whether a student’s dormitory room within one of the Student Housing Apartment Complexes could qualify as a legal residence, such doubt is dispelled by the statutory requirement that “a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.” S.C. Code Ann. § 12-43-220(c)(1). Here, students occupy the unit while away from home. Their domicile is certainly elsewhere than in the dormitory unit.

1. Statutory Interpretation Requires the Use of Words in Their Plain and Ordinary Sense, Which Use Allows Student Housing Apartment Complexes in a Multicounty Park.

When attempting to discern the meaning of terms used by the General Assembly, the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). That task is best accomplished by giving words their plain and ordinary meaning without limiting or expanding the scope of the statute in such an interpretation. *State v Bull*, 350 S C 58, 60, 564 S E 2d 351, 353 (Ct App 2002). And, when the terms of a statute are clear and unambiguous, “there is no room for construction and courts are required to apply them according to their literal meaning.” *Carolina Power & Light Co v City of Bennettsville*, 314 S C 137, 139, 442 S E 2d 177, 179 (1994).

Here, the words used in the Constitution and in the statutes are “clear and unambiguous.” Counties are authorized to place property in a “business or industrial park.” The plain and ordinary meaning of “industrial” is “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.” *Id.* at 192. Applying these terms to the real estate market as categorized by NAICS codes shows the Student Housing Apartment Complexes are part of a business operating in the real estate rental industry.

A common means of classifying economic activity is the North American Industrial Classification System (“NAICS”) maintained by the U. S. Census Bureau. Our General Assembly has relied on NAICS codes in the property tax realm.⁸ The NAICS system “is the standard for use by Federal statistical agencies in classifying business establishments [and]

⁸ The Department values all property of manufacturers with the label of manufacturers met by businesses set out in Sectors 21 and 31-33 of the North American Industry Classification System Manual. SC Code §12-43-335(B). In addition, the Department values all property of railroads, private carlines, airlines, water, power, telephone, cable television, sewer, and pipeline companies with those labels met by businesses in Sectors 22, 51, 424, 481-483, 485, and 486 of the North American Industry Classification System Manual. SC Code § 12-43-335(C).

NAICS is based on a production-oriented concept, meaning that it groups establishments into industries.” <https://www.census.gov/eos/www/naics/faqs/faqs.html#q1>, U.S. Census Bureau web page, *accessed* 2016-09-19.

Since NAICS is based on industries and classified by the businesses within those industries, the common understanding of whether the rental property here under review is part of an industry operating as a business within an industry can be found in the NAICS codes. For instance, the Student Housing Apartment Complexes at issue can be classified under NAICS code section 531110 as “Lessors of Residential Buildings and Dwellings.” According to the NAICS Manual:

This industry comprises establishments primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes. Included in this industry are owner-lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them. (emphasis added) [a true and accurate copy of NAICS section 531110 is attached hereto as Exhibit B]

Even more particularly, Student Housing Apartment Complexes can be characterized as “Rooming and Boarding Houses (Dormitories, off campus),” thereby falling under NAICS Code Section 721310. Per the NAICS Manual:

This industry comprises establishments primarily engaged in operating rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories, residential clubs, and workers' camps. These establishments provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals, and laundry services. (emphasis added) [a true and accurate copy of NAICS section 721310 is attached hereto as Exhibit C]

Thus, the common understanding of the rental activity involving Student Housing Apartment Complexes is that of an industry—the rental of real property—with the business of either providing “off-campus dormitories” or leasing real property undertaken by “establishments

primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes.” Thus, the mere fact of the use of property for “residences” or as “dwellings” does not defeat the further fact the lessor is operating a business within the rental industry. Accordingly, the Student Housing Apartment Complexes are authorized by S.C. Code Ann. § 4-1-170’s grant of power to the Counties allowing them to develop an “industrial or business park” even when the property placed in the Park is rental property used for residential purposes.

2. The Plain Meaning of “Industrial of Business Park” Viewed Liberally Under Home Rule Authorizes the Counties to Include Student Housing Apartment Complexes in the Multicounty Park.

The language of Art. VIII, § 13(D) is straight-forward:

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. (emphasis added)

Art. VIII, § 13(D).

The above quoted provision places no limitation on the entities or the properties eligible to include in the Park. Rather, all that is required is to have “[t]he participating counties . . . reduce the agreement to develop and share expenses and revenues of the park to a written

instrument which is binding on all participating counties.” *Id.* The Counties complied with that requirement. [See Stipulation, ¶ 1 (“[o]n or about April 15, 2003, Richland County entered into a Master Agreement governing the 1-77 Corridor Regional Industrial Park with Fairfield County.”)].

When the no-limitations-on-the-County perspective is combined with the Constitutional context of Home Rule, the authority of the Counties to include in the Park any property desirable to achieve economic development is compelling. The powers granted counties by Home Rule “mandate[] a liberal rule of construction regarding any constitutional provisions or laws concerning local government. S.C. Const. art. VIII, § 17.” *Hosp. Ass'n v. Cty. of Charleston*, 320 S.C. 219, 464 S.E.2d 113, 117 (1995). Applying the constitutional provisions liberally (as this Court must) when combined with the plain language of the constitution establishes firm authority in the Counties to include Student Housing Apartment Complexes in the Park.

IV. Including Student Housing Apartment Complexes in a Multicounty Park Does Not Violate Constitutional or Statutory Provisions.

A. No Violation of Art X, § 1’s Uniformity Requirement Occurs for Properties Within the Six Percent Commercial Property Classification.

Plaintiffs appear to argue that allowing Student Housing Apartment Complexes within a Multicounty Park provides a property tax benefit unavailable to other properties in the same commercial classification. Thus, Plaintiffs seem to argue commercial properties are being treated differently and therefore uniformity is violated. Such an assertion is incorrect for two reasons.

First, as a matter of law, all properties in a Multicounty Park are exempt from property tax. S.C. Const. art. VIII, § 13(D) (“The area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation.”). Once the property is exempt from *ad*

valorem taxes, no violation of uniformity can occur. Our Supreme Court has made it clear that once property is removed from *ad valorem* taxation as exempt property, no violation of uniformity is possible. See *Quirk v. Campbell*, 302 S.C. 148, 153, 394 S.E.2d 320, 323 (1990) (declaring no uniformity violation can arise from an exemption because uniformity “has been literally followed inasmuch as the property is not subject to *ad valorem* taxes.”). Thus, Plaintiffs arguments are incorrect as a matter of law.

Second, even assuming uniformity could be a concern, the Constitution holds the “assessment of all property shall be equal and uniform [within the] . . . classifications.” S.C. Const. art. X, § 1. That requirement is satisfied by the Counties since, under the Counties’ practice, all commercial properties are eligible for inclusion in a Multicounty Park and therefore have the same eligibility for treatment. Hence, with no exclusions, the Counties maintain uniformity by not prohibiting the inclusion of any commercial property.

However, Plaintiffs’ position creates the very inequality of which the Plaintiffs’ accuse the Counties. Plaintiffs appear to limit the commercial properties eligible for inclusion in a Multicounty Park and specifically prohibit inclusion of any commercial properties having any element of residential character.

Such being true, Plaintiffs’ view, taken to its logical conclusion, would (by definition) deny inclusion in the Park of numerous medical facilities housing patients undergoing procedures for either acute health care to long-term health care. Individuals receiving care at such facilities would inherently be required to live on the premises for varying time periods. Despite such businesses being inherently commercial and animated by technology and innovation, Plaintiffs position would deny inclusion due to some element of the business involving occupants living on the property. Thus, Plaintiffs, not the Counties, seek to impose disparate treatment of commercial properties.

- B. No Violation of South Carolina Constitution, Art. VIII, § 13 or of S.C. Code Ann. § 4-1-170 Occurs by Including Student Housing Apartment Complexes in a Multicounty Business and Industrial Park.

The parties have stipulated the properties in the Park are "student housing projects." See Stipulation, ¶ 4, and the listing of projects by Table showing name and location within the Park. Inclusion in the Park does not violate South Carolina Constitution, Art. VIII, § 13 or of SC Code Ann. § 4-1-170.

As discussed above, the plain language of both Art. VIII, § 13 and S.C. Code Ann. § 4-1-170 allows Counties to "jointly develop an industrial or business park with other counties." The Counties have done that. Further, no language contained in either Art. VIII, § 13 or S.C. Code Ann. § 4-1-170 limits the properties eligible for inclusion in the Park. Therefore, inclusion in the Park of Student Housing Apartment Complexes is not prohibited and such a conclusion is certain given that the powers of Home Rule granted to Counties must be read liberally. *Hosp. Ass'n v. Cty. of Charleston*, 320 S.C. 219, 464 S.E.2d 113, 117 (1995) (there the Court explains the powers granted counties by Home Rule come with a "mandate [of] a liberal rule of construction regarding any constitutional provisions or laws concerning local government.").

V. The Court Lacks Subject Matter Jurisdiction Because i) the Plaintiffs Lack Standing and ii) the Matter Before the Court Is Not Justiciable.

A. Plaintiffs Lack Standing.

1. No Injury-In Fact Exists.

Standing is a prerequisite to invoking the jurisdiction of the Court. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Standing requires Plaintiffs have "a personal stake in the subject matter of the lawsuit." *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). A

personal stake is not shown unless Plaintiffs “can show that, as a result of that [governmental] action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained.” *Joytime Distribs.*, 338 S.C. at 639, 528 S.E.2d at 649–50. On that injury, “the injury must be of a personal nature to the party bringing the action, not merely of a general nature which is common to all members of the public.” *Id.* at 639-40, 528 S.E.2d at 650.

Here, no injury to Plaintiffs results from inclusion of Student Housing Apartment Complexes in a Multicounty Park. In other words, no action by any governmental entity has directed or caused Plaintiffs to do anything. Rather, only the projects owning the Student Housing Apartment Complexes are exempt from property tax and such produces no direct injury to Plaintiffs.

Further, and in all events, to the extent any injury can be identified, the injury is only that which is common to all citizens of Richland County, not just to Plaintiffs. Hence, no standing exists as to Plaintiffs.

2. Mere Status as a Taxpayer Is Insufficient for Standing in a Declaratory Judgment Action.

Plaintiffs assert standing based on the status of being a taxpayer. [Complaint, ¶ 2 (asserting standing to “bring this lawsuit as a City of Columbia and Richland County taxpayer.”)] A party in his capacity as a taxpayer has no standing to challenge governmental action given “the exceedingly small interest of a general taxpayer.” *Crews v. Beattie*, 197 S.C. 32, 14 S.E.2d 351, 357–58 (1941). As a matter of law, the Declaratory Judgment Act under which Plaintiffs are proceeding confers no independent standing. *See Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013) (“We reject any averment that the fact Bodman is proceeding under the Declaratory Judgment Act has any impact on our standing analysis [and w]e reaffirm this principle today and hold that Bodman's status as a mere taxpayer is insufficient to confer standing upon him.”)

3. Public Importance Standing Is Insufficient for a Declaratory Judgment Action.

For a plaintiff to have standing on the grounds of public importance, the party must demonstrate some overriding public purpose or concern to confer standing. *Beaufort Cnty. v. Trask*, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct. App. 2002). In deciding when an overriding public purpose is involved, the “key to the public importance analysis is whether a resolution is needed for future guidance [since it is that] . . . ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.” *Bodman*, 403 S.C. at 68, 742 S.E.2d at 367.

Here, nothing in the Complaint supports any basis for concluding any extensive public importance exists. On the contrary, it is clear Plaintiff's Complaint involves a limited number of projects. Plaintiff lacks standing to sue, and the Complaint should be dismissed under Rule 12(b)(1).

B. The Matter Before the Court Is Non-Justiciable.

Section 13D of Article VIII of the S.C. Constitution specifically grants to counties the authority to create “an industrial or business park.” Section 13D mandates the member counties who jointly develop a multicounty industrial or business park to “reduce the agreement to develop and share expenses and revenues of the park to a written instrument which is binding on all participating counties.” Thus, the S.C. Constitution, in unequivocal terms, vests the authority to “develop” a multicounty park in the hands of the constituent counties who create such a park. And, in enacting ordinances placing the property under review in the Park, both Fairfield County and Richland County exercised their best policy judgment and acted within their plenary constitutional authority.

A Court lacks jurisdiction to review questions of policy judgment when those matters are constitutionally committed to other legal bodies. *See Stone v. Leatherman*, 343 S.C. 484, 484-85,

541 S.E.2d 241 (2001) (holding the S.C. Constitution provides the Senate with the authority to judge the election returns and qualifications of its own members).

Plaintiffs' allegations raise a personal disagreement over the discretionary policy judgments of counties, which authority resides exclusively with the counties. Thus, Plaintiffs voicing in the Complaint their disagreement with the policy judgments exercised by Fairfield and Richland Counties presents a nonjusticiable question, which asks the Court to usurp the authority of the political bodies imbued with the constitutional authority to develop a multicounty park. The Court, has no jurisdiction over such matters under Rule 12(b)(1).

CONCLUSION

The irrefutable material facts of this case, when viewed in light of the applicable law, establish that the Counties are entitled to a judgment in their favor. Plaintiffs' claims, therefore, fail as a matter of law, and the Counties respectfully request that the Court issue an Order granting the Counties' Motion for Summary Judgment.

Respectfully submitted,



Ray N. Stevens (Bar N. 5342)
Ray E. Jones (Bar No. 11322)
Court E. Walsh (Bar No. 72723)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com
courtwalsh@parkerpoe.com

*Counsel for Defendants
Richland County and Fairfield County*

September 20, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually, and)
 on behalf of all others similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 The City of Columbia, Richland County, and)
 Fairfield County,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-00946

**AFFIDAVIT OF
 ELIZABETH M. MCDONALD**

Personally appeared before me Elizabeth M. McDonald, who, being duly sworn, pursuant to Rule 56(e) of the South Carolina Rules of Civil Procedure, hereby deposes and certifies as follows:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein. The statements in this affidavit are made based upon my personal knowledge.
2. I am currently employed as the Assessor of Richland County, South Carolina, located in Richland County, South Carolina.
3. I am authorized to make this affidavit on behalf of Defendant Richland County.
4. As the Assessor, my office's responsibilities include appraising and classifying owner-occupied, non-owner-occupied and commercial real property in Richland County, South Carolina.

5. As a result of carrying out the responsibilities of my office, I am familiar with the attributes of each class of property assessed and classified by my office.

6. I have reviewed the assigned classification for the following private dormitory projects: (the "Private Dormitories"):

- a. Park Place Columbia owned by CD/Park 7 Columbia SC Owner LLC with TMS numbers: 08914-16-01, 08914-16-02;
- b. Greene Crossing owned by University Residences Columbia, LLC with TMS numbers: 08915-13-02, 08914-14-03, 08915-14-05, 08915-13-07, 08915-13-06, 08915-13-01, 08914-13-02, 08914-13-03, and 08915-14-02;
- c. Station at Five Points owned by Blue Atlantic Columbia, LLC with TMS numbers: 11406-13-01, 11406-13-02, 11406-13-03, 11406-13-04; and
- d. University SC Towers owned by CD/Park 7 Columbia SC High Rise Owner, LLC with TMS numbers: 08916-09-07, 08916-09-08, 08916-09-09, and 08916-09-10.

7. The aforementioned Private Dormitories are currently or will be classified as property assessable at a 6% rate.

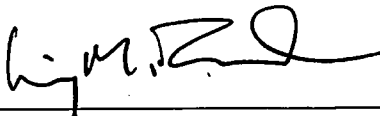
8. The Private Dormitories are assessed at this rate because my office classified the Private Dormitories as commercial properties.

9. The Private Dormitories were classified as commercial properties by my office because it is my office's understanding that each of the Private Dormitories' activities, which consist of operating and leasing off-campus accommodations for college students, and provision of specific services, including security, property management, and planned recreational activities, comprise business and commercial activities.

10. For those reasons, Richland County has determined that the planned operation of the Private Dormitories named herein comprise business and commercial activities appropriately assessed as a commercial property at a 6% rate.

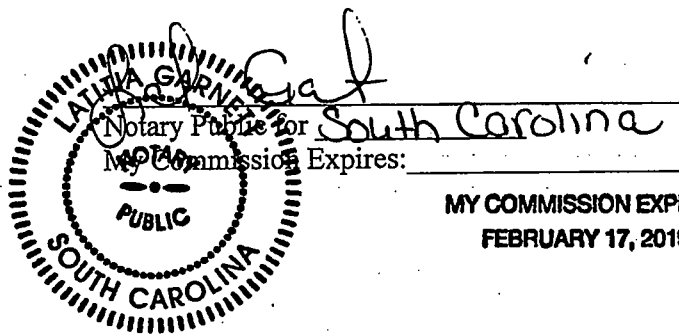
FURTHER, Affiant sayeth naught.

This 20 day of September, 2016.



Elizabeth M. McDonald, Assessor
Richland County, South Carolina

SWORN to before me this
20th day of September 2016.



**MY COMMISSION EXPIRES
FEBRUARY 17, 2019**



Search

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov/) / [Business & Industry](http://www.census.gov/econ/www/index.html) / [NAICS](http://www.census.gov/econ/www/naics/index.html) / [NAICS Search/Tools](#)

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

531110 Lessors of Residential Buildings and Dwellings

This industry comprises establishments primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single family homes, apartment buildings, and town homes. Included in this industry are owner-lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them.

Cross-References.

- Establishments primarily engaged in managing residential real estate for others are classified in U.S. Industry 531311 ([/cgi-bin/sssd/naics/naicsrch?code=531311&search=2012](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=531311&search=2012)), Residential Property Managers.

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
531110	531110	531110	Apartment building rental or leasing
531110	531110	531110	Apartment hotel rental or leasing
531110	531110	531110	Apartment rental or leasing
531110	531110	531110	Building, apartment, rental or leasing
531110	531110	531110	Building, residential, rental or leasing
531110	531110	531110	Cottage rental or leasing
531110	531110	531110	Duplex houses (i.e., single family) rental or leasing
531110	531110	531110	Dwelling rental or leasing
525930	531110	531110	Equity real estate investment trusts (REITs), primarily leasing residential buildings and dwellings
531110	531110	531110	Houses rental or leasing
531110	531110	531110	Housing authorities operating residential buildings
531110	531110	531110	Lessors of residential buildings and dwellings
531110	531110	531110	Mobile (manufactured) home, on site, rental or leasing
531110	531110	531110	Real estate rental or leasing of residential building
531110	531110	531110	Residential building rental or leasing
531110	531110	531110	Residential hotel rental or leasing
531110	531110	531110	Retirement hotel rental or leasing
531110	531110	531110	Single family house rental or leasing
531110	531110	531110	Town house rental or leasing

[PDF] or ([/main/www/pdf.html](http://main/www/pdf.html)) denotes a file in Adobe's **Portable Document Format** ([/main/www/pdf.html](http://main/www/pdf.html)). To view the file, you will need the **Adobe® Reader®** (<http://www.adobe.com/products/reader/>) available free from Adobe. [Excel] or the letters [xls] indicate a document is in the **Microsoft® Excel® Spreadsheet Format (XLS)**. To view the file, you will need the **Microsoft® Excel® Viewer** (<http://www.microsoft.com/en-us/download/details.aspx?id=10>) available for free from Microsoft. This symbol indicates a link to a non-government web site. Our linking to these sites does not constitute an endorsement of any products, services or the information found on them. Once you link to another site you are subject to the policies of the new site.

ABOUT US
<http://www.census.gov>

EXHIBIT "B"

[/about.html](#)

Are You In a Survey?
[\(/www.census.gov/programs-surveys/are-you-in-a-survey.html\)](#)

FAQs ([/ask.census.gov](#))

Director's Corner
[\(/www.census.gov/about/leadership.html\)](#)

Regional Offices
[\(/www.census.gov/about/regions.html\)](#)

History ([/www.census.gov/about/history.html](#))

Research ([/www.census.gov/about/research.html](#))

Scientific Integrity
[\(/www.census.gov/about/policies/quality/scientific_integrity.html\)](#)

Census Careers
[\(/www.census.gov/about/census-careers.html\)](#)

Diversity @ Census
[\(/www.census.gov/about/diversity-networks.html\)](#)

Business Opportunities
[\(/www.census.gov/about/business-opportunities.html\)](#)

Congressional and Intergovernmental
[\(/www.census.gov/about/cong-gov-affairs.html\)](#)

Contact Us
[\(/www.census.gov/about/contact-us.html\)](#)

FIND DATA

QuickFacts
[\(/www.census.gov/data/data-tools/quickfacts.html\)](#)

American FactFinder
[\(/www.census.gov/data/data-tools/americanfactfinder.html\)](#)

Easy Stats
[\(/www.census.gov/data/data-tools/easy-stats.html\)](#)

Population Finder
[\(/www.census.gov/data/data-tools/interactive-population-map.html\)](#)

2010 Census
[\(/www.census.gov/programs-surveys/decennial-census/2010-census.html\)](#)

Economic Census
[\(/www.census.gov/programs-surveys/econ_census.html\)](#)

Interactive Maps
[\(/www.census.gov/geography/interactive-maps.html\)](#)

Training & Workshops
[\(/www.census.gov/data/training-workshops.html\)](#)

Data Tools
[\(/www.census.gov/data/data-tools.html\)](#)

Developers
[\(/www.census.gov/developers/\)](#)

Catalogs ([/www.census.gov/data/product-catalog.html](#))

Publications
[\(/www.census.gov/library/publications.html\)](#)

BUSINESS & INDUSTRY

Help With Your Forms
[\(/www.census.gov/topics/business/business-help.html\)](#)

Economic Indicators
[\(/www.census.gov/topics/economy/economic-indicators.html\)](#)

Economic Census
[\(/www.census.gov/programs-surveys/econ_census.html\)](#)

E-Stats ([/www.census.gov/programs-surveys/e-stats.html](#))

International Trade
[\(/www.census.gov/topics/international-trade.html\)](#)

Export Codes
[\(/www.census.gov/topics/international-trade/schedule-b.html\)](#)

NAICS ([/www.census.gov/topics/economy/naics-classification-codes.html](#))

Governments
[\(/www.census.gov/topics/public-sector.html\)](#)

Local Employment Dynamics
[\(/www.census.gov/topics/employment/led.html\)](#)

Survey of Business Owners
[\(/www.census.gov/programs-surveys/sbo.html\)](#)

PEOPLE & HOUSEHOLDS

2020 Census
[\(/www.census.gov/2020census/\)](#)

2010 Census
[\(/www.census.gov/programs-surveys/decennial-census/2010-census.html\)](#)

American Community Survey
[\(/www.census.gov/programs-surveys/acs/\)](#)

Income ([/www.census.gov/topics/income-poverty/income.html](#))

Poverty ([/www.census.gov/topics/income-poverty/poverty.html](#))

Population Estimates
[\(/www.census.gov/topics/population/population-estimates.html\)](#)

Population Projections
[\(/www.census.gov/topics/population/population-projections.html\)](#)

Health Insurance
[\(/www.census.gov/topics/health/health-insurance.html\)](#)

Housing ([/www.census.gov/topics/housing.html](#))

International
[\(/www.census.gov/topics/population/international.html\)](#)

Genealogy
[\(/www.census.gov/topics/population/genealogy.html\)](#)

SPECIAL TOPICS

Advisors, Centers and Research Programs
[\(/www.census.gov/about/partners.html\)](#)

Statistics in Schools
[\(/www.census.gov/schools/\)](#)

Tribal Resources (AAN)
[\(/www.census.gov/about/cong-gov-affairs/tribal-affairs/tribal-resources.html\)](#)

Emergency Preparedness
[\(/www.census.gov/topics/preparedness.html\)](#)

Statistical Abstract
[\(/www.census.gov/library/publications/time-series/statistical_abstracts.html\)](#)

Special Census Program
[\(/www.census.gov/programs-surveys/specialcensus.html\)](#)

Data Linkage Infrastructure
[\(/www.census.gov/kitalinage/\)](#)

Fraudulent Activity & Scams
[\(/www.census.gov/programs-surveys/are-you-in-a-survey/fraudulent-activity-and-scams.html\)](#)

USA.gov ([/www.usa.gov](#))

Business USA.gov
[\(/business.usa.gov\)](#)

NEWSROOM

[\(/www.census.gov/newsroom.html\)](#)

News Releases
[\(/www.census.gov/newsroom/press-releases.html\)](#)

Release Schedule
[\(/www.census.gov/calendar.html\)](#)

Calendar
[\(/calendar.php?cmd=cens1&sampleid=31793\)](#)

Facts for Features
[\(/www.census.gov/newsroom/facts-for-features.html\)](#)

Stats for Stories
[\(/www.census.gov/newsroom/stories.html\)](#)

Blogs ([/www.census.gov/about/contact-us/social_media.html](#))

CONNECT WITH US
[\(/www.census.gov/about/contact-us/social_media.html\)](#)

[\(/twitter.com/usacensusbureau\)](#)

[\(/www.facebook.com/usacensusbureau\)](#)

[\(/www.youtube.com/user/usacensusbureau\)](#)

[\(/public.govdelivery.com/accounts/USCENSUS/subscribe/new\)](#)

Accessibility ([/www.census.gov/about/policies/privacy/privacy.html#sec_landmarks_1](#))

Information Quality ([/www.census.gov/quality](#)) | **FOIA** ([/www.census.gov/foia](#)) | **Data Protection and Privacy Policy** ([/www.census.gov/privacy](#)) | **U.S. Department of Commerce** ([/www.commerce.gov](#))

Source: U.S. Census Bureau | North American Industry Classification System (NAICS) | (888) 756-2427 | naics@census.gov | naics@census.gov | Last Revised: May 13, 2013



U.S. Department of Commerce (<http://www.commerce.gov/>) | Blogs (http://www.census.gov/about/contact-us/social_media.html) | Index A-Z (<http://www.census.gov/about/index.html>) | Glossary (<http://www.census.gov/glossary/>) | FAQs (<http://ask.census.gov/>)

Search

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov/) / [Business & Industry](http://www.census.gov/econ/www/index.html) / [NAICS](http://www.census.gov/econ/www/naics/index.html) / [NAICS Search/Tools](http://www.census.gov/econ/www/naics/index.html)

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

721310 Rooming and Boarding Houses

This industry comprises establishments primarily engaged in operating rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories, residential clubs, and workers' camps. These establishments provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals, and laundry services.

Illustrative Examples:

- Dormitories (off campus)
- Sorority houses
- Fraternity houses
- Workers' camps
- Rooming houses

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
721310	721310	721310	Boarding houses
721310	721310	721310	Clubs, residential
721310	721310	721310	Dormitories, off campus
721310	721310	721310	Fraternity houses
721310	721310	721310	Migrant workers' camps
721310	721310	721310	Off campus dormitories
721310	721310	721310	Residence clubs, organizational
721310	721310	721310	Residential clubs
721310	721310	721310	Rooming and boarding houses
721310	721310	721310	Sorority houses
721310	721310	721310	Workers' camps
721310	721310	721310	Workers' dormitories

[PDF] or (<http://www.census.gov/econ/www/pdf.html>) denotes a file in Adobe's Portable Document Format (<http://www.adobe.com/products/reader/>). To view the file, you will need the [Adobe® Reader®](http://www.adobe.com/products/reader/) (available free from Adobe). [Excel] or the letters [xls] indicate a document is in the Microsoft® Excel® Spreadsheet Format (XLS). To view the file, you will need the [Microsoft® Excel® Viewer](http://www.microsoft.com/en-us/download/details.aspx?id=10) (available for free from Microsoft®). This symbol indicates a link to a non-government web site. Our linking to these sites does not constitute an endorsement of any products, services or the information found on them. Once you link to another site you are subject to the policies of the new site.

ABOUT US
<http://www.census.gov/about.html>
 Are You in a Survey?
<http://www.census.gov/programs-surveys/are-you-in-a-survey.html>
 FAQs (<http://ask.census.gov/>)
 Director's Corner
<http://www.census.gov/about>

EXHIBIT "C"

Leadership.html)
 Regional Offices
 (/www.census.gov/about/regions.html)
 History (/www.census.gov/about/history.html)
 Research (/www.census.gov/about/research.html)
 Scientific Integrity (/www.census.gov/about/policies/scientific_integrity.html)
 Census Careers (/www.census.gov/about/census-careers.html)
 Diversity @ Census (/www.census.gov/about/diversity-networks.html)
 Business Opportunities (/www.census.gov/about/business-opportunities.html)
 Congressional and Intergovernmental (/www.census.gov/about/cong-gov-affairs.html)
 Contact Us (/www.census.gov/about/contact-us.html)

FIND DATA
 QuickFacts (/www.census.gov/data/data-tools/quickfacts.html)
 American FactFinder (/www.census.gov/data/data-tools/american-factfinder.html)
 Easy Stats (/www.census.gov/data/data-tools/easy-stats.html)
 Population Finder (/www.census.gov/data/data-tools/interactive-population-map.html)
 2010 Census (/www.census.gov/programs-surveys/decennial-census/2010-census.html)
 Economic Census (/www.census.gov/programs-surveys/econ_census.html)
 Interactive Maps (/www.census.gov/geography/interactive-maps.html)
 Training & Workshops (/www.census.gov/k12a/training-workshops.html)
 Data Tools (/www.census.gov/data/data-tools.html)
 Developers (/www.census.gov/developers/)
 Catalogs (/www.census.gov/k12a/product-catalog.html)
 Publications (/www.census.gov/library/publications.html)

BUSINESS & INDUSTRY
 Help With Your Forms (/www.census.gov/topics/business/business-help.html)
 Economic Indicators (/www.census.gov/topics/economy/economic-indicators.html)
 Economic Census (/www.census.gov/programs-surveys/econ_census.html)
 E-Stats (/www.census.gov/programs-surveys/e-stats.html)
 International Trade (/www.census.gov/topics/international-trade.html)
 Export Codes (/www.census.gov/topics/international-trade/schedule-b.html)
 NAICS (/www.census.gov/topics/economy/naics-classification-codes.html)
 Governments (/www.census.gov/topics/public-sector.html)
 Local Employment Dynamics (/www.census.gov/topics/employment.html)
 Survey of Business Owners (/www.census.gov/programs-surveys/sbo.html)

PEOPLE & HOUSEHOLDS
 2020 Census (/www.census.gov/2020census/)
 2010 Census (/www.census.gov/programs-surveys/decennial-census/2010-census.html)
 American Community Survey (/www.census.gov/programs-surveys/acs/)
 Income (/www.census.gov/topics/income-poverty/income.html)
 Poverty (/www.census.gov/topics/income-poverty/poverty.html)
 Population Estimates (/www.census.gov/topics/population/population-estimates.html)
 Population Projections (/www.census.gov/topics/population/population-projections.html)
 Health Insurance (/www.census.gov/topics/health/health-insurance.html)
 Housing (/www.census.gov/topics/housing.html)
 International (/www.census.gov/topics/population/international.html)
 Genealogy (/www.census.gov/topics/population/genealogy.html)

SPECIAL TOPICS
 Advisors, Centers and Research Programs (/www.census.gov/about/partners.html)
 Statistics in Schools (/www.census.gov/schools/)
 Tribal Resources (AIAN) (/www.census.gov/about/cong-gov-affairs/tribal-affairs/tribal-resources.html)
 Emergency Preparedness (/www.census.gov/topics/preparedness.html)
 Statistical Abstract (/www.census.gov/library/publications/time-series/statistical_abstracts.html)
 Special Census Program (/www.census.gov/programs-surveys/specialcensus.html)
 Data Linkage Infrastructure (/www.census.gov/data/linkage)
 Fraudulent Activity & Scams (/www.census.gov/programs-surveys/are-you-in-a-survey/fraudulent-activity-and-scams.html)
 USA.gov (/www.usa.gov)
 BusinessUSA.gov (/business.usa.gov)

NEWSROOM
 (/www.census.gov/newsroom.html)
 News Releases (/www.census.gov/newsroom/press-releases.html)
 Release Schedule (/www.census.gov/calendar.html)
 Calendar (/www.census.gov/calendar.php?cid=cens1&sampleid=91793)
 Facts for Features (/www.census.gov/newsroom/facts-for-features.html)
 Stats for Stories (/www.census.gov/newsroom/stories.html)
 Blogs (/www.census.gov/about/contact-us/social-media.html)
CONNECT WITH US
 (/www.census.gov/about/contact-us/social-media.html)
 (/twitter.com/us/censusbureau)
 (/www.facebook.com/us/censusbureau)
 (/www.youtube.com/user/us/censusbureau)
 (/public.govdelive.com/accounts/us/censusbureau)
 Accessibility (/www.census.gov/about/policies/privacy/policy.html#pr_privacy_1)
 Information Quality (/www.census.gov/quality/) | FOIA (/www.census.gov/foia/) | Data Protection and Privacy Policy (/www.census.gov/privacy/) | U.S. Department of Commerce (/www.commerce.gov)

Source: U.S. Census Bureau | North American Industry Classification System (NAICS) | (888) 756-2427 | naics@census.gov (mailto:naics@census.gov) | Last Revised: May 13, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 The City of Columbia, Richland County,)
 and Fairfield County.)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-00946

**RICHLAND COUNTY'S AND
 FAIRFIELD COUNTY'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR SUMMARY JUDGMENT**

2016 OCT -4 PM 3:33
 JENNIFER W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

Richland County and Fairfield County ("Richland" or "Fairfield" individually and "Counties" collectively) submit this Opposition to Plaintiffs' Motion for Summary Judgment. While the Counties' opposition is more fully developed in the accompanying Memorandum and Affidavit Supporting Opposition to Plaintiffs' Motion for Summary Judgment, two positions require the Court to deny Plaintiffs' Motion for Summary Judgment.¹

First, Plaintiffs are in error when asserting property cannot be placed in a Multicounty Business and Industrial Park and cannot receive Special Source Revenue Credits without first meeting the definitions of "Project" and "Industry" as those terms are defined in S.C. Code Ann. §4-29-10. No such requirement exists. Second, Plaintiffs assert investments in a Multicounty Business and Industrial Park must be manufacturing in nature. Again, no such requirement

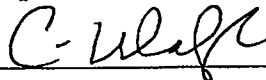
¹ The Counties bring to the Court's attention that Plaintiff's theories found in Chapter 29, Title 4 of the South Carolina Code are nowhere previewed or otherwise preserved in Plaintiff's Amended Complaint. Accordingly, the Counties, pursuant to Rules 8, 15, and 56 of the S.C. Rules of Civil Procedure, request that the Court consider the arguments set forth in Sections II & III of the Counties' Memorandum in Opposition as formal objections and requests to strike the extraneous and offending portions of Plaintiffs' Memorandum for Summary Judgment.

exists. Hence, no grounds exist upon which the Court can grant Summary Judgment to Plaintiffs.

While identifying the two grounds above for opposing Plaintiffs' Motion for Summary Judgment, Counties do not abandon nor waive but instead reiterate their positions stated in their Motion to Dismiss the Amended Complaint. Those positions are reasserted here by arguing the Plaintiffs' Amended Complaint should be dismissed because i) Plaintiffs' Amended Complaint is defective by failing to allege the student housing projects are not Businesses; ii) Plaintiffs' Amended Complaint is defective by alleging the City of Columbia owns the Property at issue in the Multicounty Park, iii) and the Court lacks jurisdiction to grant Plaintiffs any relief because the Plaintiffs lack of standing and the Court lacks authority to overturn discretionary policy judgments constitutionally or statutorily committed to other political bodies..

For the foregoing reasons, and for those set forth in the accompanying Memorandum of Law, Affidavit and Exhibits incorporated herein and severed contemporaneously herewith, Richland County and Fairfield County respectfully request the Court deny the Plaintiffs' Motion for Summary Judgment and grant such other and further relief as it may deem appropriate.

Respectfully submitted,



Ray N. Stevens (Bar No. 5342)
Ray E. Jones (Bar No. 11322)
Court E. Walsh (Bar No. 72723)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com
courtwalsh@parkerpoe.com

*Counsel for Defendants Richland County and
Fairfield County*

October 4, 2016
Columbia, South Carolina

PPAB 342776v1


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 4, 2016, she caused the foregoing **RICHLAND COUNTY'S AND FAIRFIELD COUNTY'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** and **RICHLAND COUNTY'S AND FAIRFIELD COUNTY'S MEMORANDUM AND AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**, with accompanying Exhibits, to be served on all parties of record via U. S. mail delivery, postage prepaid, addressed as follows:

James Carpenter, Esquire
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, South Carolina 29601

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202

RICHLAND COUNTY
FILED
2016 OCT -4 PM 3:33
JEANNETTE W. MCBRIDE
C.C.P. & G.S.



Randi M. Berlin

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 The City of Columbia, Richland County,)
 and Fairfield County.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-00946

**RICHLAND COUNTY'S AND
 FAIRFIELD COUNTY'S
 MEMORANDUM AND AFFIDAVIT IN
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR SUMMARY JUDGMENT**

2016 OCT -4 PM 3:33
 ANNETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

I. INTRODUCTION

Plaintiffs give four reasons summary judgment should be granted in their favor. Each is incorrect as a matter of law.

First, Plaintiffs assert “[t]he statutory definition of ‘Project’ [in S.C. Code Ann. §4-29-10] does not include student housing [and a]ccordingly, the use of Special Source Revenue Credits for student housing, and their inclusion in a Multicounty Business and Industrial Park is illegal and unconstitutional.” *Plaintiffs’ Memorandum p. 7.* Second, Plaintiffs assert “[t]he student housing complexes are not ‘Industry’ and do not meet the definitions of [S.C. Code Ann. §4-29-10 in] Chapter 29 to qualify for inclusion in an Industrial Park, or a Special Source Revenue Credit.” *Plaintiffs’ Memorandum p. 8.* Third, Plaintiffs argue “[p]lacing student housing projects in the Industrial Park and granting them Special Source Revenue Credits (or Bonds), do not fulfill the purposes of S.C. Code Ann. § 4-29-68 [because s]tudent housing projects are not ‘used in the operation of a manufacturing or commercial enterprise.’” *Plaintiffs’ Memorandum p. 8-9.* Finally, Plaintiffs argue the Student Housing complexes “are not entitled

to the tax breaks created by the General Assembly [because they are not] for the purpose of 'attracting large capital intensive industries to this State;' and they do not 'improve[e] the industrial climate of South Carolina in order to provide for the welfare and prosperity of its inhabitants.'" *Plaintiffs' Memorandum p. 11-12.*

Arguments one and two assert Chapter 29 of Title 4 controls Chapter 1 of Title 4. These two arguments are addressed together.¹ Further, arguments three and four assert investments in a Multicounty Business and Industrial Park must be manufacturing in nature.² These two arguments are addressed together as well.

II. ANALYSIS OF THE APPLICABILITY OF CHAPTER 29 OF TITLE 4 TO INVESTMENTS IN A MULTICOUNTY BUSINESS AND INDUSTRIAL PARK UNDER CHAPTER 1 OF TITLE 4

Plaintiffs' assert meeting the definitions of "Project" and "Industry" in S.C. Code Ann. §4-29-10 are mandatory for investments made in a Multicounty Business and Industrial Park. In essence, Plaintiffs urge the Court to find Chapter 29 of Title 4 controls Chapter 1 of Title 4.

Chapter 29 does not control Chapter 1. Rather, Chapter 29 controls Industrial Development Projects while Chapter 1 (among other activities) governs investments in

~~Multicounty Business and Industrial Parks. In addition, not only does Chapter 29 not control~~

¹ In their Amended Complaint, Plaintiffs' make no claim for relief and nowhere cite to any provision of law in Chapter 29, Title 4 of the S.C. Code. The Counties, pursuant to Rules 8, 15, and 56 of the S.C. Rules of Civil Procedure, reiterate their request that the Court consider the arguments set forth in Sections II & III of the Counties' Memorandum in Opposition as formal objections and requests to strike the extraneous and offending portions of Plaintiffs' Memorandum for Summary Judgment. The Court should not consider Plaintiffs' novel and unpled theories or requests for relief raised for the first time only on Summary Judgment. *See Resolution Trust Corp. v. Eagle Lake & Golf Condominiums*, 310 S.C. 473, 475, 427 S.E.2d 646, 648 (1993) (disapproving of the practice of raising unpled issues for the first time on summary judgment).

² *See supra* note 1.

Chapter 1, even if such requirements were imposed, the Student Housing Apartments meet the requirements. Each of these positions is developed below.

A. The Definitions of “Project” and “Industry” in S.C. Code Ann. §4-29-10 Do Not Apply to Investments Authorized by S.C. Code Ann. §4-1-170 in a Multicounty Business and Industrial Park

Plaintiffs assert Student Housing Apartments cannot be included in a Multicounty Business and Industrial Park and cannot receive Special Source Revenue Credits because “[t]he statutory definition of ‘Project’ [as required in S.C. Code Ann. §4-29-10(3)(d)] does not include student housing” and “[t]he student housing complexes are not ‘Industry’ and do not meet the definitions of [‘Industry’ in S.C. Code Ann. §4-29-10(6) in] Chapter 29.” *Plaintiffs’ Memorandum p. 7 & 8.* Plaintiffs’ premise is that Chapter 29 of Title 4 controls and imposes the definitions of “Project” and “Industry” on investments in a Multicounty Business and Industrial Park authorized by Chapter 1 of Title 4. Plaintiffs’ arguments fail as a matter of law for four reasons.

First, the opening words of S.C. Code Ann. §4-29-10 confirm the definitions of “Project” and “Industry” apply only to Chapter 29, not to Chapter 1. The statute states “[w]henever used in this chapter [Chapter 29], unless a different meaning clearly appears from the context, the following terms, whether used in the singular or plural, shall be given the following meanings.” S.C. Code Ann. §4-29-10. (Emphasis added.)

The cardinal rule of statutory construction is to ascertain and effectuate the General Assembly's intent. *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). “The plain language of a statute is considered the best evidence of legislative intent.” *Id.* Here, the “plain language” of S.C. Code Ann. §4-29-10 limits the definitions of “Project” and “Industry” to

Industrial Revenue Bonds in Chapter 29 and does not apply those definitions to Multicounty Business and Industrial Parks in Chapter 1.

Second, the words "Project" and "Industry" appear nowhere within the Multicounty Business and Industrial Parks provisions of Chapter 1 of Title 4. It is illogical to assert the statutory definitions of "Project" and "Industry" in Chapter 29 are made mandatory for Chapter 1's authorization of investments in a Multicounty Business and Industrial Park when the terms "Project" and "Industry" do not even appear in Chapter 1.

Third, when the General Assembly imposes a definition (such as is the case for "Project" and "Industry") that definition applies only to the statutes using the defined terms. *See e.g., Branch v. City of Myrtle Beach*, 340 S.C. 405, 413, 532 S.E.2d 289, 293 (2000) (where the Court addressed whether public employees are covered under right-to-work laws by stating "when the legislature desired to cover public employment it includes a definition doing so."). Here, if the General Assembly desired to impose the definitions of "Project" and "Industry" on Multicounty Business and Industrial Parks it would have "included[d] a definition doing so." Instead, the General Assembly specifically limited those definitions to those terms as "used in this chapter [Chapter 29]." S.C. Code Ann. §4-20-10. The terms "Project" and "Industry" (as defined in Chapter 29) are not used in Chapter 1 and thus those terms do not apply to Chapter 1.

Fourth, Plaintiffs urge this Court to impose the definitions of "Project" and "Industry" to every Multicounty Business and Industrial Park in the state but provides no guidance to the Court on how operatives in the Economic Incentives field deal with these statutes on a day-to-day basis. Richland and Fairfield Counties, on the other-hand, fill that void.

In the attached Exhibit A, Affidavit of Mark Farris, a Certified Economic Developer, Mr. Farris explains he is a graduate of the Economic Development Institute at the University of

Oklahoma and past President of the South Carolina Economic Developers' Association. He has over thirty (30) years of experience in Economic Development with all of his experience within the State of South Carolina. He is the President and Chief Executive Officer of the Greenville Area Development Corporation (an organization promoting and enhancing economic development in Greenville County) and was previously the Director of Economic Development for York County from 1987 to 2014.

He states he is familiar with Article VIII, Section 13(D) of the South Carolina Constitution, S.C. Code Ann. § 4-1-175 and Chapter 29, Title 4 of the S.C. Code and he says he has participated in numerous economic development projects involving locating real and personal property within a multicounty business or industrial park. Particularly pertinent to the issue before the Court, Mr. Farris states he has "never encountered a project requesting inclusion in a multicounty business and industrial park that was denied solely because the project did not fall within the definition of 'Projects' or the definition of 'Industry' under S.C. Code Ann. § 4-29-10." And, much more to the point before the Court, Mr. Farris explains that as "a Certified Economic Developer, when considering whether to offer to a business the location of its project in a multicounty business or industrial park as an incentive, I do not consider whether the project meets the definition of 'Projects' or 'Industry' under S.C. Code Ann. § 4-29-10."

Finally, he states he is unaware of any "Certified Economic Developer in South Carolina who believes that a project must meet the definition of 'Projects' or 'Industry' under S.C. Code Ann. § 4-29-10 before it may be located in a multicounty business or industrial park." He explains "[r]ather, the analysis of whether to include property in a multicounty business or industrial park or extend other economic development incentives to a project is based on an

analysis of whether the project will serve a 'public purpose,' [and that] is a determination to be made by the governing body . . . based on whether the benefits of the project will outweigh the costs."

In short, Plaintiffs ask this Court to reach a legal conclusion (Multicounty Parks must satisfy the definition of "Project" and "Industry" from §4-29-10(3)(d) and (6)) wholly at odds with the practices utilized by informed operatives in the Economic Incentives field. Thus, Plaintiffs' positions are not only legally incorrect, Plaintiffs' positions are contrary to the established practices of operatives who work daily in the Economic Incentives field.

B. Even if the Definitions of "Project" and "Industry" in S.C. Code Ann. §4-29-10 Could Be Made Applicable to Investments in a Multicounty Business and Industrial Park Authorized by S.C. Code Ann. §4-1-170, the Student Housing Apartments Would Still Meet those Definitions

While no basis exists requiring an investment in a Multicounty Business and Industrial Park to satisfy the definitions of "Project" or "Industry," nonetheless, the Student Housing Apartments satisfy those definitions.³ Both "Project" and "Industry" are examined here.

1. Investments in Multicounty Business and Industrial Parks Meet the Definition of "Project" in S.C. Code Ann. §4-29-10(3)(d)

"Project" at S.C. Code Ann. §4-29-10(3)(d) is defined as "any land and any buildings and other improvements on the land . . . considered necessary, suitable, or useful by . . . any enterprise engaged in commercial business including, **but not limited to**, wholesale, retail, or other mercantile establishments." (Emphasis added). The words "but not limited to" are words of expansion. *See Whaley v. Dorchester Cty. Zoning Bd. of Appeals*, 337 S.C. 568, 579, 524

³ *See supra* note 1. Plaintiffs' unpled and novel legal theories should not be considered. *See Resolution Trust Corp.*, 310 S.C. at 475. However, because the Court has Plaintiffs' novel theories now before it, the Counties respond and demonstrate in Section II.B. how the investments here under review would still satisfy Chapter 29, Title 4 even under the erroneous application for which Plaintiffs argue.

S.E.2d 404, 410 (1999) (where the words “but not limited to” signal an expansion of the “non-exclusive definition.”); *Doe v. S. Carolina Dep't of Soc. Servs.*, 407 S.C. 623, 640, 757 S.E.2d 712, 721 (2014) (*dissent* by Justice Kitteridge stating “the legislature defined the term [vulnerable adult] broadly, as evidenced by the ‘including, but not limited to,’ language.”); *State v. Jones*, 416 S.C. 283, 297, 786 S.E.2d 132, 139 (2016) (“By using the language ‘but not limited to, . . .’ we find the Legislature intended the protection of [stand-your-ground legislation] . . . to apply to incidents . . . without a geographical restriction.”).

Here, the definition of “Project” is satisfied if the property is “engaged in commercial business.” That condition is satisfied.

The parties agree “[a]ll 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.” [*Joint Stipulation of Fact*, ¶ 13 (previously filed with Court), attached hereto as **Exhibit B**]. That act of renting real property to students is a rental business dealing in commercial properties. See Affidavit of Elizabeth M. McDonald, Richland County Assessor, ¶ 8 (discussing classification of Private Dormitories as commercial properties), Exhibit A to Counties’ Motion for Summary Judgment, attached hereto as **Exhibit C**]; see North American Industrial Classification System (“NAICS”) Code Sections 531110 & 721310, Exhibits B & C to Counties’ Motion for Summary Judgment, attached hereto collectively as **Exhibit D**].

Accordingly, renting commercial property (the activity in which the owners of the Student Housing Apartments engage) is a commercial business. See *City of Beaufort v. Holcombe*, 369 S.C. 643, 650, 632 S.E.2d 894, 898 (Ct. App. 2006) (“A property owner renting commercial property to third parties is in the business of renting commercial property.”

Emphasis added). Therefore, the owners of the Student Housing Apartments rent real property to students as dormitory space. That activity is the conducting of a commercial business satisfying the definition of "Project" in S.C. Code Ann. §4-29-10(3)(d).

2. Investments in Multicounty Business and Industrial Parks Meet the Definition of "Industry" in S.C. Code Ann. §4-29-10(6)

The rental activity discussed above for the term "Project" also meets the definition of "Industry" in S.C. Code Ann. §4-29-10(6). That statute defines "Industry" as "any person, firm or corporation engaged in any one or more of the enterprises identified in item (3) of this section or any person, firm or corporation providing facilities constituting a project to be used by any one or more of the enterprises identified in item (3) of this section." As the above discussion of "Project" explains, the owners of the Student Housing Apartments are "engaged" in the enterprises identified in item (3) since the owners rent real property to students as dormitory space and that activity is the conducting of a commercial business within S.C. Code Ann. § 4-29-10(3)(d). Therefore, the requirements of "Industry" are satisfied.

III. INVESTMENTS IN MULTICOUNTY BUSINESS AND INDUSTRIAL PARKS DO NOT REQUIRE AN INVESTMENT IN A MANUFACTURING USE AND DO NOT REQUIRE INVESTMENTS "ATTRACTING LARGE CAPITAL INTENSIVE INDUSTRIES"

Plaintiffs final two arguments assert investments in a Multicounty Business and Industrial Park must have a manufacturing use or "attract large capital intensive industries." More particularly, Plaintiffs argue "[p]lacing student housing projects in the Industrial Park and granting them Special Source Revenue Credits (or Bonds), do not fulfill the purposes of S.C. Code Ann. § 4-29-68 [because s]tudent housing projects are not 'used in the operation of a manufacturing or commercial enterprise.'" *Plaintiffs' Memorandum p. 8-9*. Plaintiffs, in a similar vein, argue Student Housing complexes "are not entitled to the tax breaks created by the

General Assembly [because they are not] for the purpose of 'attracting large capital intensive industries to this State.'" *Plaintiffs' Memorandum p. 11-12*. Each position is addressed in turn.⁴

A. No Duty Exists for Investments in a Multicounty Business and Industrial Park to Satisfy S.C. Code Ann. § 4-29-68's Requirement of Being "Used in the Operation of a Manufacturing or Commercial Enterprise."

No duty exists under the incentives provided by S.C. Code Ann. §4-1-175 to invest in manufacturing. Rather, the lack of limitations on what investments to incentivize allows proper flexibility for the Counties to accommodate the needs of a changing economic landscape.

1. Richland and Fairfield Counties Have Complied with the Requirements of S.C. Code Ann. §4-1-175 and Have Complied With that Section's Reference to S.C. Code Ann. §4-29-68

S.C. Code Ann. §4-1-175 states:

A county . . . 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.

The requirements of S.C. Code Ann. §4-1-175 are satisfied.

First, the revenue source against which the credit is applied is the payment to the Counties under a Multicounty Business and Industrial Park flowing from the Student Housing Apartments in the I-77 Corridor Regional Industrial Park. The Ordinances⁵ adopted by

⁴ See *supra* note 1.

⁵ The Ordinances with respect to Student Housing Apartments, described and stipulated to in **Exhibit B**, each contain the following identical provision:

Section 2. Approval of Credit; Authorization to Execute Credit Agreement.
There is hereby authorized a Credit against the Company's Fee Payments on the Facility as a reimbursement to the Company for its qualifying Infrastructure expenditures.

Richland County authorizing the credit to the Student Housing Apartments each state that the credits reduce the in-lieu-of-tax payments due from the owners of the Student Housing Apartments to the Richland County. [See Richland County Ordinance No. 004-014HR attached hereto as **Exhibit E**].

Second, the proceeds of the credit must be used by the owners of the Student Housing Apartments for the “purposes” outlined in Section 4-29-68. A valid purpose in S.C. Code Ann. §4-29-68(2)(i) is using the credits to pay for “improved or unimproved real estate and personal property . . . used in the operation of a . . . commercial enterprise.” Consistent with that requirement, the Student Housing Apartments are commercial enterprises and the Ordinances⁶ adopted by the Richland County which authorizes the credit for the Student Housing Apartments each show the credit is to be utilized to pay for improved or unimproved real estate and personal property used in the operation of the Student Housing Apartment. [**Exhibit B**, p. 2]. Therefore, the credit extended to the Student Housing Apartments meets the requirements of S.C. Code Ann. §4-1-175 and satisfies the purposes outlined in S.C. Code Ann. §4-29-68. Thus, the credit offered to the Student Housing Apartments is proper and violates no statute or constitutional provision.

In each of the stipulated Ordinances, “Fee Payments” is defined as “fees-in-lieu of ad valorem property taxes in an amount equivalent to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty industrial parks.”

“Infrastructure” is defined in each of the stipulated Ordinances as “improved or unimproved real estate and personal property used in the operation of a commercial enterprise.”

Ordinance No. 004-14HR, which is the first ordinance adopted by Richland County with respect to the Student Housing Apartments, is attached hereto as **Exhibit E** as an example of the authorizing Ordinances and the cited language. Each Ordinance adopted by Richland County with respect to the Student Housing Apartments was provided to Plaintiffs and listed and referenced in the Joint Stipulation [**Exhibit B**].

⁶ See *supra* Note 5.

2. The Plaintiffs Are in Error by Asserting the Counties Have Failed to Satisfy the Purposes of S.C. Code Ann. § 4-29-68 Because the Student Housing Apartments Are Not “Used in the Operation of a Manufacturing or Commercial Enterprise.”

Plaintiffs argue in error that the narrow reference in S.C. Code Ann. §4-1-175 to S.C. Code Ann. § 4-29-68 incorporates all requirements of Chapter 29, Title 4. On the contrary, S.C. Code Ann. §4-1-175 looks only to S.C. Code Ann. §4-29-68 to identify the list of items upon which the credits authorized by Section 4-1-175 may be spent.

B. No Limitation Exists on Investments in a Multicounty Business and Industrial Park to Have the Purpose of “Attracting Large Capital Intensive Industries to this State to Improve the Industrial Climate of South Carolina.”

Plaintiffs cite to and rely on *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990) to argue investments in Multicounty Business and Industrial Parks must seek to attract “large capital-intensive businesses.” The Plaintiffs are incorrect.

At best, *Quirk* supports an argument the incentive offered under Chapter 29, Title 4 seeks to attract investments with certain economic development characteristics (e.g., large number of jobs, specific type of facility, etc.). However, Chapter 29, Title 4 is not the incentive extended to the Student Housing Apartments under Section 4-1-175.

Further, *Quirk* does not support Plaintiffs’ argument that only projects of a certain size and type should benefit from economic development incentives. Instead, credits under Section 4-1-175 have no requirements as to size of the investment or to the characteristics of the investment. Doing so provides flexibility and innovation suitable to the characteristics of each investment under review.

The more appropriate tool for analysis of what investments to incentivize is the application of the broader “public purpose” jurisprudence of our courts. The South Carolina Supreme Court has well established that a public purpose has for its objectives the “promotion

of the public health, morals, general welfare, security, prosperity, and contentment” of the residents within the political subdivision. *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 425, 351 S.E.2d 155, 160 (1986). Public purpose is a concept that is specific to geographic location and a particular population. *Id.* The Court has further found that a public purpose can be served even if a private party may benefit from the action. *Id.* at 426, 161. Many kinds of projects, such as hotels, stadiums, office buildings, and low-income housing, which have benefited from “public assistance” (through money, donation of land, issuance of bonds, etc.) have been held to pass constitutional muster because the project served a public purpose. *Id.* at 427, 162.

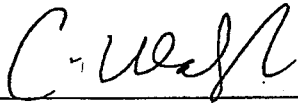
The credit granted to the Student Housing Apartments satisfies the constitutional duty of serving a public purpose. The Student Housing Apartments provide an increase to the revenue available to Counties by encouraging privately owned investment in facilities which would otherwise be provided by a tax-exempt entity. Additionally, the Student Housing Apartments provide secondary benefits such as attracting residents to the business district of the City of Columbia and encouraging additional commercial establishments within the City to serve a growing presence of students in the area.

When analyzed within the public purpose framework established by our courts and not under the narrow, inapplicable analysis of the industrial development projects of Chapter 29, Title 4, the Student Housing Apartments are proper investments to incentivize under a Multicounty Business and Industrial Park *via* S.C. Code Ann. §4-1-175.

For the above reasons, the Motion for Summary Judgment sought by Plaintiffs should be denied.

[Signature on Following Page]

Respectfully submitted,



Ray N. Stevens (Bar No. 5342)
Ray E. Jones (Bar No. 11322)
Court E. Walsh (Bar No. 72723)

Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509 Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com
courtwalsh@parkerpoe.com
Counsel for Defendants, Richland County and Fairfield County.

October 4, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually, and)
 on behalf of all others similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 The City of Columbia, Richland County, and)
 Fairfield County,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-00946

**AFFIDAVIT OF
 J. MARK FARRIS**

2016 OCT -4 PM 3:33
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

Personally appeared before me J. Mark Farris, who, being duly sworn, pursuant to Rule 56(e) of the South Carolina Rules of Civil Procedure, hereby deposes and certifies as follows:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein. The statements in this affidavit are made based upon my personal knowledge, including my review of the issues in this case.

2. I am currently the President and Chief Executive Officer of the Greenville Area Development Corporation, an organization responsible for promoting and enhancing economic development in Greenville County, South Carolina.

3. Prior to my current position, I served as the Director of Economic Development for York County, South Carolina from 1987 to 2014. My experience also includes working as a Research Assistant and later as Economic Development Manager for Anderson County prior to joining York County.

4. I am a Certified Economic Developer, a graduate of the Economic Development Institute at the University of Oklahoma, and past President of the South Carolina Economic Developers' Association. I hold a Bachelor of Arts in Political Science from Clemson University and a Masters of City and Regional Planning also obtained from Clemson University.

5. Combined I have more than thirty (30) years of experience in the field of Economic Development, with all of my experience accrued in development initiatives within the State of South Carolina.

6. In connection with my professional work and experience, I routinely advise governments and businesses regarding economic development programs and incentives available to them under state law, and the procedures and requirements related thereto.

7. In particular, I am familiar with and routinely advise governments and businesses regarding economic development incentives of multi-county business or industrial parks, special source revenue credits ("Credits") and negotiated fee-in-lieu of property taxes. Specifically, I am familiar with the provisions of Article VIII, Section 13(D) of the South Carolina Constitution, S.C. Code Ann. § 4-1-175 and Chapter 29, Title 4 of the S.C. Code.

8. In my career, I have participated in numerous economic development projects that involved locating the real and personal property associated with that project within a multi-county business or industrial park.

9. Of those projects located in the multi-county business or industrial park, many of them also involved extending Credits to the projects against the payment derived from the property of the project that was located in the multicounty business or industrial park.

10. Of those projects located in the multi-county business or industrial park and receiving Credits, many of them were commercial properties including office and mixed-use.

11. Of those commercial properties, some involved the leasing of property producing an income stream from leasing the property.

12. In my experience, the location of commercial properties involving rental income in a multicounty business or industrial park and the use of Credits as incentive for those commercial properties is not unusual.

13. During my career, I have never encountered a project requesting inclusion in a multicounty business and industrial park that was denied solely because the project did not fall within the definition of "Projects" or the definition of "Industry" under S.C. Code Ann. § 4-29-10.

14. As a Certified Economic Developer, when considering whether to offer to a business the location of its project in a multicounty business or industrial park as an incentive, I do not consider whether the project meets the definition of "Projects" or "Industry" under S.C. Code Ann. § 4-29-10.

15. In addition, I am not familiar with a Certified Economic Developer in South Carolina who believes that a project must meet the definition of "Projects" or "Industry" under S.C. Code Ann. § 4-29-10 before it may be located in a multi-county business or industrial park.

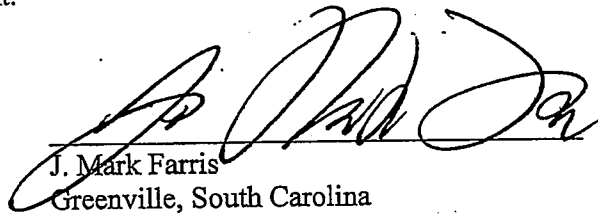
16. Rather, the analysis of whether to include property in a multi-county business or industrial park or extend other economic development incentives to a project is based on an analysis of whether the project will serve a "public purpose," which is a determination to be made by the governing body and is based on whether the benefits of the project will outweigh the costs. Each community needs the flexibility to determine what it considers a viable economic development project. To expect the credit to be used strictly for manufacturing, distribution or office projects constrains a community's opportunity to maximize benefit from the project.

17. I have included projects in a multi-county business or industrial park that have used or will use Credits to pay for either improved or unimproved real estate and personal property that will be used in the operation of the commercial enterprise.

18. Based on my experience, the Certified Economic Developers I know expect that Credits will be used by businesses to pay for either improved or unimproved real estate and personal property that will be used in the operation of the commercial enterprise.

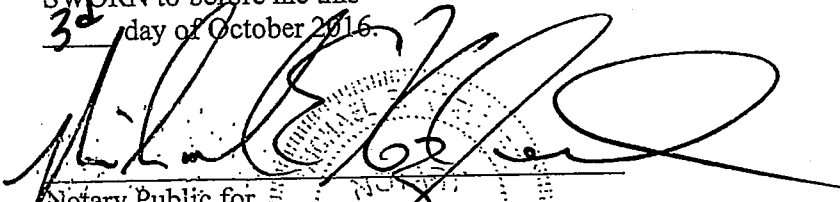
FURTHER, Affiant sayeth naught.

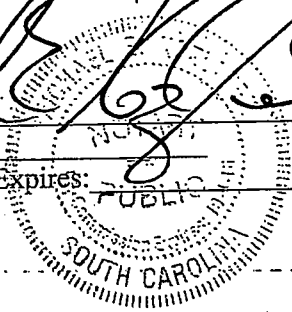
This 3rd day of October, 2016.



J. Mark Farris
Greenville, South Carolina

SWORN to before me this
3rd day of October 2016.



Notary Public for
My Commission Expires: _____


STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

City of Columbia, Fairfield County, and
Richland County,

Defendant.

IN THE CIRCUIT COURT

Case No. 2016-CP-40-00946

Joint Stipulation of Facts

2016 AUG 31 PM 3:08
RICHLAND COUNTY
FILED
JEANETTE W. HERRIDGE
C.P. & C.S.

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 (attached).
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:

NPCOLI:4865298.1-DOC-(SP)JOHNSON) 017611-00037
DRAFT 7/18/16

EXHIBIT "B"

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)	<u>2014-019</u>	<u>011-14HR</u>	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

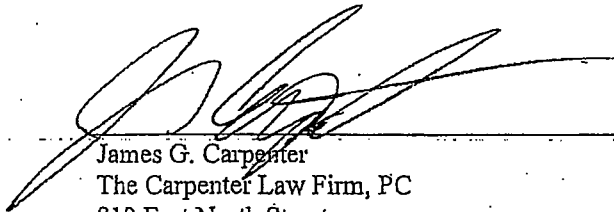
5. Richland County, by the ordinances referenced above, further authorized a 50% Special Source Revenue Credit (the "Credit") to the student housing projects located in the Park pursuant to the terms and conditions of the agreements between Richland County and each of the developers of the student housing projects.
6. The City of Columbia utilized Resolution No. 2015-049 (attached) "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 foot 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 foot 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 foot parking garage with 518 dedicated spaces.

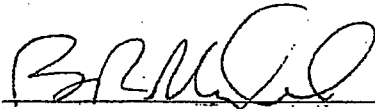
13. All of the projects engage in the continuous activity of letting beds to students through the entering of a lease or other contractual arrangements between the student and the developer or other property manager.



James G. Carpenter
The Carpenter Law Firm, PC
819 East North Street
Greenville, SC 29601
864.235.1269

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

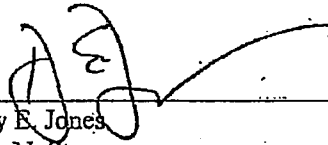
August 30, 2016
Greenville, South Carolina



Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Box 2426
Columbia, SC 29202
803.771.8900

Attorney for Defendant
City of Columbia

August 18, 2016
Columbia, South Carolina



Ray E. Jones
Ray N. Stevens
Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450 (29201)
PO Box 1509
Columbia, SC 29202
803.255.8000

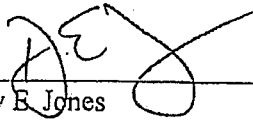
Attorneys for Defendants
Richland County and Fairfield County

August 15, 2016
Columbia, South Carolina

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Box 2426
Columbia, SC 29202
803.771.8900

Attorney for Defendant
City of Columbia

August __, 2016
Columbia, South Carolina



Ray E. Jones
Ray N. Stevens
Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450 (29201)
PO Box 1509
Columbia, SC 29202
803.255.8000

Attorneys for Defendants
Richland County and Fairfield County

August 15, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiffs,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-00946

**AFFIDAVIT OF
ELIZABETH M. MCDONALD**

2016 SEP 20 PM 4:33
JEANETTE W. MCGRIN
C.C.P. & G.S.
RICHLAND CO. FILED

Personally appeared before me Elizabeth M. McDonald, who, being duly sworn, pursuant to Rule 56(e) of the South Carolina Rules of Civil Procedure, hereby deposes and certifies as follows:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein. The statements in this affidavit are made based upon my personal knowledge.
2. I am currently employed as the Assessor of Richland County, South Carolina, located in Richland County, South Carolina.
3. I am authorized to make this affidavit on behalf of Defendant Richland County.
4. As the Assessor, my office's responsibilities include appraising and classifying owner-occupied, non-owner-occupied and commercial real property in Richland County, South Carolina.

EXHIBIT "A"
EXHIBIT "C"

5. As a result of carrying out the responsibilities of my office, I am familiar with the attributes of each class of property assessed and classified by my office.

6. I have reviewed the assigned classification for the following private dormitory projects: (the "Private Dormitories"):

- a. Park Place Columbia owned by CD/Park 7 Columbia SC Owner LLC with TMS numbers: 08914-16-01, 08914-16-02;
- b. Greene Crossing owned by University Residences Columbia, LLC with TMS numbers: 08915-13-02, 08914-14-03, 08915-14-05, 08915-13-07, 08915-13-06, 08915-13-01, 08914-13-02, 08914-13-03, and 08915-14-02;
- c. Station at Five Points owned by Blue Atlantic Columbia, LLC with TMS numbers: 11406-13-01, 11406-13-02, 11406-13-03, 11406-13-04; and
- d. University SC Towers owned by CD/Park 7 Columbia SC High Rise Owner, LLC with TMS numbers: 08916-09-07, 08916-09-08, 08916-09-09, and 08916-09-10.

7. The aforementioned Private Dormitories are currently or will be classified as property assessable at a 6% rate.

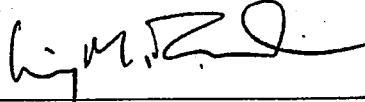
8. The Private Dormitories are assessed at this rate because my office classified the Private Dormitories as commercial properties.

9. The Private Dormitories were classified as commercial properties by my office because it is my office's understanding that each of the Private Dormitories' activities, which consist of operating and leasing off-campus accommodations for college students, and provision of specific services, including security, property management, and planned recreational activities, comprise business and commercial activities.

10. For those reasons, Richland County has determined that the planned operation of the Private Dormitories named herein comprise business and commercial activities appropriately assessed as a commercial property at a 6% rate.

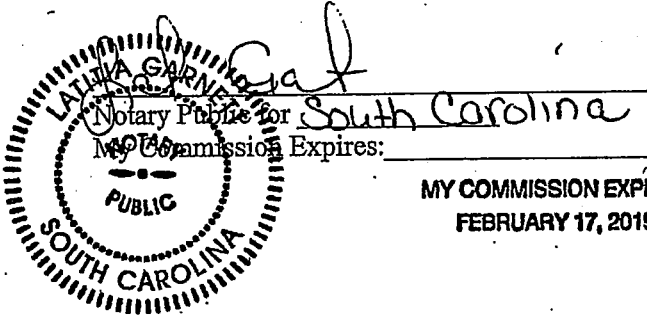
FURTHER, Affiant sayeth naught.

This 20 day of September, 2016.



Elizabeth M. McDonald, Assessor
Richland County, South Carolina

SWORN to before me this
20th day of September 2016:



MY COMMISSION EXPIRES
FEBRUARY 17, 2019



Search

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov/) / [Business & Industry](http://www.census.gov/business-and-industry/) / [NAICS](http://www.census.gov/business-and-industry/naics/) / [2012](http://www.census.gov/business-and-industry/naics/2012/) / [531110 Lessors of Residential Buildings and Dwellings](http://www.census.gov/business-and-industry/naics/2012/531110/)

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

531110 Lessors of Residential Buildings and Dwellings

This industry comprises establishments primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single family homes, apartment buildings, and town homes. Included in this industry are owner-lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them.

Cross-References.

- Establishments primarily engaged in managing residential real estate for others are classified in U.S. Industry [531311 \(cql-bin/sssd/naics/naicsrch?code=531311&search=2012\)](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=531311&search=2012), Residential Property Managers.

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
531110	531110	531110	Apartment building rental or leasing
531110	531110	531110	Apartment hotel rental or leasing
531110	531110	531110	Apartment rental or leasing
531110	531110	531110	Building, apartment, rental or leasing
531110	531110	531110	Building, residential, rental or leasing
531110	531110	531110	Collage rental or leasing
531110	531110	531110	Duplex houses (i.e., single family) rental or leasing
531110	531110	531110	Dwelling rental or leasing
525930	531110	531110	Equity real estate investment trusts (REITs), primarily leasing residential buildings and dwellings
531110	531110	531110	Houses rental or leasing
531110	531110	531110	Housing authorities operating residential buildings
531110	531110	531110	Lessors of residential buildings and dwellings
531110	531110	531110	Mobile (manufactured) home, on site, rental or leasing
531110	531110	531110	Real estate rental or leasing of residential building
531110	531110	531110	Residential building rental or leasing
531110	531110	531110	Residential hotel rental or leasing
531110	531110	531110	Retirement hotel rental or leasing
531110	531110	531110	Single family house rental or leasing
531110	531110	531110	Town house rental or leasing

[PDF] or (<http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=531110&search=2012>) denotes a file in Adobe's **Portable Document Format** (<http://www.adobe.com/products/reader/>). To view the file, you will need the **Adobe® Reader®** (<http://www.adobe.com/products/reader/>) - available free from Adobe. [Excel] or the letters [xls] indicate a document is in the **Microsoft® Excel® Spreadsheet Format (XLS)**. To view the file, you will need the **Microsoft® Excel® Viewer** (<http://www.microsoft.com/en-us/download/details.aspx?id=10>) - available for free from Microsoft®. This symbol indicates a link to a non-government web site. Our linking to these sites does not constitute an endorsement of any products, services or the information found on them. Once you link to another site you are subject to the policies of the new site.

ABOUT US
<http://www.census.gov>

EXHIBIT "B"

EXHIBIT "D"

9/20/2016 9:45 AM

about.htm

Are You In a Survey? (www.census.gov/programs-surveys/are-you-in-a-survey.html)
 FAQs (www.census.gov/programs-surveys/are-you-in-a-survey/faq.html)
 Director's Corner (www.census.gov/about/directors-corner.html)
 Regional Offices (www.census.gov/about/regional-offices.html)
 History (www.census.gov/about/history.html)
 Research (www.census.gov/about/research.html)
 Scientific Integrity (www.census.gov/about/scientific-integrity.html)
 Census Careers (www.census.gov/about/census-careers.html)
 Diversity @ Census (www.census.gov/about/diversity-at-census.html)
 Business Opportunities (www.census.gov/about/business-opportunities.html)
 Congressional and Intergovernmental (www.census.gov/about/congressional-and-intergovernmental.html)
 Contact Us (www.census.gov/about/contact-us.html)

FIND DATA

QuickFacts (www.census.gov/data/tables/quickfacts.html)
 American FactFinder (www.census.gov/data/tables/americafactfinder.html)
 Easy Stats (www.census.gov/data/tables/easy-stats.html)
 Population Finder (www.census.gov/data/tables/population-finder.html)
 2010 Census (www.census.gov/programs-surveys/decennial-census/2010-census.html)
 Economic Census (www.census.gov/programs-surveys/econ_census.html)
 Interactive Maps (www.census.gov/geography/interactive-maps.html)
 Talking & Writing Tools (www.census.gov/data/talking-writing-tools.html)
 Data Tools (www.census.gov/data/data-tools.html)
 Developers (www.census.gov/developers/)
 Catalogs (www.census.gov/data/product-catalog.html)
 Publications (www.census.gov/library/publications.html)

BUSINESS & INDUSTRY

Help With Your Forms (www.census.gov/topics/business/business-help.html)
 Economic Indicators (www.census.gov/economy/economic-indicators.html)
 Economic Census (www.census.gov/programs-surveys/econ_census.html)
 E-Stats (www.census.gov/programs-surveys/e-stats.html)
 International Trade (www.census.gov/topics/international-trade.html)
 Export Codes (www.census.gov/topics/international-trade/export-codes.html)
 NAICS (www.census.gov/economy/naics/naics-codes.html)
 Governments (www.census.gov/topics/governments.html)
 Local Employment Dynamics (www.census.gov/topics/employment.html)
 Survey of Business Owners (www.census.gov/programs-surveys/sbo.html)

PEOPLE & HOUSEHOLDS

2020 Census (www.census.gov/2020census/)
 2010 Census (www.census.gov/programs-surveys/decennial-census/2010-census.html)
 American Community Survey (www.census.gov/programs-surveys/acs/)
 Income (www.census.gov/topics/income-poverty/income.html)
 Poverty (www.census.gov/topics/income-poverty/poverty.html)
 Population Estimates (www.census.gov/topics/population/population-estimates.html)
 Population Projections (www.census.gov/topics/population/population-projections.html)
 Health Insurance (www.census.gov/topics/health/health-insurance.html)
 Housing (www.census.gov/topics/housing.html)
 International (www.census.gov/topics/population/international.html)
 Genealogy (www.census.gov/topics/population/genealogy.html)

SPECIAL TOPICS

Advisors, Centers and Research Programs (www.census.gov/about/partners.html)
 Statistics in Schools (www.census.gov/schools/)
 Tribal Resources (AAI) (www.census.gov/about/indig-gov-affairs/indigovernmental-affairs/tribal-affairs/tribal-resources.html)
 Emergency Preparedness (www.census.gov/topics/preparedness.html)
 Statistical Abstract (www.census.gov/library/publications/annual-series/statistical-abstracts.html)
 Special Census Program (www.census.gov/programs-surveys/specialcensus.html)
 Data Linkage Infrastructure (www.census.gov/data/linkage/)
 Fraudulent Activity & Scams (www.census.gov/programs-surveys/are-you-in-a-survey/fraudulent-activity-and-scams.html)
 USA.gov (<http://www.usa.gov/>)
 BusinessUSA.gov (<http://business.usa.gov/>)
 Quality | FOIA (www.census.gov/foia/) | U.S. Department of Commerce (www.commerce.gov/)

NEWSROOM

(www.census.gov/newsroom/)
 News Releases (www.census.gov/newsroom/press-releases.html)
 Release Schedule (www.census.gov/calendar.html)
 Facts for Features (www.census.gov/newsroom/facts-for-features.html)
 State by State (www.census.gov/newsroom/states.html)
 Blogs (www.census.gov/about/blogs/)
 CONNECT WITH US (www.census.gov/about/contact-us/social-media.html)
 Facebook (www.facebook.com/usascensusbureau/)
 YouTube (www.youtube.com/user/usascensusbureau/)
 Twitter (pubs.census.gov/havercom/accounts/USCENSUS/statuses/bureau/)
 Accessibility (www.census.gov/about/policy/privacy/privacy-policy.html#par_section_1) | Information Quality (www.census.gov/quality/) | Data Protection and Privacy Policy

Source: U.S. Census Bureau | North American Industry Classification System (NAICS) | (888) 756-2427 | naics@census.gov | naics@naics.gov | Last Revised: May 13, 2013



Search

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov/) | [Business & Industry](http://www.census.gov/economy/business_and_industry/) | [NAICS](http://www.census.gov/economy/business_and_industry/naics/) | [NAICS Index](http://www.census.gov/economy/business_and_industry/naics/index.html) | [NAICS Search/Tools](#)

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

721310 Rooming and Boarding Houses

This industry comprises establishments primarily engaged in operating rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories, residential clubs, and workers' camps. These establishments provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals, and laundry services.

Illustrative Examples:

- Dormitories (off campus)
- Sorority houses
- Fraternity houses
- Workers' camps
- Rooming houses

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
721310	721310	721310	Boarding houses
721310	721310	721310	Clubs, residential
721310	721310	721310	Dormitories, off campus
721310	721310	721310	Fraternity houses
721310	721310	721310	Migrant workers' camps
721310	721310	721310	Off campus dormitories
721310	721310	721310	Residence clubs, organizational
721310	721310	721310	Residential clubs
721310	721310	721310	Rooming and boarding houses
721310	721310	721310	Sorority houses
721310	721310	721310	Workers' camps
721310	721310	721310	Workers' dormitories

[PDF] or (http://www.census.gov/economy/business_and_industry/naics/721310/721310.pdf) denotes a file in Adobe's Portable Document Format (<http://www.adobe.com/products/reader/>). To view the file, you will need the Adobe® Reader® (<http://www.adobe.com/products/reader/>) available free from Adobe. [Excel] or the letters [xls] indicate a document is in the Microsoft® Excel® Spreadsheet Format (XLS). To view the file, you will need the Microsoft® Excel® Viewer (<http://www.microsoft.com/en-us/download/details.aspx?id=10>) available for free from Microsoft®. This symbol indicates a link to a non-government web site. Our linking to these sites does not constitute an endorsement of any products, services or the information found on them. Once you link to another site you are subject to the policies of the new site.

ABOUT US
<http://www2.census.gov/about.html>
 Are You in a Survey?
<http://www2.census.gov/programs-surveys/are-you-in-a-survey.html>
 FAQs (<http://ask.census.gov>)
 Director's Corner
<http://www.census.gov/about>

EXHIBIT "C"

[/leadership.html](#)
 Regional Offices
[\(http://www.census.gov/about/regions.html\)](#)
 History
[\(http://www.census.gov/about/history.html\)](#)
 Research
[\(http://www.census.gov/about/our-research.html\)](#)
 Scientific Integrity
[\(http://www.census.gov/about/policies/integrity.html\)](#)
 Census Careers
[\(http://www.census.gov/about/census-careers.html\)](#)
 Diversity @ Census
[\(http://www.census.gov/about/diversity-networks.html\)](#)
 Business Opportunities
[\(http://www.census.gov/about/business-opportunities.html\)](#)
 Congressional and Intergovernmental
[\(http://www.census.gov/about/congress-gov-affairs.html\)](#)
 Contact Us
[\(http://www.census.gov/about/contact-us.html\)](#)

FIND DATA
 QuickFacts
[\(http://www.census.gov/data/tables/quickfacts.html\)](#)
 American FactFinder
[\(http://www.census.gov/data/tables/factfinder.html\)](#)
 Easy State
[\(http://www.census.gov/data/tables/easy-state.html\)](#)
 Population Finder
[\(http://www.census.gov/data/tables/population-finder.html\)](#)
 2010 Census
[\(http://www.census.gov/programs-surveys/decennial-census/2010-census.html\)](#)
 Economic Census
[\(http://www.census.gov/programs-surveys/econ_census.html\)](#)
 Interactive Maps
[\(http://www.census.gov/geography/interactive-maps.html\)](#)
 Training & Workshops
[\(http://www.census.gov/data/training-workshops.html\)](#)
 Data Tools
[\(http://www.census.gov/data/tables.html\)](#)
 Developers
[\(http://www.census.gov/developers/\)](#)
 Catalogs
[\(http://www.census.gov/data/product-catalog.html\)](#)
 Publications
[\(http://www.census.gov/library/publications.html\)](#)

BUSINESS & INDUSTRY
 Help With Your Forms
[\(http://www.census.gov/topics/business/business-help.html\)](#)
 Economic Indicators
[\(http://www.census.gov/topics/economy/economic-indicators.html\)](#)
 Economic Census
[\(http://www.census.gov/programs-surveys/econ_census.html\)](#)
 E-Stats
[\(http://www.census.gov/programs-surveys/e-stats.html\)](#)
 International Trade
[\(http://www.census.gov/topics/international-trade.html\)](#)
 Export Codes
[\(http://www.census.gov/topics/international-trade/codes.html\)](#)
 NAICS
[\(http://www.census.gov/topics/economy/naics/codes.html\)](#)
 Governmental
[\(http://www.census.gov/topics/public-sector.html\)](#)
 Local Employment Dynamics
[\(http://www.census.gov/topics/employment.html\)](#)
 Survey of Business Owners
[\(http://www.census.gov/programs-surveys/sbo.html\)](#)

PEOPLE & HOUSEHOLDS
 2020 Census
[\(http://www.census.gov/2020census/\)](#)
 2010 Census
[\(http://www.census.gov/programs-surveys/decennial-census/2010-census.html\)](#)
 American Community Survey
[\(http://www.census.gov/programs-surveys/acs/\)](#)
 Income
[\(http://www.census.gov/topics/income-poverty/income.html\)](#)
 Poverty
[\(http://www.census.gov/topics/income-poverty/poverty.html\)](#)
 Population Estimates
[\(http://www.census.gov/topics/population/population-estimates.html\)](#)
 Population Projections
[\(http://www.census.gov/topics/population/population-projections.html\)](#)
 Health Insurance
[\(http://www.census.gov/topics/health-insurance.html\)](#)
 Housing
[\(http://www.census.gov/topics/housing.html\)](#)
 International
[\(http://www.census.gov/topics/population/international.html\)](#)
 Genealogy
[\(http://www.census.gov/topics/population/genealogy.html\)](#)
[\(http://www.census.gov/privacy/\)](#) U.S. Department of Commerce [\(http://www.commerce.gov/\)](#)

SPECIAL TOPICS
 Advisors, Centers and Research Programs
[\(http://www.census.gov/about/special.html\)](#)
 Statistics in Schools
[\(http://www.census.gov/schools/\)](#)
 Tribal Resources (AAH)
[\(http://www.census.gov/about/aaah-gov-affairs/\)](#)
 Intergovernmental Affairs
[\(http://www.census.gov/about/international-affairs/\)](#)
 Emergency Preparedness
[\(http://www.census.gov/topics/preparedness.html\)](#)
 Statistical Abstract
[\(http://www.census.gov/library/publications/series/statistical_abstract.html\)](#)
 Special Census Program
[\(http://www.census.gov/programs-surveys/special-census.html\)](#)
 Data Linkage Infrastructure
[\(http://www.census.gov/data/linkage/\)](#)
 Fraudulent Activity & Scams
[\(http://www.census.gov/programs-surveys/are-you-in-a-survey/fraudulent-activity-and-scams.html\)](#)
 USA.gov
[\(http://www.usa.gov/\)](#)
 Business USA.gov
[\(http://business.usa.gov/\)](#)
 Privacy | FOIA [\(http://www.census.gov/privacy/\)](#) | Data Protection and Privacy Policy [\(http://www.commerce.gov/\)](#)

NEWSROOM
[\(http://www.census.gov/newsroom.html\)](#)
 News Releases
[\(http://www.census.gov/newsroom/press-releases.html\)](#)
 Release Schedule
[\(http://www.census.gov/newsroom/press-releases.html\)](#)
 Facts for Features
[\(http://www.census.gov/newsroom/facts-for-features.html\)](#)
 Stats for Stories
[\(http://www.census.gov/newsroom/stats-for-stories.html\)](#)
 Blogs
[\(http://www.census.gov/about/contact-us/social-media.html\)](#)
CONNECT WITH US
[\(http://www.census.gov/about/contact-us/social-media.html\)](#)
[\(http://twitter.com/censusbureau\)](#)
[\(http://www.facebook.com/censusbureau\)](#)
[\(http://www.youtube.com/censusbureau\)](#)
[\(http://public.govdata.gov/\)](#)
 ACCESSIBILITY [\(http://www.census.gov/about/policies/hypocapacity-policy.html#accessibility\)](#)
 Information Quality [\(http://www.census.gov/infoquality/\)](#) | Data Protection and Privacy Policy [\(http://www.commerce.gov/\)](#)

Source: U.S. Census Bureau | North American Industry Classification System (NAICS) | (888) 756-2427 | naics@census.gov | mailto:naics@census.gov | Last Revised: May 13, 2013

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 004-14HR

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN REAL PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A CREDIT AGREEMENT TO PROVIDE FOR SPECIAL SOURCE REVENUE CREDITS TO CD/PARK7 COLUMBIA SC OWNER LLC; AND OTHER RELATED MATTERS.

WHEREAS, Richland County ("County"), a public body corporate and politic under the laws of the State of South Carolina, is authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, "Act"), to (i) create multi-county industrial parks in partnership with counties having contiguous borders with the County; and (ii) include the property of eligible companies within such multi-county industrial parks, which inclusion under the terms of the Act makes such property exempt from *ad valorem* property taxes, and changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equivalent to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multi-county industrial parks ("Fee Payments");

WHEREAS, the County is further authorized by the Act to grant credits against such Fee Payments ("Credit") in order to assist a company located in a multi-county industrial park in paying the cost of designing, acquiring, constructing, improving, or expanding (A) the infrastructure serving the County or the property of a company located within such multi-county industrial parks or (B) for improved or unimproved real estate and personal property used in the operation of a commercial enterprise located within such multi-county industrial park in order to enhance the economic development of the County ("Infrastructure");

WHEREAS, the County and Fairfield County, South Carolina have previously developed a multi-county industrial park ("Park") and entered into the "Master Agreement Governing the I-77 Corridor Regional Industrial Park," dated April 15, 2003 which governs the operation of the Park ("Park Agreement");

WHEREAS, CD/Park 7 Columbia SC Owner LLC, a limited liability company organized and existing under the laws of Delaware ("Company"), is making an investment of at least \$40,000,000 in the County, on a site more particularly described on Exhibit A, to establish a student-housing facility in the County ("Facility");

WHEREAS, the Facility is expected to provide significant economic benefits to the County and surrounding areas;

WHEREAS, at the Company's request, the County has offered as a reimbursement to the Company for its expenditures on Infrastructure benefitting the County and the Facility, a Credit against the Company's Fee Payments on the Facility, the terms and conditions of which are more particularly described in the Credit Agreement between the County and the Company, the form of which is attached as Exhibit B; and

RC_000114

EXHIBIT "E"

WHEREAS, to effect the Credit, the County desires to expand the boundaries of the Park and amend the Master Agreement to include the Facility in the Park.

NOW THEREFORE, THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, ORDAINS:

Section 1. Expansion of Park Boundaries; Inclusion of Facility. There is hereby authorized an expansion of the Park boundaries to include the Facility and an amendment to the Master Agreement. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are hereby authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the Master Agreement and the Act, the expansion shall be complete on the adoption of (i) a companion ordinance by the Fairfield County Council and (ii) a resolution by the City of Columbia City Council consenting to the inclusion of the of the Facility in the Park.

Section 2. Approval of Credit; Authorization to Execute Credit Agreement. There is hereby authorized a Credit against the Company's Fee Payments on the Facility as a reimbursement to the Company for its qualifying Infrastructure expenditures. The form and terms of the Credit as set forth in the Credit Agreement that is before this meeting are approved and all of the Credit Agreement's terms and conditions are incorporated in this Ordinance by reference as if the Credit Agreement was set out in this Ordinance in its entirety. The County Council Chair, or the Vice-Chair in the event the Chair is absent, is authorized and directed to execute the Credit Agreement, in the name of and on behalf of the County, subject to any revisions as may be approved by the Chair or the County Administrator following receipt of advice from counsel to the County and do not materially affect the obligation and rights of the County under the Credit Agreement, and the Clerk to County Council is authorized and directed to attest the Credit Agreement.

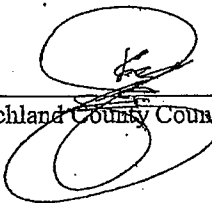
Section 3. Further Assurances. The County Administrator (and his designated appointees) is authorized and directed, in the name of and on behalf of the County, to take whatever further actions and execute whatever further documents as the County Administrator (and his designated appointees) deems to be reasonably necessary and prudent to effect the intent of this Ordinance.

Section 4. Savings Clause. The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 5. General Repealer. Any prior ordinance, resolution or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

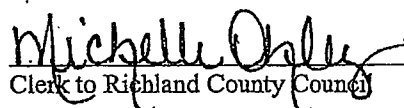
This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA



Chairman, Richland County Council

(SEAL)
ATTEST:



Clerk to Richland County Council

First Reading: February 4, 2014
Second Reading: February 18, 2014
Public Hearing: March 4, 2014
Third Reading: March 4, 2014

EXHIBIT A
PROPERTY DESCRIPTION

Parcel 1

Beginning at the intersection of the southern right-of-way margin of Blossom Street and the eastern right-of-way margin of Huger Street at a X on conc. (o), this being the POINT OF BEGINNING 1 (POB 1); thence turning and running N 69°56'30" E along the southern right-of-way margin of Blossom Street for a distance of 417.26 feet to a X on conc (o); thence turning and running S 19°53'06" E along the western right-of-way margin of Pulaski Street (unopened) for a distance of 249.33 feet to a 2-3/4" Pipe (o); thence turning and running S 69°59'06" W along property of now or formerly Arnold Realty Company for a distance of 413.24 feet to a 2" Pipe (o) [Reference Iron]; thence turning and running S 69°59'06" W along property of now or formerly Arnold Realty Company for a distance of 1.66 feet to a Calc. point; thence turning and running N 20°25'37" W along the eastern right-of-way margin of Huger Street for a distance of 249.06 feet to a X on conc. (o), this being the POINT OF BEGINNING 1 (POB1).

TMS 08914-16-01

Parcel 2

Beginning at the intersection of the northern right-of-way margin of Wheat Street and the eastern right-of-way margin of Huger Street at a 1" Pipe (o), this being the POINT OF BEGINNING 2 (POB 2); thence turning and running N 20°07'00" W along the eastern right-of-way margin of Huger Street for a distance of 167.86 feet to a Calc. point; thence turning and running N 69°59'06" E along property of now or formerly Arnold Realty Company for a distance of 1.66 feet to a 2" Pipe (o) [Reference Iron]; thence turning and running N 69°59'06" E along property of now or formerly Arnold Realty Company for a distance of 413.24 feet to a 2-3/4" Pipe (o); thence turning and running S 20°04'50" E along the western right-of-way margin of Pulaski Street (unopened) for a distance of 167.12 feet to a 1/2" Rebar (o); thence turning and running S 69°53'02" W along the northern right-of-way margin of Wheat Street for a distance of 414.79 feet to a 1" Pipe (o), the POINT OF BEGINNING 2 (POB 2).

TMS 08914-16-02

RC_000117

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE CIRCUIT COURT

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,

Plaintiffs,

vs.

The City of Columbia, Richland County, and
Fairfield County

Defendants.

**CITY OF COLUMBIA'S RESPONSE TO
PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

Defendant City of Columbia, by their undersigned attorney, submits this Memorandum of Law in response to Plaintiff's Motion for Summary Judgment.

Plaintiff's entire lawsuit is premised on Section 4-29-68. Specifically, Plaintiff's brief repeatedly states that "Special Source Revenue Credits granted under § 4-1-175 must be 'for the purposes outlined in section 4-29-68.'" (Plaintiff's brief at page 8.) Section 4-29-68 accordingly states in part:

(A) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4-29-60, Section 4-29-67, Section 4-12-20, or Section 4-12-30 may issue special source revenue bonds secured by and payable from all or a part of such revenues, subject to the following terms and conditions:

* * * *

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

the issuer to enhance the economic development of the issuer. (Emp added.)

Accordingly, Special Source Credits are limited to projects which include (1) manufacturing; (2) commercial; and (3) aircraft. As maybe seen in the attached affidavits, the student housing projects which are the subject of the Special Source Credits in this litigation are commercial property. As stated in the City's earlier memorandum, they are classified as commercial property for all purposes, including property tax, business license taxes, zoning, water and sewer rates, etc.

Plaintiff's memo notes that section 4-29-10(3)(d) defines "commercial." This subsection defines "commercial" to include "any enterprise engaged in commercial business, including, but not limited to wholesale, retail or other mercantile establishments." The student housing projects are "engaged in commercial business." Plaintiff notes that the subsection also defines commercial business to include residential and mixed use developments of two thousand five acres or more. The student housing projects are neither residential nor mixed use developments.

Plaintiff notes that "The statutory definition of 'Project' does not include student housing." The statutory definition does not need to, as it includes a "commercial business." The statutory definition also does not include malls. The South Carolina Supreme Court nevertheless upheld the use of Special Source Credits for a large retail mall in Myrtle Beach in *Horry County School District v. Horry County*, 346 SC621, 552 SE2d 737 (2001).

Plaintiff alleges that the definition of "project" "is a specific and exclusive list of qualified endeavors without expansive language." It bears repeating that a qualifying project is "any enterprise engaged in commercial business including, but not limited to wholesale, retail, or other mercantile establishments." How could the General Assembly be more expansive? Incidentally, "mercantile" is defined in two dictionaries as follows:


The Simple Definition of Mercantile is: of or relating to the business of buying and selling products to earn money : of or relating to trade or merchants. The Full Definition of Mercantile is : of or relating to merchants or trading : of, relating to, or having the characteristics of mercantilism. Merriam-Webster.

Dictionary.com (<http://dictionary.com/>) defines Mercantile as:

1. of or relating to merchants or trade; commercial.
2. Engaged in trade or commerce: *a mercantile nation*.
3. Economics. Of or relating to the mercantile system

Were the Court to rule in favor of the Plaintiff, i.e. that student housing is residential and not commercial, the only persons who would be happier than the Plaintiff would be the Student Housing developers, as well as the entire apartment/hotel/motel industry in South Carolina. They presumably would not owe business license taxes (which are not imposed on residential), business personal property taxes (likewise) and they would pay on a 4% property tax assessment ratio rather than 6%. Such a ruling would have serious budget ramifications for every city, county and school district in South Carolina.

Respectfully submitted by,



Burnet R. Maybank, III
Chris Hampton
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorney for Defendant City of Columbia

October 4, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

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,

Plaintiffs,

vs.

The City of Columbia, Richland County, and
Fairfield County

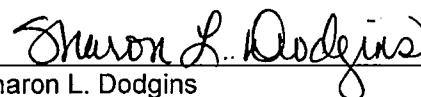
Defendants.

CERTIFICATE OF SERVICE

This is to certify that **City of Columbia's Response to Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment** has been served on the counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 4th day of October, 2016:

James G. Carpenter, Esquire
819 East North Street
Post Office Box 11449
Greenville, South Carolina 29601

Ray E. Jones, Esquire
Ray N. Stevens, Esquire
Post Office Box 1509
Columbia, South Carolina 29202



Sharon L. Dodgins
Legal Practice Assistant
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

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

Case No. 2016-CP-40-00946

Plaintiff,

**Affidavit of Jeff Githens in Support of
Motion for Summary Judgment**

vs.

City of Columbia and Richland County,

Defendants.

Personally appeared before me, Jeff Githens, who being duly sworn, deposes and says as follows:


1. My name is Jeff Githens and I am over 18 years of age and competent to execute this affidavit.
2. I am the President of Development for McKinley Development Companies, LLC (DBA Peak Campus Development), a for-profit real estate developer.
3. Peak Campus Development is a team of student housing development professionals. The company is headquartered in Atlanta, Georgia, along with the affiliated management companies (DBA Peak Campus). Peak Campus has completed previous student housing developments in such communities as Charlottesville, Virginia (University of Virginia), Tempe, Arizona (Arizona State University), Durham, New Hampshire (University of New Hampshire), and Chicago, IL (University of Chicago). Peak Campus has developed nearly 13,000 beds and manages approximately 54,000 beds of student housing from Maine to California making us one of the largest developers and operators of student housing in the country.
4. Plaintiff's lawsuit involves the constitutionality of including 4 student housing projects in a Multi-County Business Park. On information and belief, one of the student housing projects includes Blue Atlantic Columbia, LLC.
5. Taxes on commercial properties in the state of South Carolina are among the highest in the United States.
6. Peak Campus' student housing development project, Station at Five Points, went before both Richland County and the City of Columbia Councils. Richland County passed Ordinance No. 072-14HR which amended an existing Multi-

County Business Park to include this student housing project, together with the 50% Special Source Revenue Credit. The City of Columbia passed Ordinance No. 2014-123 consenting to the Special Source Revenue Credits for the Station at Five Points project.

7. Peak Campus, after passage of the Ordinances and Resolutions, committed to building Station at Five Points in Columbia. Peak Campus relied on the Ordinances in making its decision to move forward.
8. Station at Five Points, at Harden and Gervais Streets, will consist of 218 units and 660 beds and 557 structured parking spaces. Furthermore, the project will include a resort style pool, two level fitness center, business center, two level club room with gaming area, independent study/conference rooms on each floor, outdoor putting green and bocce ball court, indoor golf simulator. We expect to expend over \$40 million in capital construction. This project is nearly complete and will be available for occupancy as soon as late summer 2016. An architectural rendering of the project is attached.
9. These student housing projects are classified as commercial for all purposes in Columbia, including water and sewer, property taxes, and zoning.

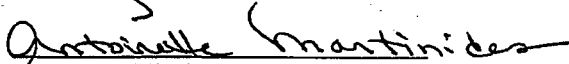
FURTHER AFFIANT SAYETH NOT.

IN WITNESS WHEREOF, the undersigned executes this Affidavit on this 22 day of July, 2016.



Jeff Githens
President of Development
Peak Campus
2970 Clairmont Road, NE #310
Atlanta, GA

SWORN TO before this 22nd day of July, 2016.



Notary Public for Georgia
My Commission Expires: October 9, 2016



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

City of Columbia and Richland County,

Defendants.

IN THE CIRCUIT COURT

Case No. 2016-CP-40-00946

**Affidavit of Paul Levine in Support of
Motion for Summary Judgment**

RICHLAND COUNTY
FILED
2016 JUN -7 PM 3:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Personally appeared before me, Paul Levine, who being duly sworn, deposes and says

follows:

1. My name is Paul Levine and I am over 18 years of age and competent to execute this affidavit.
2. I am the Executive Vice President of Development for the Park 7 Group.
3. Park 7 Group is a team of student housing development professionals comprised of three companies: Park 7 Development, Park 7 Management, and Park 7 Capital. The company is headquartered in New York. The Park 7 Group has completed previous student housing developments in Lubbock, Texas (Texas Tech University), San Marcos, Texas (Texas State University), Tuscaloosa, Alabama (University of Alabama), Tallahassee, Florida (Florida State University), and Norman, Oklahoma (University of Oklahoma). These developments consist of 2,957 units together with 8,609 beds. Prior to forming Park 7, the development team developed and managed a 16,000-bed student housing portfolio.
4. Plaintiff's lawsuit involves the constitutionality of including 4 student housing projects in a Multi-County Business Park. On information and belief, the student housing projects were private sector projects completed by for-profit real estate developers and include: CD/Park 7 Columbia SC Owner, LLC, CD/Park 7 Columbia SC High Rise Owner, LLC, Blue Atlantic Columbia, LLC, and University Residences Columbia, LLC.
5. Taxes on commercial properties in the state of South Carolina are among the highest in the United States. They are the highest of any project that I have been involved.

6. The City met with Park 7. Our realtor and Park 7 prepared the attached PowerPoint, which we presented to the City. It shows property taxes in Columbia are much higher, and in some cases much higher than other university towns.
7. My two national student housing development projects, CD/Park 7 Columbia SC Owner, LLC and CD/Park 7 Columbia SC High Rise Owner, LLC, went before both Richland County and the City of Columbia Councils. Richland County passed two ordinances which amended an existing Multi-County Business Park to include these student housing projects, together with the 50% Special Source Revenue Credit. The City of Columbia passed two ordinances consenting to the Special Source Revenue Credits for the two Park 7 projects.
8. The Park 7 entities, after passage of the Ordinances and Resolutions committed to building two student housing projects in Columbia. Both will pay at least \$375,000 in property taxes. Park 7 relied on the Ordinances in making its decision to move forward.
9. Park Place Columbia, at Blossom & Huger Streets, is 237 units and consists of 640 beds. There is \$46 million in capital construction and 500 structured parking spaces. This project is nearly complete and will be available for occupancy as soon as July 2016. The Assembly & Pendleton project is 227 units with 684 beds and \$45 million in construction cost. The project will also include 4,500 square feet of retail. Construction has commenced on this project with a goal of occupancy for July 2018.
10. These student housing projects are classified as commercial for all purposes in Columbia, including water and sewer, property taxes, and zoning.

FURTHER AFFIANT SAYETH NOT.

IN WITNESS WHEREOF, the undersigned executes this Affidavit on this 19 day of May, 2016.

Paul Levine

Paul Levine
Executive Vice President of Development
Park 7 Group
461 Park Avenue S, Floor 4
New York, NY 10016

SWORN TO before this 19 day of May, 2016.

[Signature]
Notary Public for New York CT
My Commission Expires: 5/31/17

SHIRLEY MATHEWS
Notary Public
Connecticut
My Commission Expires Aug 31, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

City of Columbia and Richland County,

Defendants.

IN THE CIRCUIT COURT

Case No. 2016-CP-40-00946

**Affidavit of Ryan Szymanski in Support
of Motion for Summary Judgment**

Personally appeared before me, Ryan Szymanski, who being duly sworn, deposes and
says as follows:

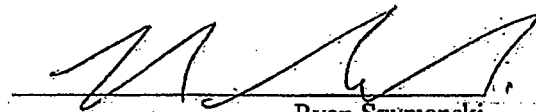
1. My name is Ryan Szymanski and I am over 18 years of age and competent to execute this affidavit.
2. I am the President of Edwards Communities Development Company ("Edwards"), a for-profit real estate developer headquartered in Columbus, Ohio. Edwards has developed student housing projects containing approximately 12,000 beds in 12 states including Greene Crossing located on Pulaski, Greene, and Blossom Streets in the City of Columbia.
3. Greene Crossing cost in excess of \$43.4 million in development costs and consists of 247 fully furnished units, 726 beds, 295 structured parking spaces, and offers such amenities as a 5,500 square foot clubhouse, swimming pool, and fitness center. This project is complete and was available for occupancy in August of 2015.
4. Plaintiff's lawsuit involves the constitutionality of four (4) student housing projects, including Greene Crossing that were included in a Multi-County Business Park. On information and belief, all four (4) of the student housing projects were private sector projects completed by for-profit real estate developers.
5. Greene Crossing, went before both Richland County and the City of Columbia Councils. Richland County passed Ordinance No. 011-14HR which amended an existing Multi-County Business Park to include Greene Crossing, together with the 50% Special Source Revenue Credit. The City of Columbia passed Ordinance

No. 2014-019 consenting to the Special Source Revenue Credits for Greene Crossing.

6. After passage of the Ordinances, Edwards committed to building Greene Crossing. Edwards relied on the Ordinances in making its decision to move forward.
7. Greene Crossing is zoned as a private dormitory, a permitted use under the MX-2 zoning classification and which such use is considered a commercial use for zoning, taxation, and utility purposes.

FURTHER AFFIANT SAYETH NOT.

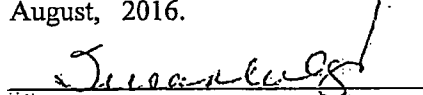
IN WITNESS WHEREOF, the undersigned executes this Affidavit on this 17th day of August, 2016.



Ryan Szymanski
President

Edwards Communities Development Company
495 South High Street, Suite 150
Columbus, OH 43215

SWORN TO before this 17th day of August, 2016.


Notary Public for Ohio

My Commission Expires: 6-25-2020



Susan Wilgus
Notary Public, State of Ohio
My Commission Expires 08-25-2020

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
 Plaintiffs,)
 v.)
 The City of Columbia, Richland County,)
 and Fairfield County,)
 Defendants.)

IN THE CIRCUIT COURT
 CASE NO: 2016-CP-40-00946

**PLAINTIFFS' REPLY MEMORANDUM
 OF LAW IN SUPPORT OF MOTION
 FOR SUMMARY JUDGMENT**

JEANETTE M. HARRIS
 2016 OCT 17
 RICHLAND COUNTY
 FILED
 PH 3: 18

NOW COME the Plaintiffs, by their undersigned attorney, and submit this Reply Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment and in opposition to the dispositive motions filed by the Defendants.

STATEMENT OF THE CASE

The South Carolina Constitution allows adjacent counties to jointly develop "an industrial or business park." Property in the park is "exempt from all ad valorem taxation, but the "owners . . . 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." S.C. Constitution, Art. VIII, § 13(D). The Developers negotiated with the Defendants to receive a 50% Special Source Revenue Credit against the taxes that would ordinarily be due. Plaintiffs contend that including student housing projects in the Park and granting their owners and developers a 50% Special Source Revenue Credit is illegal and unconstitutional.

LEGAL DISCUSSION

This is a case of statutory and Constitutional interpretation. The South Carolina Supreme Court has ruled,

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

SCANA Corp. v. South Carolina Dep't of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009) (emphasis added). The Supreme Court has also ruled,

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

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

A law must be interpreted reasonably and practically, **consistent with the purpose and policy of the General Assembly.** *Abell v. Bell*, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956); *see also Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct.App.2003) ("A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.").

The terms must be **construed in context** and their meaning determined by looking at the other terms used in the statute. *S. Mut. Church Ins. Co. v. South Carolina Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991); *Dupree*, 354 S.C. at 693, 583 S.E.2d at 446. Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the **purpose of the whole statute and the policy of the law.** *Whitner v. State*, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997); *see also Stephen v. Avins Constr. Co.*, 324 S.C. 334, 340, 478 S.E.2d 74, 77 (Ct.App.1996) (finding

statutory provisions should be given reasonable and practical construction consistent with purpose and policy of entire act). In interpreting a statute, the language of the statute must be construed in a sense which **harmonizes with its subject matter and accords with its general purpose**. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992); *Multi-Cinema, Ltd. v. S.C. Tax Comm'n*, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987); *State v. Hudson*, 336 S.C. 237, 246, 519 S.E.2d 577, 582 (Ct.App.1999). Statutes must be **read as a whole** and sections which are part of the same general statutory scheme must be **construed together** and each given effect, if it can be done by any reasonable construction. *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

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

The enabling statutes for such industrial parks include S.C. Code Ann. § 4-1-170 and -175. Section 4-1-170 states:

- (A) By written agreement, counties may develop jointly an **industrial or business park** with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State.
- (B) . . . Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of **Section 4-29-68(E)**.

Id. (emphasis added).

Section 4-1-175 allows counties and municipalities receiving payments in lieu of taxes to issue **credits** against the payments **for the purposes outlined in Section 4-29-68**:

A county or municipality receiving revenues from a payment in lieu of taxes pursuant to Section 13 of Article VIII of the Constitution of this State may issue special source revenue bonds secured by and payable from all or a part of that portion of the revenues which the county is entitled to retain pursuant to the agreement required by Section 4-1-170 in the manner and **for the purposes set forth in Section 4-29-68**. The county or municipality may pledge the revenues for the additional securing of other indebtedness in the manner and **for the purposes set forth in Section 4-29-68**.

A county or municipality or special purpose district **that receives and retains revenues from a payment in lieu of taxes** pursuant to Section 13 of Article VIII of the Constitution of this State **may use a portion of this**

revenue for the purposes outlined in Section 4-29-68 without the requirement of issuing the special source revenue bonds or meeting the requirements of Section 4-29-68(A)(4) by providing a credit against or payment derived from the revenues received and retained under Section 13 of Article VIII of the Constitution of this State.

Id. (emphasis added).

Section 4-29-68 governs special source revenue bonds. It also governs special source revenue credits: “To the extent that the bonds or any credit or offset against a fee in lieu of taxes that is allowed in lieu of the issuance of the bonds,” *Id.* (emphasis added).

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

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

Id. (Emphasis added).

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

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

Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of Section 4-29-68(E).

Id. (Emphasis added).

Thus, Section 4-29-67 connects “projects” in an “industrial development park as defined in section 4-1-170” to the purposes of Section 4-29-67 and Section 4-29-68. All these sections are part of the unified statutory scheme. The words of the related statutory provisions must be read together, in harmony, and in context. The South Carolina Supreme Court ruled:

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

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

Similarly, the Court of Appeals ruled:

When statutes address the same subject matter, they are *in pari material* and **must be construed together**, if possible, to produce a single, harmonious result. *Howell*, 370 S.C. at 509, 636 S.E.2d at 628; *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001); *Joiner ex. rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000); see also *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 363, 660 S.E.2d 264, 268 (2008) (“Moreover, ‘[a] statute should not be construed by concentrating on an isolated phrase.’”). “ ‘The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense.’ ” *S.C. Coastal*, 669 S.E.2d 899, 2008 WL 4693075 at *7 (quoting *Pee v. AVM, Inc.*, 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct.App.2001)); accord *Purdy v. Moise*, 223 S.C. 298, 304, 75 S.E.2d 605, 608 (1953); *Powers v.*

Fid. & Deposit Co. of Md., 180 S.C. 501, 509, 186 S.E. 523, 527 (1936); see also *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 568, 556 S.E.2d 726, 730 (Ct.App.2001) (“[The Court] should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statutes and the policy of the law.”).

Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) (emphasis added).

Accordingly, Title 4, Chapter 1 is tied by statute to Title 4, Chapter 29, contrary to the frantic protestations of the Defendant Counties. Furthermore, the definitions in Chapter 1 applied to the circumstances of Chapter 29. In other words, the Industrial Development Projects requiring a fee in lieu of property taxes in Section 4-29-67, and the special source revenue bonds, and special source revenue credits, governed by Section 4-29-68 are subject to the definitions in Section 4-29-10. Finally, the jointly developed Industrial or Business Park governed by Section 4-1-170, and the special source revenue bonds authorized by Section 4-1-175 are subject to the requirements of section 4-29-68, and they must meet the purposes of section 4-29-68. Accordingly, the “projects” in the business and industrial park in Richland and Fairfield Counties, which are located within the boundaries of the City of Columbia, must be governed by the definitions in Section 4-29-10.

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

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

The Defendants chafe at these definitions, and they chafe at these restrictions, but instead of offering cogent legal analysis, they resort to affidavits complaining that the taxes are too high and discussing how other counties handle economic development projects. But this Court is not asked to decide whether taxes are too high in the City of Columbia. This Court is not asked to pass on the legality of other economic development projects in other counties. The inquiry for this Court is the application of the Constitution and the statutes of South Carolina to the facts of this case.

A legal analysis of the relevant statutes demonstrates that the relevant statutes were never intended to authorize, and in fact do not authorize, student housing projects to be an Industrial Park. Nor did the statutes authorize the special source revenue credits for student housing projects.

I. SPECIAL SOURCE REVENUE CREDITS ARE UNLAWFUL FOR STUDENT HOUSING.

A. The Statutory Definition of Industrial “Project” Does Not Include Student Housing.

As demonstrated in the Plaintiffs’ Memorandum in Support of Motion for Summary Judgment, the Defendants’ ordinances regularly referred to these student housing developments as “Projects.”

S.C. Code Ann. § 4-29-10 defines authorized “Projects” that may be included in Industrial Parks, and for which the counties may issue Special Source Revenue Credits. The Counties subject to any application of the definitions. The City seems to accept the authority of the statutory definitions, but argues that the projects qualify under the statutes. The City does not argue that these student housing projects qualify under §4-29-10(3)(a), (b), or (c); and clearly they do not.

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

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

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

Id. (emphasis added). Student housing does not qualify under those paragraphs, as related to “agricultural or manufactured products,” “products of agriculture, mining, or industry,” “laundry services” for medical providers, and “enterprise for research.”

Instead, the City contends that these student housing projects qualify under Section 4-29-10(3)(d): “any enterprise engaged in **commercial business** including, but not limited to, **wholesale, retail, or other mercantile establishments**.” In this statute, “mercantile establishment” defines or illustrates what the General Assembly meant by an “enterprise engaged in commercial business.” Mercantile establishments **sell merchandise**. Student housing projects would not ordinarily be considered “mercantile establishments.” The City’s strained construction is not within the “plain meaning” of the statute.

The statutorily qualified “Project” closest in definition to these student housing projects is a “residential and mixed-use development,” but the statute requires a “residential and mixed-use development of **two thousand five hundred acres or more**” Section 4-29-10(3)(d). The General Assembly expressed explicitly that a “residential or mixed use development” must contain 2,500 acres to qualify. *Expressio unius est exclusio alterius* (“The expression of one excludes the alternatives.”) These “Projects”

at issue are “residential or mixed use developments,” but they do not “contain 2,500 acres or more.” Accordingly, they are **excluded** from inclusion in a Multicounty Business and Industrial Park; and a Special Source Revenue Credit is not authorized for such “Projects.” Accordingly, granting Source Revenue Credits for these student housing projects is illegal and unconstitutional.

B. Student Housing Is Not “Industry” for Industrial Parks.

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

Nevertheless, Defendants are attempting to justify these student housing projects as “industrial development projects.” Under Chapter 29, to be included in a Multicounty Business and Industrial Park, and to qualify for a Special Source Revenue Credit, a “Project” must be an a part of an “Industry” as defined by Section 4-29-10:

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

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

C. The Attorney General Stated that the Plain Meaning of a “Business and Industrial Park” Excludes Student Housing.

The Attorney General was asked whether residential housing could be included in a Business and Industrial Park, and was further asked “does it matter if the end use for the residential property in question is to be owner-occupied (4%) or commercial (6%) residential property.” 2010 WL 1370089 (S.C.A.G.) (March 1, 2010). The City raises a similar contention. The City argues that because the apartment complexes are taxed at 6%, they qualify for inclusion in a Multicounty Business and Industrial Park. This is an argument based on the City’s view of “fairness” in taxation, not statutory interpretation. While it may be beneficial to the favored developers to get a 50% tax break, it’s not beneficial to everyone else who is paying the full taxation, and it is especially not “fair” to those developers and owners and managers of other apartment complexes catering to the same demographic in the same customer, competing against the favored developers, but who do not receive the 50% tax break. The Defendants’ whole argument based on “fairness” is shortsighted and elusive. The fairest solution is to lower taxes for all taxpayers.

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

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

Id. (emphasis added).

Similarly, the Supreme Court ruled, “The language of a tax exemption statute must be given its **plain, ordinary meaning** and must be **strictly construed against** the claimed exemption. *John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 278 S.E.2d 340 (1981).” *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (emphasis added).

D. Student Housing Projects Fail to Fulfill the Statutory Purposes of Industrial Development Projects.

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

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

S.C. Code Ann. § 4-29-68(2)(i) (emphasis added). Student housing projects do not fulfill the statutory purposes of S.C. Code Ann. § 4-29-68. Student housing projects are not

“infrastructure serving the issuer.” Student housing projects are not “used in the operation of a manufacturing or commercial enterprise.” *Id.* Accordingly, they do not fulfill the authorized statutory purpose for either special source revenue bonds or special source revenue credits.

II. STUDENT HOUSING FAILS TO BRING THE ECONOMIC BENEFITS OF “INDUSTRIAL PROJECTS.”

Courts have reasoned that the tax benefits granted to industrial development projects have benefited the surrounding communities by generating jobs and investments in the community. Defendants have failed to justify student housing projects because they do not bring such benefits. The Defendants failed to demonstrate that these projects came within the rationale, the holding, and the analysis in *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990).

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

Id., 302 S.C. 148, 150, 394 S.E.2d 320, 321 (1990) (footnote omitted) (emphasis added).

The *Quirk* Court explained the facts supporting its analysis.

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

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

In *Quirk*, the Court also cited the “established legislative policy of **improving the industrial climate in South Carolina** in order to provide for the welfare and prosperity of its inhabitants.” *Id.*, 302 S.C. 148, 151, 394 S.E.2d 320, 322 (1990),

quoting, *Elliott v. McNair*, 250 S.C. 75, 89, 156 S.E.2d 421, 428 (1967). The Court in *Quirk* also referred favorably to the “legislative purpose of attracting large capital-intensive industries to this State.” *Id.*, 302 S.C. 148, 153, 394 S.E.2d 320, 323 (1990).

Defendants failed to demonstrate that student housing projects would bring such benefits to the Defendant Counties or to the City of Columbia. Defendants failed to demonstrate that student housing projects would bring in new jobs or add millions of dollars to the annual payroll of the City of Columbia. Defendants failed to demonstrate that the student housing projects would support any “legislative purpose of attracting large capital-intensive industries to this State.” *Id.* Defendants failed to demonstrate that the student housing projects would “improve[e] the industrial climate of South Carolina in order to provide for the welfare and prosperity of its inhabitants.” *Id.*, 302 S.C. 148, 151, 394 S.E.2d 320, 322 (1990), quoting, *Elliott v. McNair*, 250 S.C. 75, 89, 156 S.E.2d 421, 428 (1967). Defendants failed to demonstrate that student housing projects would induce “large industries to make new or expanded investments in South Carolina.” *Id.*

Defendants failed to demonstrate any societal benefit by providing tax breaks to favored developers, most of whom are out-of-state, and many of whom want to fill up the apartments quickly and sell them to receive their windfall and move away, all at the expense of the other taxpayers. Defendants failed to dispute Plaintiffs’ contention that Defendants have granted these favored developers a huge financial advantage over their competition, the other owners of apartment complexes and private student housing competing against them in the Columbia market. These owners of other apartment complexes and private student housing facilities (along with all the other taxpayers) are

required, by their taxes, to offset the financial advantages given to their competition, the favored developers.

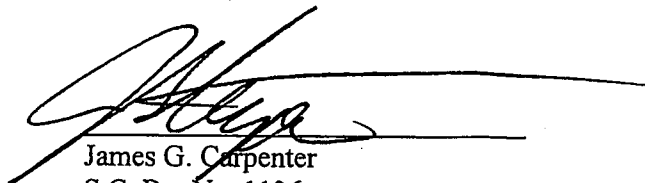
CONCLUSION

This Court should declare the inclusion student housing projects in an Industrial Park and the granting of special source revenue credits illegal and unconstitutional.

WHEREFORE, Plaintiffs pray the Court to:

1. Grant the Plaintiffs' Motion for Summary Judgment;
2. Deny the Defendants' Motions to Dismiss and for Summary Judgment;
3. Rule that including student housing projects in an Industrial Park and that granting them Special Source Revenue Credits violates the South Carolina Constitution, Art. 8, § 13; and S.C. Code Ann. § 4-1-170 ff.;
4. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

October 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

v.

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

IN THE CIRCUIT COURT

CASE NO: 2016-CP-40-00946

CERTIFICATE OF SERVICE

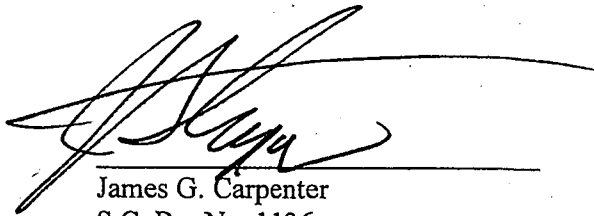
2016 OCT 17 PM 3:18
JANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The undersigned attorney hereby certifies that he served a copy of the foregoing Plaintiffs' Reply Memorandum of Law in Support of Motion for Summary Judgment on opposing counsel by first class mail, postage prepaid, this October 11, 2016, addressed as follows:

Burnet R. Maybank III
Post Office Drawer 2426
Columbia, SC 29202

Ray N. Stevens
PO Box 1509
Columbia, SC 29202

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

October 11, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest Foundation,)
 and William B. DePass, Jr., individually,)
 and on behalf of all others similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 The City of Columbia, Richland County,)
 and Fairfield County,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-00946

**RICHLAND COUNTY'S AND
 FAIRFIELD COUNTY'S
 SURREPLY TO PLAINTIFFS' REPLY
 MEMORANDUM**

RICHLAND COUNTY
 FILED
 2016 OCT 18 PM 1:54
 ANNETTE W. HOSBRIDE
 C.C.P. & G.S.

I. BACKGROUND

Richland County and Fairfield County (“Richland” or “Fairfield” individually and “Counties” collectively) filed on September 20, 2016, a Motion for Summary Judgment. The South Carolina Public Interest Foundation, and William B. DePass, Jr., (“Plaintiffs”) also on September 20, 2016, moved for Summary Judgement.

Consistent with the Court’s Scheduling Order, Counties and Plaintiffs had to file “any memoranda and opposing affidavits in response to the cross-motions for summary judgments . . . by October 4, 2016.” Counties filed their memorandum and opposing affidavits timely on October 4, 2016. Plaintiffs filed no memorandum; they filed no opposing affidavits.

However, with no permission, in the late afternoon of October 11, Plaintiffs filed what they characterized as a “Reply Memorandum of Law in Support of Plaintiffs’ Motion for Summary Judgment and in opposition to the dispositive motions filed by the Defendants.” The Counties, after attempting with no success to speak with counsel for Plaintiffs, requested

permission from the Court on October 12, 2016, to file a Surreply. Counsel for Plaintiffs on October 13 notified the Court the Plaintiffs did not object to the Counties request.

II. ANALYSIS

The Plaintiffs argue three primary positions in their Reply Memorandum. They argue the definitions of Title 4, Chapter 29 governs Title 4, Chapter 1.¹ In addition, they argue those definitions are not satisfied by the Student Housing Apartments.² Finally, they argue granting the Special Source Revenue Credits of S.C. Code Ann. § 4-1-175 does not satisfy “the purposes outlined in Section 4-29-68.”³ Each is addressed below.⁴

A. Plaintiffs Cannot Show that the Definitions of Title 4, Chapter 29 Apply to Title 4, Chapter 1.

At least three contentions raised by the Counties in their Motion for Summary Judgment relative to the alleged applicability of the definitions of Chapter 29 to Chapter 1 of Title 4 remain unanswered by the Plaintiff’s Reply Memorandum.

First, the Plaintiffs seek to lead the Court into asking unnecessary and undefined subjective inquires. For example, the Plaintiffs ask the Court to read “[t]he terms . . . construed in context”⁵ and invite a finding of “*in pari materia*[] [to be] . . . construed together, if possible,

¹ Plaintiffs’ Reply Memorandum p. 6 (arguing “the ‘projects’ in the business and industrial park in Richland and Fairfield Counties, . . . must be governed by the definitions in Section 4-29-10.”).

² Plaintiffs’ Reply Memorandum p. 7-9

³ Plaintiffs’ Reply Memorandum p. 11-12

⁴ The Counties remind the Court that the Plaintiffs, in their Amended Complaint, make no claim for relief and nowhere cite to any provision of law contained in Chapter 29, Title 4 of the S.C. Code. The Counties accordingly renew and incorporate herein their previous requests that the Court strike the extraneous and offending portions of the Plaintiffs’ memoranda. *Resolution Trust Corp. v. Eagle Lake & Golf Condominiums*, 310 S.C. 473, 475, 427 S.E.2d 646, 648 (1993) (unpled and novel legal theories should not be considered for the first time on Summary Judgment). Subject to those renewed objections, the Counties respond and again demonstrate *infra* that the investments here under review are not controlled by Chapter 29, Title 4 or alternatively satisfy Chapter 29, Title 4.

⁵ Plaintiffs’ Reply Memorandum p. 5

to produce a single, harmonious result.”⁶ The Court should reject the Plaintiffs’ invitation to embark on such speculation.

Instead, the Court is bound by the plain and literal language of S.C. Code Ann. §4-29-10. In that statute the General Assembly states the definitions apply “[w]henever used in this chapter [Chapter 29].” Thus, the General Assembly by plain language states the definitions of Chapter 29 are limited to Chapter 29. Had the General Assembly meant the definitions of Chapter 29 were to apply to any other Chapter in Title 4, the General Assembly would have so stated. *Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001) (“if [the] legislature had intended [a] certain result in [a] statute[,] it would have said so.”).

Instead of speculation as urged by the Plaintiffs, the Counties’ Motion for Summary Judgment asks the Court to read the statutes of Chapter 29 using the plain language employed by the General Assembly. Doing so is the Court’s duty.

When a statute’s terms are clear and unambiguous there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005). If a statute’s language is unambiguous and clear, the Court has no right to look for or impose another meaning. *Paschal v. State Election Comm’n*, 317 S.C. 434, 454 S.E.2d 890 (1995).

In the instant case, the literal language states the definitions apply “[w]henever used in this chapter [Chapter 29].” No ambiguity results since the definitions of “project” and “industry” are required to apply to those terms when used in Chapter 29. The language being clear, the literal application applies. The literal application means the definitions of Chapter 29 **do not apply** to Chapter 1 of Title 4.

⁶ Plaintiffs’ Reply Memorandum p. 5

Second, the Plaintiffs' Reply Memorandum presents to the Court a logical impossibility. How can the definitions of "Project" and "Industry" in Chapter 29 be imposed on the Multicounty Business and Industrial Parks provisions of Chapter 1 when the words "Project" and "Industry" do not even exist in Chapter 1?⁷ To reach Plaintiffs' position, this Court must write-in new provisions to Chapter 1. Such is obviously not permitted since Courts may not add words to a statute. *Kinard v. Moore*, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951) ("The court has no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy.").

Third, the Counties' unopposed affidavit from Mark Farris establishes economic developers uniformly do not require investments in a Business and Industrial Park to meet the definition of "Project" or "Industry" as defined in Title 4, Chapter 29. See Affidavit of Mark Farris, ¶¶ 14 & 15.⁸ Plaintiffs' Reply Memorandum invites the Court to issue a ruling removing an incentive tool heretofore relied upon by every economic developer (both within and without South Carolina) seeking to incentivize South Carolina economic development in a multicounty park.

⁷ The terms "project" and "industry" are never used while the word "industrial" is used only three times in Chapter 1; even then the reference to "industrial" always appears as a reference to the multicounty park rather than in a description of activities within the park.

⁸ "As a Certified Economic Developer, when considering whether to offer to a business the location of its project in a multicounty business or industrial park as an incentive, I do not consider whether the project meets the definition of "Projects" or "Industry" under S.C. Code Ann. § 4-29-10 [and i]n addition, I am not familiar with a Certified Economic Developer in South Carolina who believes that a project must meet the definition of 'Projects' or 'Industry' under S.C. Code Ann. § 4-29-10 before it may be located in a multi-county business or industrial park."

B. Even if the Definitions of S.C. Code Ann. §4-29-10 Were Applied, the Student Housing Apartments Meet the Definitions

Plaintiffs assert in their Reply Memorandum “these student housing projects [do not] qualify under Section 4-29-10(3)(d) [as] ‘any enterprise engaged in commercial business including, but not limited to, wholesale, retail, or other mercantile establishments.’” Plaintiffs’ Reply Memorandum p. 8. Further, Plaintiffs argue that for residential use the “statute requires a ‘residential and mixed-use development of two thousand five hundred acres or more’ [under] Section 4-29-10(3)(d).” Neither position is correct.

1. *The Student Housing Apartments are Projects Within an Industry Meeting the Meaning of S.C. Code Ann. §4-29-10(3) & (6)*

“Project” at S.C. Code Ann. §4-29-10(3)(d) is defined as “any land and any buildings and other improvements on the land . . . considered necessary, suitable, or useful by . . . any enterprise engaged in **commercial business** including, **but not limited to**, wholesale, retail, or other mercantile establishments.” (Emphasis added). For at least three reasons, the Student Housing Apartments are commercial businesses.

First, the unopposed affidavit of Elizabeth M. McDonald, Richland County Assessor, at paragraphs 8 and 9 explains the Assessor “classified the Private Dormitories as commercial properties . . . because . . . each of the Private Dormitories’ activities . . . consist of operating and leasing off-campus accommodations for college students, and provision of specific services, including security, property management, and planned recreational activities [all of which] comprise business and commercial activities.

Second, the parties agree in Joint Stipulation of Fact, paragraph 13 “[a]ll 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.” Case law confirms such activity is the operation of a commercial business. *See City of*

Beaufort v. Holcombe, 369 S.C. 643, 650, 632 S.E.2d 894, 898 (Ct. App. 2006) (“A property owner renting commercial property to third parties is in the business of renting commercial property.”)(Emphasis added).

Third, the common practice of renting dormitories to students is a commercial business and part of an “industry” recognized by the North American Industrial Classification System (“NAICS”). The Student Housing Apartment Complexes at issue can be classified under NAICS code 721310 as “Rooming and Boarding Houses (Dormitories, off campus).” That activity is an “industry” since the NAICS Code explains “[t]his industry comprises establishments primarily engaged in operating rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories, residential clubs, and workers' camps.”

2. *The Operation of a Dormitory Business Is Not a Residential Activity*

The definition of “Project” in S.C. Code Ann. §4-29-10(3) referencing “residential and mixed-use development” does not prohibit the dormitory businesses conducted by the Student Housing Apartments. Rather, the statutory reference to residential within S.C. Code Ann. §4-29-10(3) means a use that is residential for property tax purposes. Article X, § 1 classifies real property into 5 categories. Manufacturers are classified and assessed at a 10.5% ratio, transportation at 9.5%, legal residences at 4%, agricultural at 4%, and “all other real property” at 6%. The unopposed affidavit of the Assessor for Richland County classifies the Student Housing Apartment Complexes as “other real property” assessed at a 6% ratio.

The Assessor does not assess the real property as a “legal residence.” 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 not owners. Thus, the Student Housing Apartments are not residential—they are commercial business within S.C. Code Ann. §4-29-10.

3. *The Special Source Revenue Credits of S.C. Code Ann. § 4-1-175 Satisfy the Purposes Required by S.C. Code Ann. § 4-29-68*

S.C. Code Ann. §4-1-175 states:

A county . . . 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. (Emphasis added)

The requirements of S.C. Code Ann. §4-1-175 are satisfied.

First, the revenue source against which the credit is applied is the payment to the Counties under a Multicounty Business and Industrial Park flowing from the Student Housing Apartments in the 1-77 Corridor Regional Industrial Park. The Ordinances adopted by Richland County authorizing the credit to the Student Housing Apartments each state the credits reduce the in-lieu-of-tax payments due from the owners of the Student Housing Apartments to the Richland County.


Second, under the statute, the proceeds of the credit must be used by the owners of the Student Housing Apartments for the “purposes” outlined in Section 4-29-68. A valid purpose in S.C. Code Ann. §4-29-68(2)(i) is using the credits to pay for “improved or unimproved real estate and personal property . . . used in the operation of a . . . commercial enterprise.” Consistent with that requirement, the Student Housing Apartments are commercial enterprises and the Ordinances adopted by the Richland County which authorizes the credit for the Student

Housing Apartments each show the credit is to be utilized to pay for improved or unimproved real estate and personal property used in the operation of the Student Housing Apartment.⁹

Therefore, the credit extended to the Student Housing Apartments meets the requirements of S.C. Code Ann. §4-1-175 and satisfies the purposes outlined in S.C. Code Ann. §4-29-68. Thus, the credit offered to the Student Housing Apartments is proper and violates no statute or constitutional provision.

For the above reasons, the Motion for Summary Judgment sought by Plaintiffs should be denied and the Motion for Summary Judgment sought by the Counties granted.

Respectfully submitted,



Ray N. Stevens (Bar N. 5342)
Ray E. Jones (Bar No. 11322)
Court E. Walsh (Bar No. 72723)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com
courtwalsh@parkerpoe.com

*Counsel for Defendants
Richland County and Fairfield County*

October 18, 2016
Columbia, South Carolina

⁹ See, e.g., Richland County Ordinance No. 004-14HR, Exhibit E to *Richland County's and Fairfield County's Opposition to Plaintiffs Motion for Summary Judgment*.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 18, 2016, she caused the foregoing **RICHLAND COUNTY'S AND FAIRFIELD COUNTY'S SURREPLY TO PLAINTIFFS' REPLY MEMORANDUM**, to be served on all parties of record via U. S. mail delivery, postage prepaid, addressed as follows:

James Carpenter, Esquire
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, South Carolina 29601

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202



Randi M. Berlin

Columbia, South Carolina

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND)
3)
4 SOUTH CAROLINA PUBLIC)
INTEREST FOUNDATION and)
5 WILLIAM B. DePASS, JR.,)
Individually and on)
6 behalf of others)
similarly situated)
7)
Plaintiffs)
8)
versus)
9)
10)
THE CITY OF COLUMBIA,)
11 RICHLAND COUNTY and)
FAIRFIELD COUNTY)
12)
Defendants)

COURT OF COMMON PLEAS
No. 2016 CP 40 00946

TRANSCRIPT OF RECORD

Columbia, South Carolina
January 17, 2017

15 B E F O R E :
16 HONORABLE CASEY MANNING, Judge Presiding

17 A P P E A R A N C E S :
18 For the Plaintiffs: JAMES G. CARPENTER, Esq.
19 For the Defendants: BURNET R. MAYBANK, III, Esq.
20 RAY N. STEVENS, Esq.
21 Reporter Present: CRYSTAL HOLMES
22

23 HARRIET P. BENNETT
Reporter, S. C. Court Administration
24 46 Regency Oaks Drive
Summerville, S.C. 29485
25

I N D E X

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Mr. Carpenter p. 4, 39, 44
Mr. Maybank 19
Mr. Stevens 28, 43, 44

EXHIBITS

1

2

3

TRANSCRIPTION NOTE: No Exhibits were proffered or introduced
by Counsel

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The within matter came before the Court for hearing on
2 January 17, 2017)

3 THE COURT: Here we have the South Carolina Public In-
4 terest Foundation and William B. DePass, Junior, individually
5 and on behalf of others similarly situated, as Plaintiff,
6 versus City of Columbia, Richland County and Fairfield
7 County, Defendants.

8 Are we all here?

9 MR. CARPENTER: Yes, sir.

10 THE COURT: We have a Motion for Summary Judgment and a
11 Motion to Dismiss as I recall. Is that right?

12 MR. CARPENTER: That's right.

13 THE COURT: All right, who wants to go first?

14 MR. CARPENTER: We have basically decided that I could
15 go first . . .

16 THE COURT: All right.

17 MR. CARPENTER: . . . for the Plaintiffs.

18 THE COURT: Yes, sir, Mr. Carpenter.

19 MR. CARPENTER: Your Honor, we represent the Plaintiffs,
20 the South Carolina Public Interest Forum and Mr. DePass,
21 and we have brought this action because we believe that the
22 use of multi-county businesses and industrial parks to give
23 tax breaks to developers of student housing is not autho-
24 rized by the Statutes or the Constitution.

25 I will focus on the Statutes which track the Constitution.

1 Some years ago the General Assembly adopted a device
2 called the Multi-County Business and Industrial Park, and
3 one of the requirements was that you had to have at least
4 -- you had to have contiguous counties and at least one of
5 the counties had to be disadvantaged or underdeveloped.

6 The idea was to have . . .

7 THE COURT: I assume this case is about Fairfield
8 County.

9 MR. CARPENTER: That's right.

10 THE COURT: All right, go ahead.

11 MR. CARPENTER: And in this case Richland County joined
12 with Fairfield County to form a multi-county industrial
13 business park that they called the I-77 (inaudible) Indus-
14 trial Park.

15 The purpose or the idea behind this was or seemed to
16 be that it was going to be helping . . .

17 THE COURT: Was there another of these cases?

18 MR. CARPENTER: Not that I know of.

19 THE COURT: Because I am from Dillon County is why I
20 asked. All right.

21 MR. CARPENTER: Exactly, but there was a case where the
22 Spartanburg County Department of Public Safety used some of
23 the property there which caused problems because it was
24 not used properly, and here we think there was a mis-use of
25 the device.

5

1 There was a case a few years ago brought by Professor
2 Burke of the Law School that was related to a more legiti-
3 mate use of a business-industrial park. The other device
4 used in these projects was that they had used special
5 source revenue bonds or later on they changed that to spe-
6 cial source credits, special source revenue credits.

7 When they began they would issue bonds that would be
8 repaid by payments from the people at the industrial park,
9 and the bonds would be used to develop infrastructure such
10 as roads, water, sewer, etcetera, etcetera.

11 Then the General Assembly or some of the developers
12 decided it was cumbersome and difficult to use the bond
13 process so they added another device called special source
14 revenue credits.

15 So instead of going through the motions of the bond
16 process they would issue a tax credit, and supposedly . .

17 THE COURT: To members of the industrial park?

18 MR. CARPENTER: Sir?

19 THE COURT: To members of the industrial park?

20 MR. CARPENTER: Yes. To persons who had property in
21 the industrial park. Right.

22 Initially the idea was that the property belonged to
23 the government and, therefore, was exempt from taxation,
24 and then they changed that legal fiction to that the land
25 was exempt from taxation all together if it was within a

1 business-industrial park, but what they hadn't considered was
2 that would be in lieu and being in lieu of taxes was sup-
3 posed to be equivalent to the tax that would have been paid
4 had they not been in the business-industrial park.

5 Well, then the third device comes along where you get
6 a special source revenue credit which would cut that B I P
7 tax down, and in this case they cut it in half. So when the
8 smoke clears, what happens is these developers get a fifty
9 percent tax break. They don't pay any taxes per se. They
10 pay a fee in lieu of taxes, and the fee in lieu of taxes is
11 only fifty percent of what they would pay in taxes ordinar-
12 ily.

13 That is a pretty serious device used by the City and
14 the County, and real estate again in the City is continuing
15 to balance and the City has to consent to the County -- let
16 me just say it is the County that has entered into the Mul-
17 ti-County Industrial Park.

18 So Richland and Fairfield Counties created this Park.
19 Now, you might expect the Park would be located out there
20 on a border between Richland and Fairfield Counties, but
21 in this case what they have done is take various small plots
22 in downtown Columbia -- we're going to put this two acre lot
23 into the Business and Industrial Park.

24 So they have the Park out at I-77 where it joins in
25 Richland County with Fairfield County, and they've got the

1 other little plots of land in the City of Columbia that have
2 no contiguous . .

3 THE COURT: Does the Statute contain the regulation or
4 does the City have some law that is involved in that?

5 MR. CARPENTER: No, but they are allowed to do it. It
6 is just not what you would expect when you hear about the
7 ordinance of the Business-Industrial Park.

8 THE COURT: Is there anything you want to say about
9 his presentation so far?

10 MR. MAYBANK: I see nothing wrong at this point.

11 THE COURT: So far?

12 MR. MAYBANK: So far.

13 THE COURT: Everything is fine?

14 MR. MAYBANK: It may smell but it is not against the
15 law.

16 THE COURT: Okay, thank you.

17 MR. CARPENTER: So they take little plots of land in
18 downtown Columbia and say the property is a Business and
19 Industrial Section right here.

20 MR. MAYBANK: I think it is a question of use of the
21 property but I would again point out that . .

22 THE COURT: They are creating a use for the property,
23 is that right?

24 MR. CARPENTER: There was a case a few years ago brought
25 by Professor Horton over at the Law School, and I think it

1 got to the Supreme Court. I can't recall whether it was
2 original jurisdiction or what it was, but he was objecting
3 to the idea of giving these tax breaks and the industry
4 coming into the State because the Constitution requires the
5 uniformity of taxation.

6 The Court, you know, utilized the fictions to say, well,
7 these are not really taxes; these are in lieu of taxes so
8 that -- and it ruled against Horton.

9 The Supreme Court said that the use of these devices
10 can be helpful. They spoke a lot about why these devices
11 can be very useful and genuinely helpful, and some of the
12 policies they talked about were, well, this is a big indus-
13 trial property where the tax break is being challenged by
14 Professor Horton.

15 The Supreme Court said, well, this company is coming
16 in and spending umpteen million dollars and they're going
17 to create several hundred jobs, and not only that . . .

18 THE COURT: Was this BMW?

19 MR. CARPENTER: No, it wasn't BMW but it was a big
20 industrial plant -- a paper mill or some big industrial
21 plant.

22 But they would bring umpteen million dollars and they
23 would create hundreds of jobs as well as the companies
24 that would supply what they needed; that the industrial com-
25 pany would create several hundred more jobs a year and add

1 so many millions of dollars of taxes through the payroll of
2 this county, and this county was, you know, really needing
3 help by financial incentives and investments.

4 So it was all used as justification for the develop-
5 ment and was used as justification to say that if this kind
6 of thing worked in this case context then this was a good
7 thing. It would bring prosperity to the county and every-
8 body wants prosperity.

9 So they use the mechanics of zero taxes and then they
10 give this special source credit against those zero taxes,
11 to these Multi-County Business Industrial Parks.

12 Well, a few years ago a private lawyer, who happened
13 to be the County Attorney for Oconee County, wrote to the
14 Attorney General and asked for an opinion about whether he
15 could put residential housing into a business-industrial
16 park.

17 THE COURT: Who wrote the Attorney General?

18 MR. CARPENTER: As a matter of fact, I don't remember.
19 I can submit a copy to the Court.

20 THE COURT: Did you call the attorney?

21 MR. CARPENTER: I called the attorney and . . .

22 THE COURT: What was said?

23 MR. CARPENTER: I can't tell you at this time but he
24 wrote a letter . . .

25 THE COURT: What was the date of the letter?

1 MR. CARPENTER: I believe it was 1987. I think he was
2 with a firm which had a branch office in Oconee.

3 (Portion inaudible due to the Court and Counsel speak-
4 ing at the same time)

5 MR. CARPENTER: The Attorney General did respond to
6 him, and I did call the guy and talk to him. He said,
7 yeah, I did write the Attorney General and gave a draft of
8 the letter.

9 The Attorney General asked him a question and also re-
10 plied to him.

11 THE COURT: Am I supposed to take judicial notice of
12 some opinion to some letter to some lawyer who wrote the
13 Attorney General asking for an opinion?

14 Am I supposed to do that?

15 MR. CARPENTER: No, sir, I'm not saying that. I am
16 just telling you a story as to what occurred.

17 THE COURT: All right.

18 (Parties speaking at the same time)

19 MR. CARPENTER: No, no. He said that the Attorney Gen-
20 eral has given an opinion contrary to what was requested
21 by the attorney from Oconee County, and what he said was
22 the plain language of the statute said business and indus-
23 try, and he asked him two questions. One, he said is the
24 property ten years old, and, number two, does it make any
25 difference whether it's taxed at six percent or four percent?

11

1 The Attorney General's Opinion came back and said that we
2 don't think residential belongs in a business and industrial
3 park based on the plain language of the statute. He looked
4 at the definition of business. He looked at the definition
5 of industrial. It doesn't fit, and he didn't distinguish
6 between four percent property and six percent property.

7 But he said, well, actually, you know, there has been
8 no ruling so what you need to do is to make a -- to file a
9 case and make a motion for declaratory judgment to get a
10 ruling on that.

11 Well, he didn't do that. Well, two or three weeks
12 later the Chairman of the Department of Revenue wrote this
13 very similar letter.

14 Well, I don't know -- it may not have been two or
15 three weeks later but a second Opinion came out two or
16 three weeks issued to the Department of Revenue, saying,
17 hey, this residential property being in a multi-county
18 business and industrial park -- and the letter came back
19 again saying based on the plain language of the statute,
20 residential properties don't belong in a business and in-
21 dustrial park. It's not business; it's not industry.

22 So we would suggest both of those AG Opinions were is-
23 sued just a few weeks apart back in 2010 as I recall.

24 Both came down on the side of it's got to be business
25 or industry in a business and industrial park. That's what

1 they are for.

2 So then if you look at the Statutes, there are the two
3 groups of Statutes -- we've gone into it extensively in
4 our Memorandum filed with the Court.

5 But there are statutory criteria that say what are al-
6 lowed in these business and industrial parks and they call
7 them projects.

8 They have a listing of projects and have got a series
9 of paragraphs that talk about what an acceptable project is,
10 and, as far as I can tell, the project most -- the defini-
11 tion of a project that mostly resembles these projects
12 here in Columbia would be a mixed-use development.

13 These projects have dormitories and they also have
14 exercise rooms. They've got little commercial shops. They
15 have . . .

16 THE COURT: So are these the projects in Columbia --
17 the projects are for student housing?

18 MR. CARPENTER: Yes, sir. These five projects here
19 in Columbia that are primarily student dormitories, pri-
20 vately owned student dormitories, but they also have little
21 shops around the first floor of many of them.

22 So they are essentially mixed used developments, and
23 there is a provision in the Statute that allows mixed used
24 developments to be in a business and industrial park but
25 it has to have twenty-five hundred acres. These things are

1 five acres or less.

2 So the Statute set forth allowed use that would most
3 closely resemble these projects but doesn't do them any
4 good because they don't have twenty-five hundred acres.

5 That is what the Statute says for mixed used develop-
6 ment. Now, one other thing that I expect the Defendants to
7 argue is wording in the Statute that says or talks about
8 renting for commercial use. They're going to argue that
9 renting apartments is commercial use; therefore, this is
10 perfectly fine, even though it doesn't meet any of the two
11 AG Opinion and it doesn't provide any of the benefits that
12 the big industrial projects do.

13 I mean, just because you have a student dormitory that
14 does not involve hundreds of new jobs. It's not going to
15 create millions and millions of dollars in new investment.
16 It is not going to create prosperity for the lower ranking
17 county.

18 It is not going to do any of the things that a busi-
19 ness and industrial park is supposed to do. The only thing
20 it's going to do is provide unfair advantage to certain
21 chosen developers.

22 One of those developers has already built up apart-
23 ments and sold them. He has got most of his money and he's
24 left town, and it appears that is the business plan that
25 will be probably expected of the rest of them, the developers

1 who build and sell them or they just -- I mean, there is
2 no bringing of additional investment. There is no . .

3 THE COURT: How many times has what you just stated
4 happened?

5 MR. CARPENTER: Sir, they . .

6 THE COURT: How many times has a developer up and sold
7 and left town?

8 MR. CARPENTER: One of the five so far, and we're just
9 talking about like -- it's only been going for two or three
10 years.

11 THE COURT: So that . .

12 MR. CARPENTER: That was already sold and . .

13 THE COURT: So one of these developers, one of the
14 five that you discussed?

15 MR. CARPENTER: Yes, sir.

16 THE COURT: The other haven't sold?

17 MR. CARPENTER: Not so far.

18 THE COURT: All right.

19 MR. CARPENTER: So far. But another thing the Defen-
20 dants I expect will argue is that, oh, Columbia taxes are
21 so high they are lucky to get anybody to come in here and
22 develop, and that to build dormitories is this big, huge
23 financial incentive, which is just not the case, not . .

24 THE COURT: Of the five properties, one has . .

25 MR. CARPENTER: And I am not meaning to criticize . .

1 (Portion inaudible due to the Court and counsel speak-
2 ing at the same time)

3 THE COURT: All right, I get the gist of the problem.
4 I understand.

5 Do you want to go ahead and . . .

6 MR. CARPENTER: I'll take your suggestion. I'll keep
7 my powder dry and speak after them.

8 THE COURT: All right. Well, anything further on this
9 point?

10 MR. CARPENTER: Yes, sir. The thing that is unfair
11 about it is that there are these other developers who are
12 in the same business and competing with these people who
13 don't get this fifty percent tax advantage.

14 So even the . . .

15 THE COURT: Are these people who don't get the tax ad-
16 vantage -- are these ones who brought this lawsuit as
17 Plaintiffs?

18 Yes or no?

19 MR. CARPENTER: No.

20 THE COURT: All right.

21 MR. CARPENTER: I mean, the people who are complaining
22 with Mr. DePass -- he is a taxpayer, and the Public Inter-
23 est Foundation is actually . . .

24 THE COURT: He has an interest in this litigation?

25 MR. CARPENTER: He has a taxpayer's interest in this

1 litigation.

2 THE COURT: Which would be . . .

3 MR. CARPENTER: Interest that is sufficient in South
4 Carolina.

5 THE COURT: All right, sir.

6 MR. CARPENTER: As to taxpayer standing, Courts in
7 South Carolina have never ruled that manufacturers or . . .

8 THE COURT: I'm not saying that either. I just wanted
9 to know the interest of the Plaintiffs in the case. I'm
10 not saying . . .

11 MR. CARPENTER: He has an interest -- he has an inter-
12 est of a single taxpayer.

13 THE COURT: Okay.

14 MR. CARPENTER: He also has a -- I think we'll hear a
15 standing argument. He also has standing based on the pub-
16 lic importance of the issues.

17 THE COURT: They may have as to the issue of standing
18 but we'll hear from them.

19 MR. CARPENTER: He has the importance standing as
20 well as taxpayer standing, and there is an unfairness to
21 people who are trying to compete and not getting the favor-
22 able tax treatment that the competitors got.

23 They get the favorable tax treatment. They get the
24 -- the huge favorable tax treatment, and they get the
25 smaller number of people that run the property who don't

17

1 get the tax treatment, so they've got . . .

2 THE COURT: Well, they've got the less people based
3 on your argument who may be affected so who are the people
4 who are complaining before me in this lawsuit?

5 MR. CARPENTER: We do have a man who is a taxpayer in
6 Columbia.

7 THE COURT: All right.

8 MR. CARPENTER: So he is one of those who have to pay
9 and to make up the tax difference that these fifty percent
10 tax breaks are creating.

11 The fairness thing is we think is -- the fairest thing
12 we think is to lower all the tax rates. That would be the
13 fairest resolution of this, but fundamentally these super
14 housing projects do not belong in a business and industrial
15 park because they are not allowed by Statute and they don't
16 have twenty-five thousand acres.

17 THE COURT: I understand. What about these industrial
18 parks? Are they on campus at USC or are they on Assembly
19 Street? Where are these located?

20 MR. CARPENTER: Some are on Assembly Street. One is
21 on Parker Street. They're in downtown Columbia.

22 THE COURT: All right.

23 MR. CARPENTER: They are scattered about at different
24 places in downtown Columbia.

25 THE COURT: All right.

18

1 MR. CARPENTER: And when you have the County giving a
2 tax break then the City has to consent to that.

3 In this case, we think the City is more the instigator
4 than the consenter, but they consented to the County and
5 the two Counties agreed to have these properties put in the
6 business and industria park and they granted the fifty per-
7 cent credit which lowered the taxes.

8 THE COURT: Thank you.

9 All right, you may proceed.

10 MR. MAYBANK: Thank you, Your Honor. Burnet Maybank,
11 here on behalf of the State.

12 We have stipulated to the facts in the case as far as
13 the argument we've heard, Your Honor. We have one very nar-
14 row legal issue that we would raise today and we would ask
15 the Court to rule on it after today rather than to hold a
16 non-jury trial on the matter.

17 For purposes of today we would stipulate to the facts
18 again.

19 You cannot put residential in a multi-county business
20 park. We stipulate to that and the Attorney General has said
21 that as well. We would stipulate to that again.

22 The sole issue is whether a Forty Million Dollar County
23 project was residential anyway. If Your Honor finds it is
24 residential in a multi-county business and industrial park
25 that would conclude it. If Your Honor finds it is not

1 residential then we would prevail and that would end the
2 case. It's as simple as that.

3 The multi-county business park does implement jobs for
4 taxpayers. It was made into law at the same time that then
5 Governor Campbell and the Economic Development Board made an
6 approach to the General Assembly which adopted a number of
7 provisions and the multi-county business park was created in
8 part because those property taxes in South Carolina are al-
9 most the highest in the entire United States.

10 We have attached to our brief a copy of the multi-state
11 property tax survey that was issued I guess now a couple of
12 months ago.

13 In that survey South Carolina was a white line and re-
14 mains a white line, and it got worse when the property tax
15 burden shifted from primary residences to commercial.

16 We have given you all the details, but we are the high-
17 est in the country on manufacturers. We're the eighth high-
18 est in the country on commercial and we are fiftieth to best
19 in the country on primary single family residences.

20 So the question or the issue is whether all the dorms
21 at the University of South Carolina, Morehead College, Allen
22 University and Benefict College are exempt for property
23 taxes.

24 THE COURT: Are exempt?

25 MR. MAYBANK: Are exempt.

1 MR. MAYBANK: Fraternities and sororities . . .

2 (Brief pause)

3 THE COURT: All right, go ahead.

4 MR. MAYBANK: Fraternities and sororities are exempt.
5 They don't pay nothing in property taxes.

6 So the City decided they wanted some dorms that would
7 pay property taxes so the developers would come in and they
8 would build dorms and they would start paying property tax.

9 After that the City started working with the County and
10 that was over about a year and a half. They passed an Ordinance
11 which said if you build a student housing facility at
12 a capital investment of Forty Million Dollars they would get
13 this property tax credit if they comply with the City stu-
14 dent housing ordinance.

15 That arrangement took place in 2015 (portion inaudible) on
16 December 31st of 2015, and there was a period of time before
17 the developers came in.

18 So the whole issue before the Court is whether the Forty
19 Million Dollar investment by the builder was being made on a
20 commercial property or residential.

21 THE COURT: Is the Statute in accordance with the Consti-
22 tution?

23 MR. MAYBANK: Yes, sir.

24 THE COURT: All right.

25 MR. MAYBANK: And it invalidates this lawsuit.

21

1 THE COURT: All right, continue.

2 MR. MAYBANK: So that residential -- the, quote, residen-
3 tial is a term of art. It's a term of art and taxation is a
4 term of art.

5 But residential -- no one has ever -- no where does it
6 say student housing is commercial and not residential because
7 it is just so obvious.

8 Nobody ever expected it to arise because it is just so
9 obvious, and so I would list some differences -- there are a
10 lot of differences between residential property and commer-
11 cial property.

12 The first is the assessment ratio. The assessment ratio
13 in a primary residence is four percent. The assessment ratio
14 on an apartment complex is six percent. The assessment ratio
15 for student housing, six percent, and the assessment ratio
16 for business or commercial property is ten point five per-
17 cent. A lot of difference. The tax code has a lot of dif-
18 ferences, is full of differences between residential and the
19 commercial property.

20 So there are a bunch of credits that are offered. On
21 primary residences you no longer pay property tax as related
22 to operating expenses. Commercial and business -- they pay
23 those taxes.

24 (Portion inaudible) Household furnishings -- our Consti-
25 tution actually exempts all household furniture and goods in

1 the home of the owner, and it goes on to say that this pro-
2 vision or exemption shall not apply to household goods that
3 are used in hotels, rooming houses, apartments and other
4 places of business.

5 So Article Ten, Section Three, refers to apartment com-
6 plexes as businesses, end quote, and by contract commercial
7 businesses have to pay property taxes on all the furniture,
8 all the furnishings used therein in a housing complex. They
9 have to pay property taxes at six and a half percent.

10 There are other ordinances. The City of Columbia has
11 different zoning for residential and commercial buildings.

12 The ordinance we've been dealing with provides or per-
13 mits only the following zoning districts: General commer-
14 cial, central area commercial, central business, industrial.
15 They are not permitted in single family residential. It's
16 as simple as that.

17 If they were, quote, residential, they could go in any
18 neighborhood in the popular sense and build a Forty Million
19 Dollar facility, but they can't do that in the City of
20 Columbia because they are not residential. They are a busi-
21 ness. They are commercial.

22 The city also charges different water rates depending on
23 the ^{type and} amount of use and there are three rates, residential,
24 irrigation and all others. Those are rates established by
25 the City.

1 The sewer service rates -- they have a rate for single
2 family residence . .

3 THE COURT: Repeat that, please. You're talking too fast.

4 MR. MAYBANK: The City has different sewer rates. They
5 have one rate for residential, another rate for apartments,
6 and another rate for -- a third rate for hotels and motels,
7 dormitories and rooming houses.

8 We don't pay the single family rate. We pay the rate
9 for hotels, motels and rooming houses.

10 If you look at the definition of residential in the tax
11 code under water and sewer you will see that hotels, motels,
12 rooming houses and dormitories are not considered residential
13 but commercial in every instance. They are considered com-
14 mercial and not residential. Dorms are where students live.

15 The Constitution doesn't have the word commercial. The
16 Constitution says industrial or business park. Business park.

17 The Constitution says you can do exactly what Columbia
18 -- The Constitution and the available legislation say you can
19 do exactly what the City of Columbia did in an industrial or
20 business park.

21 What's the definition of business? The Plaintiff uses
22 the word business as a commercial establishment. The law de-
23 fines it as, quote, activity conducted for profit. Black's
24 Law Dictionary defines it as activity or enterprise for pro-
25 fit or carried on for profit. Our brief gives a lot of

1 definitions for these things, and I'm sure I'm giving you too
2 much information. Another is a commercial enterprise car-
3 ried on for profit.

4 Our Constitution, as I said, includes an exemption for
5 hotels, motels, rooming houses, apartments or other places
6 of business.

7 The actual Constitution defines apartment complex as a,
8 quote, business, end quote.

9 A business park which we are here today on says indus-
10 trial or business park. Multi-county business park.

11 A Forty Million Dollar facility built by a private for-
12 profit developer is considered a business or commercial use.

13 Four Forty Million Dollar buildings with five hundred
14 parking spots apiece for all practical purposes is consid-
15 ered a business and is not residential. Commercial or business.

16 Our Supreme Court has already dealt with -- we only
17 have one or two decisions in our numerous economic develop-
18 ment cases -- the Supreme Court dealt with this issue when
19 Horry County School District brought a very contentious and
20 well litigated -- Horry County brought it against the County
21 Council of the City of Myrtle Beach because the County put
22 into law as the law of South Carolina that a multi-county
23 business park is a business exactly like this Forty Million
24 Dollar project, and our Supreme Court ruled it was constitu-
25 tional to do so.

1 Now, in that case the Supreme Court said you can do it,
2 put commercial property in a multi-county business park. The
3 Constitution said you can do it, have a business park. The
4 Legislature said you can have a business park. So the sole
5 issue before you is, is this . . .

6 THE COURT: Speak more slowly, please.

7 MR. MAYBANK: In the Horry County case they complained it
8 was a violation of equal protection to put a multi-county
9 business there but the Supreme Court said it was constitu-
10 tional. That case took about ten to twelve years to come to
11 conclusion.

12 So the Supreme Court said you can do it and the Constitu-
13 tion as well says you can do it, and then the sole issue be-
14 fore you then is whether a Forty Million Dollar facility with
15 five hundred parking spaces is residential or is this a com-
16 mercial facility.

17 We say it shrieks that it is commercial and is not resi-
18 dential.

19 So that is the only issue before the Court, and in every
20 single statute, every single issue, every single ordinance,
21 everyone that was raised, it says this is commercial and is
22 not residential. It is commercial or business.

23 For the Court to rule in Mr. Carpenter's favor the big-
24 gest victor today would not be them. The biggest victor
25 would be the student housing developers. Their taxes would

1 go down by three hundred percent. That is the difference.

2 So if (inaudible) built a Forty Million Dollar project,
3 the residents in the City of Columbia would pay a third of
4 the taxes and these developers would get the tax credit.

5 That is a huge differential between residential and the
6 commercial rates.

7 As far as apartment complex go, we are the second high-
8 est -- the second highest in the country. If you've got a
9 Two Hundred Thousand Dollar condo or if you are a Two Hundred
10 Thousand Dollar primary resident, only folks in New York City
11 have higher taxes than Columbia, South Carolina, does.

12 So if you rule a project like this would be residential,
13 then every apartment complex, every hotel, every motel in
14 South Carolina would pay. They would pay three hundred per-
15 cent more than what the primary residents are paying.

16 So it is a significant case but not a case for non-jury.
17 We would ask that you not set it for non-jury but that you
18 decide it from the facts.

19 The facts are before you and have been clearly set out.
20 The question is solely whether it is residential property or
21 whether it is commercial or business property.

22 If I could . . .

23 THE COURT: Yes, sir.

24 (Brief pause)

25 MR. MAYBANK: Thank you, Your Honor.

27

1 There is no dispute over the facts. There is really no
2 dispute over the issues. There is a dispute -- the only dis-
3 pute is whether or not a Forty Million Dollar development
4 project is residential or is it commercial slash business.

5 Thank you.

6 THE COURT: Yes, sir.

7 MR. STEVENS: Thank you, Your Honor.

8 Ray Stevens here for Richland County and Fairfield
9 County.

10 As the Court well knows, cases decided when you figure
11 out what the facts are and apply the law to them.

12 My purpose today is to help to underscore what Mr.
13 Maybank has said. There really are no facts in dispute. We
14 have stipulated to them or agreed upon them in some fashion
15 or another.

16 I will very briefly go over the facts as we have agreed
17 with them, and then I'm going to ask five questions, as I
18 believe they apply to the law of this case.

19 First of all, let's look at what we have stipulated as
20 the issues. We have stipulated that clearly this is property
21 that is in a multi-county business and industrial park as it
22 has been described.

23 It is cut right here in the City. It is attainable and
24 you can go visit it and look at the central operations, and
25 these are not small developments.

1 There has been Forty Million Dollars invested in what
2 are pretty impressive developments. Part One has six hundred
3 and forty bedrooms. Part Two has six hundred and eighty-
4 four of them.

5 Project Peak has six hundred and sixty, and University
6 Towers has seven hundred and twenty-six bedrooms.

7 Again, these are all stipulated to. These are uncontro-
8 verted facts.

9 We have stipulated that -- in Stipulation Thirteen the
10 project is engaged in continuous activity of letting beds to
11 students through the entering of leases or other contractual
12 arrangements between the students and the developers of the
13 property.

14 This is a rental business. It's what is going on. Those
15 are hard facts.

16 We have some affidavits that are in the record that are
17 self-explanatory from our Assessor for Richland County, and
18 she looked at the property and determined it was commercial.
19 No real dispute about that.

20 Once having figured out those are generally the facts,
21 there are five questions we need to ask ourselves to figure
22 out the answers.

23 I want to go through the first one. Where is the au-
24 thority that even allows us to have a multi-county business
25 and industrial park?

1 We find it in two places, and the language is exactly as
2 was stated. The first was in the Constitution and says, count-
3 ies may jointly develop an industrial or business park with
4 other counties lending geographical foundation boundaries in
5 one or more of the counties, and then you have to reduce to
6 writing, and that's it.

7 If you listen to that language you don't find a lot of
8 limitations in there. In other words, it is pretty broad and
9 open-ended.

10 That was put in the Constitution, and then the General
11 Assembly -- they have what they voted on, and it is 4-1-170.
12 They said that a county may join with another to form individ-
13 ually or jointly an industrial or business park with other
14 counties within geographical boundaries.

15 In other words, the counties have to get together and
16 decide what goes into a business and industrial park.

17 So if you just read the plain meaning of the statute,
18 the plain meaning of the Constitution, the plain meaning is
19 there to begin with. When we are looking for what the plain
20 meaning is the first place to begin is what were the words
21 that they wrote.

22 Then you look at the plain meaning of the Statute in
23 the words that they wrote, what they say is you put property
24 in a business and industrial park and there are no signifi-
25 cant limitations.

1 The only limitation, which is one that Mr. Maybank has
2 identified, is it has to be business. Well, the definition
3 -- our General Assembly is made up of ordinary people -- what
4 would the dictionary tell them the definition of business
5 is?

6 That is the one we have cited to you from Webster's New
7 World Dictionary. The term business is a commercial estab-
8 ment. So added to our facts, that is uncontraverted.

9 It is a business with people paying rent, a significant
10 amount of rent, and we believe that is a commercial endeavor.

11 We've got again an affidavit from our Assessor that
12 simply says, I look at this as commercial activity.

13 Even if you were to find there is something a little am-
14 biguous in the Statute, it is important to note that this
15 authority granted to a county is granted under home rule.
16 Home rule has kind of taken a beating over the years but at
17 least home rule is the county's authority to do things.

18 So if you and I consider home rule and focus on the
19 Constitution, the authority under home rule case law makes
20 it pretty clear.

21 This is Hospital Association versus County of Charleston.
22 Home rule mandates that a liberal rule of instruction regard-
23 ing any constitutional provision or law concerning local gov-
24 ernment -- in other words, a rule in favor of local govern-
25 ment.

1 So we think the counties have the authority to do just
2 exactly what they've done. That answers the first question.

3 The second question, or this is the third. We did the
4 second one.

5 The third one is what does the authority prohibit. We
6 know what the authority allowed in; that is commercial es-
7 tablishments. What does it prohibit?

8 From the county view, based on a reading of the Stat-
9 ute, it can develop a business within one of these parks, so
10 not seeking implementation as long as you meet the criteria
11 of the Constitution. It has to be business.

12 So the position that in a business park you cannot take
13 land that has residential use is not correct, and, secondly,
14 there are some provisions in Chapter 29 that give them con-
15 trol of what they are doing. They believe there are some pro-
16 visions in Chapter 29 that controls the activity set forth
17 in chapter one.

18 We say that is not the case, but let me go through those
19 for you as well.

20 The first thing is can you have residential property
21 within a business -- a county business park, and for the
22 answer to that question you go look at cases that have been
23 brought.

24 This is not residential property. If you look at our
25 Constitution you will find five classifications to own that

1 property.

2 The first one is owned by manufacturers. The second
3 one is owned by transportation. The third one is legal resi-
4 dents. The only mention of residents in the classification
5 of property in our Constitution is legal residents.

6 The next one is agricultural property and whatever is
7 left our Constitution calls that all other property. That
8 all other property is where commercial property shows up.
9 It's where business property shows up.

10 So what we have here is commercial property. It is not
11 legal residents. There is no authority for anyone claiming
12 legal residence in this property.

13 So that matter that is before you is simply not, we be-
14 lieve, residential property. It is commercial property.

15 Your Honor, there may be different opinions over Chapter
16 29 which defines project and industry. Your Honor, if those
17 definitions should be applied over Chapter One then you and
18 I are stuck with that as the law.

19 The first language in Chapter 29 gives definitions, and
20 it says in 4-29-10 that the General Assembly states the de-
21 finitions apply whenever used in this chapter, so in other
22 words they start out to say whenever used in this chapter.
23 If the General Assembly wanted those definitions to apply in
24 Chapter One they could have said whenever used in this chapter
25 and Chapter One.

1 They did not do that so our argument is that they did
2 not intend to do that.

3 The second reason for saying the provisions in Chapter
4 29 do not apply, there is not even mention of the word bind-
5 ing or industry in Chapter One.

6 It is then illogical to argue that in Chapter 29 it in-
7 tended to apply the definitions of Chapter One. Those words
8 are not used in Chapter One.

9 The last argument is that we have again the affidavit
10 of a non-developer, and he says to the best of his knowledge
11 nobody applies the definitions of Chapter 29 to Chapter One,
12 so to the extent that you are being asked to rule that way
13 we must at least be aware of the fact that the industry does
14 not see it that way.

15 We are under a definition in Chapter 29. If you look
16 at what is going on in those definitions -- for example, the
17 definition of project says -- if you have land or buildings
18 considered necessary and suitable for use by any enterprise
19 engaged in commercial business -- that's us. Then the defin-
20 ition of industry in Chapter 29.

21 Industry shall mean in person engaged in one or more
22 enterprise as in item three. Item three is what I just told
23 you about.

24 When you look at item three it applies to commercial
25 businesses, and in our stipulations we have agreed -- in

1 stipulation 37 we said these projects engage in the continu-
2 ous activity of letting beds to students. In other words,
3 a rental activity which is clearly commercial.

4 So even if you do find that Chapter 29 applies, we do
5 meet the definitions.

6 Finally, there is one reference in Chapter One that
7 sends us over to Chapter 29, and it says in 4-1-175 that the
8 county may use a portion for the purposes outlined in Section
9 4-29-68. That's important.

10 What you can use that portion for is to provide credit
11 against the payment derived from the revenues from the multi-
12 county park.

13 So you can go to Chapter 29 to figure out what is a va-
14 lid purpose, and then I have to use that money for that
15 purpose. Here's what it says. A valid purpose in 4-29-68
16 and subsection two, subsection I, is that I can use credit
17 for an improved or unimproved real estate, the personal prop-
18 erty used in the operation of the commercial enterprise.

19 That is what we have. We require them to use the cre-
20 dit for that purpose, so we meet the criteria, the only cri-
21 teria, that sends us over to 29.

22 The fourth question then to answer is does the leasing
23 of commercial dormitories in this park comply with Article
24 Ten and Section One. That's the uniformity provision, and
25 it says that the assessment of all property shall be equal

1 and uniform in following the classifications.

2 That is laid out there and the question has already
3 been answered. As long as it is exempt -- as long as that
4 property is exempt and no longer subject to the uniform pro-
5 vision. So this property in the park is exempt.

6 The last question, Your Honor, is one that we have to
7 address because, who knows, we may be looking at this case
8 some day, and that is the issue of whether or not the Court
9 has jurisdiction.

10 Standing is always an issue in these cases. We don't
11 believe the Plaintiffs have standing. It is an issue that
12 quite frankly we want a decision in this case but you and I
13 both have an obligation to decide whether the Court has jur-
14 isdiction here. It is an issue and we would not shirk that
15 responsibility.

16 We don't think these Plaintiffs have standing. In or-
17 der to have standing there has to be a showing of some per-
18 sonal interest in the lawsuit. There has to be an injury
19 to you. That has to be . . .

20 THE COURT: What about . . .

21 MR. STEVENS: There is a case on point that says if
22 you're a taxpayer you do not have standing. That is the
23 Bonham case, Your Honor.

24 The Supreme Court decided it, and it says that we reject
25 any argument that the fact that Mr. Bonham is proceeding

1 under a declaratory judgment action -- which is what we've
2 had to deal with -- has any impact on our standing analysis,
3 and we reaffirm that that status, that Bonham is a taxpayer,
4 is insufficient for standing.

5 So I don't think there is standing from what has been
6 presented and described.

7 As to whether or not it is a matter of importance, we
8 suggest that is tenuous. There is a public purpose as long
9 as it has great interest, but whether there is a continuing
10 likelihood that somebody needs (inaudible) is a basis from
11 which one can or cannot find public importance.

12 As Mr. Maybank has already told you, the likelihood of
13 a continuing need is not there. Our view is that they do
14 not have standing.

15 Finally, Your Honor, we think we would be remiss if we
16 did not point out that not everything that a government does
17 can be brought into Court for resolution. If that were to
18 be the case then this Court would become much of a super
19 legislature to go over everything that someone does.

20 Here we have explained that the Constitution lacks the
21 authority of counties to do what it did. Sometimes citizens
22 don't like what the counties have done.

23 What is the remedy for that? Well, the ballot box and
24 a number of other things but a Court may not do it.

25 If the Court -- this is the case of Stone versus

1 Leatherman, a dispute about whether a Senator met the appro-
2 priate qualifications for being elected as a Senator -- it
3 was brought back to the Supreme Court, and the Supreme Court
4 said we don't have jurisdiction over that.

5 That the Constitution provides the Senate the authority
6 to judge the election returns and qualifications of its own
7 members.

8 We suggest in this case that the Constitution gave the
9 county full authority to decide that.

10 The City and County didn't pay much money to the govern-
11 mental authorities for these dormitories, but they came up
12 with this very clever and win-win situation that brings in
13 money for the city and county and it has the same duty of
14 symbolizing by bringing lots of people downtown and enhances
15 the economic life of the City of Columbia by having a number
16 of students around twenty-four hours a day.

17 So it is a wise investment, and we think it is a policy
18 decision well within the county to make. It is not one which
19 is a justiciable issue for this Court.

20 THE COURT: All right.

21 MR. STEVENS: So, anyway, Your Honor, we as officers of
22 the Court do not believe there is jurisdiction, and that is
23 our argument.

24 THE COURT: Thank you, sir.

25 Mr. Carpenter, anything you would like to offer in

1 reply?

2 MR. CARPENTER: Yes, Your Honor. There's a lot.

3 THE COURT: Go ahead.

4 MR. CARPENTER: I'm sorry.

5 THE COURT: If you could just . . .

6 MR. CARPENTER: Let me shorten it. What do you want
7 to hear about?

8 THE COURT: We'll take a short break and then we'll
9 come back.

10 (Whereupon, the Court took a brief break, after which
11 the matter resumed)

12 THE COURT: All right, Mr. Carpenter.

13 MR. CARPENTER: Thank you, Your Honor.

14 As to the standing issue, this case is about an alleg-
15 edly unlawful fifty percent tax break of at least some Two
16 Hundred Million Dollars worth of property in the City of
17 Columbia.

18 That has to be an issue of great public importance for
19 the purpose of standing. So I think that we have the public
20 importance standing, and I think we also have taxpayer stand-
21 ing because there are many cases that say the person or the
22 taxpayer who has contributed has standing to contest an un-
23 lawful violation.

24 So I think the taxpayer standing and public importance
25 standing should be clear.

1 I want to attack this from Mr. Maybank's argument. Mr.
2 Maybank brought up the Horry County case that he contends is
3 about a shopping mall.

4 I have read that case.

5 THE COURT: A shopping mall on 17 . . .

6 MR. CARPENTER: Yes, sir, but the Supreme Court decision
7 does not use the words shopping mall or anything like it in
8 its decision.

9 It was not about whether a shopping mall could be in a
10 multi-county business and industrial park. That wasn't even
11 an issue; wasn't brought up in the case.

12 Everybody was fighting about how was this money going
13 to be distributed. The school district was mad because they
14 said they were not given the amount of money they should have
15 gotten or would have gotten had they had -- but for the tax
16 issues.

17 The agreement gave the school district less of the money
18 than they would have gotten had there been taxes, so they
19 brought a lawsuit saying you can't do that because you can't
20 short-change us.

21 When it came to division of taxes the Supreme Court said,
22 well, doesn't the county have a right to distribute the money
23 in accordance with their agreement? So that was what the big
24 issue was there in that Horry County case.

25 It didn't have anything to do with whether the mall can

1 be in a multi-county business and industrial park or the con-
2 stitutionality issue. It was all about how the money was
3 going to be distributed.

4 So the Horry County case doesn't have a thing to do with
5 what we're talking about here today.

6 Mr. Maybank also suggested that if you would rule for
7 the Plaintiffs that it would make this huge scheme of taxa-
8 tion changes that would reverberate across the City or maybe
9 across the State, and that is just not the case either.

10 The only people who would be affected if you are to rule
11 for the Plaintiffs would be these five developers who got
12 this unauthorized tax break in the first place.

13 They got a huge several hundred thousand dollar a year
14 tax break, each of them, and that is what is at issue, not
15 anybody else's taxes.

16 So if you rule for the Plaintiffs there would not be the
17 catastrophic tax consequences forecast by Mr. Maybank's
18 argument, but just these five developers.

19 Now, as to the link Mr. Stevens has -- he started out
20 saying Chapter One doesn't relate to Chapter 29, and he then
21 ended up saying, well, Chapter One sends us to 29 because it
22 says Chapter One which puts in the multi-county industrial
23 park can be used for other purposes stated in Chapter 29.

24 So that -- and as we pointed out in our brief as well
25 as our reply memo -- we have extensively and explicitly

1 covered that. There are several statutory references back and
2 forth between Chapter One and Chapter 29. Chapter One says
3 it can be used for the purposes in Chapter 29, and 29 has de-
4 finitions that say that a project is for industry and those
5 are the ones they don't meet. That's why they don't like it.

6 One thing that hasn't been brought up is the Statute it-
7 self defines commercial enterprise, and we have this in our
8 reply brief again. It defines it as a mercantile enterprise.
9 These student dormitories are not mercantile enterprises as
10 they don't sell merchandise so they cannot meet the statutory
11 definition of a mercantile commercial enterprise.

12 They do not meet the statutory definition of a mixed use
13 development because they don't have sufficient acreage, and
14 they don't meet the definition of industry because they don't
15 make anything. They don't meet policies in favor of the
16 multi-county business and industrial park or the incentive to
17 bring industry and development and to benefit the lower in-
18 come counties.

19 They just don't meet any of that, and this is an abuse
20 of this device that has a legitimate purpose and a legitimate
21 use.

22 The fact is that it is unfair to taxpayers, is unlawful,
23 and we ask the Court to rule that these student dormitories
24 do not belong in a multi-county business and industrial park.

25 THE COURT: What do you suggest they do with them?

1 MR. CARPENTER: I'm sorry?

2 THE COURT: If they are as you say they are, what should
3 be done?

4 MR. CARPENTER: They should lose the fifty percent tax

5
6 THE COURT: The tax credit?

7 MR. CARPENTER: Right.

8 THE COURT: All right.

9 MR. CARPENTER: That they should pay the same taxes as
10 the guy right next door to them and anybody else in business
11 in the City has to pay. They need to pay taxes like anybody
12 else and not have this unfair several hundred thousand dollar
13 tax advantage.

14 THE COURT: All right. Thank you, Mr. Carpenter.

15 MR. STEVENS: Just very briefly, Your Honor. Mr.
16 Carpenter has said the only person who is affected would be
17 these five developers if you were to rule for the Plaintiffs.
18 Every single apartment complex in South Carolina would be af-
19 fected by the ruling.

20 Every single motel, every single hotel, and certainly
21 every single smaller one, and most of them in South Carolina
22 are smaller than that.

23 There would be lawsuits filed on behalf of every single
24 apartment complex, hotel and motel in South Carolina.

25 Thank you, Your Honor.

1 MR. CARPENTER: That is only if you accept his issue
2 which is wrong and . . .

3 THE COURT: Gentlemen, I have heard your arguments.

4 MR. STEVENS: On one last point, Your Honor, is that you
5 have the Attorney General's opinions and we ask you to take
6 a look at those.

7 They refer to single family owners inside, and that is
8 the question that was asked of the Attorney General.

9 That is not what we have here. We have a commercial bus-
10 iness . . .

11 THE COURT: All right.

12 MR. STEVENS: . . . having lots of apartments and lots and
13 lots of people who will benefit.

14 The question asked of the Attorney General was as to a
15 single family resident.

16 That's all I would have.

17 THE COURT: Yes, sir.

18 MR. CARPENTER: That was a question he asked about a
19 residence. The attorney for Oconee County asked does it mat-
20 ter whether it's four percent or six percent property, and
21 the Attorney General came back with a second opinion as to
22 that.

23 THE COURT: All right, anything else?

24 MR. CARPENTER: I don't mean to persist but . . .

25 THE COURT: Well, I have heard all of the arguments and

1 I will make my decision in due course.

2 Thank you all for your presentations.

3 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Crystal Holmes to the best of my ability, having been heard in the Court of Common Pleas for Richland County on January 17, 2017.

FURTHER, I certify that I am neither of kin nor of counsel to any party to this matter, nor do I have any interest in the same.

October 16, 2017

