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

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

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

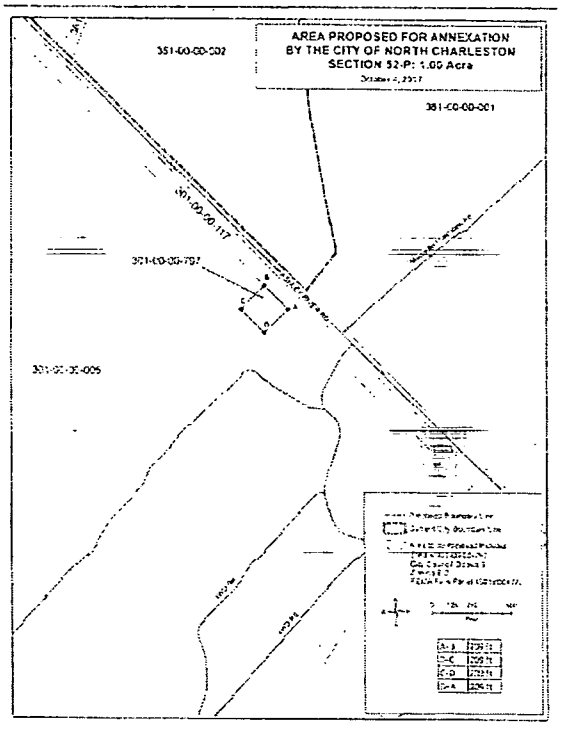
this Court finds that North Charleston did not lawfully annex the one acre parcel under the annexation statute.

FINDING OF FACTS

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

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

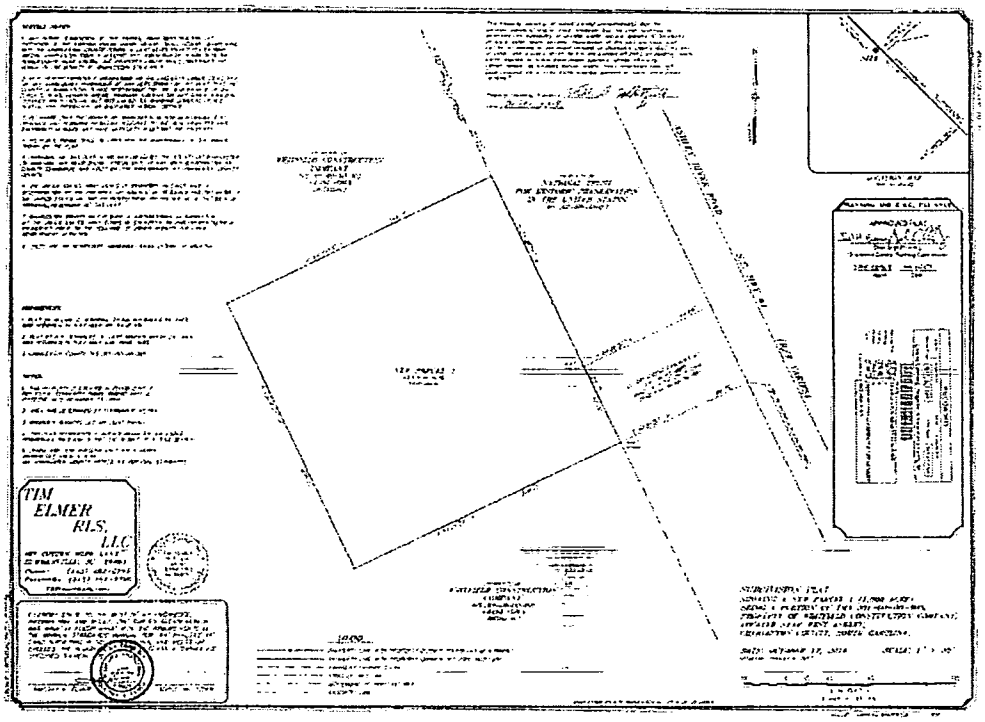
6. In 2009, Whitfield recorded Plats L09/0225 through L09/0229 (the "Easement Plats"), describing 18 purported access easements over the National Trust Property. The Easements Plats show the width of the National Trust Property as variable, but also contain a disclaimer that the plats are not boundary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



9. In 2017, The Whitfield Company executed a quit claim deed to deliver to the City of North Charleston title to the Acre.

10. The quit claim deed to the Acre specifically noted that the Acre was created from property owned by Whitfield (not the Trust) and that it was a "p/o TMS 301-00-00-005." The quit claim deed made no reference to any of the land deeded to North Charleston having originated from the Trust's parcel (TMS 301-00-00-117.)

11. The survey and plat associated with the 2017 transfer of the Acre relied upon the previously recorded 2009 survey and plat. Since the 2009 plat had width variations of a few inches here and there, so too did the 2017 plat of the Acre.



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

13. There is no evidence that Plaintiffs were aware of the Easement Plats at the time they were recorded in 2009.

14. North Charleston did not seek the consent of the National Trust for the annexation of the Acre into North Charleston. National Trust did not sign a consent to the annexation of the Acre.

15. National Trust has not brought an action to remove or clear the cloud of title or an action for trespass against North Charleston for the discrepancy in the location of the property line between the Acre and its Strip.

16. North Charleston in its pleadings alleged that it did not claim ownership of any of the strip owned by National Trust.

17. The South Carolina Attorney General is not a party to this action.

LAW AND ANALYSIS

AS TO THE STANDING ISSUE OF CHARLESTON AND NATIONAL TRUST

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

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

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

Proprietary Standing and Statutory Rights

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

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

[4] See F.C. Enterprises, Inc. v. Dibble, 335, SC 260, 266 (SC App. 1999); Cummins v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992) (no deed can convey an interest which the grantor does not have in the land described in the deed); Griggs v. Griggs, 199 S.C. 295, 19 S.E.2d 477 (1942) (no deed can operate so as to convey a greater estate or interest than grantor has); Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940).

[5] As explained in Williston on Contracts, "A quit claim deed only conveys a grantor's interest and implies nothing more. Indeed, a buyer's acceptance of a quit claim deed generally implies that the seller is only conveying whatever title the seller may have – which may be to a greater or lesser extent than the seller believes, or none at all." *Willison on Contracts*, Section 70:171, 4th Edition.

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

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

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

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

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

Public Interest Standing

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

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

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

VALIDITY OF ANNEXATION

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

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

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

S.C. Code Ann. § 5-3-100 authorizes a municipality to annex property that "belongs entirely to the municipality seeking its annexation" if such property is "adjacent" to the municipality. North Charleston relied solely on this statute as the basis for its annexation of the Acre. "Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016). Interpretation of a statute may be determined by the Court as a matter of law. See Vicary v. Town of Awendaw, Op. No. 27855 (S.C. Sup. Ct. filed Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 13) ("[T]he interpretation of a statute is a question of law."); Charleston Cty. Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) ("The determination of legislative intent is a matter of law.")

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

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

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

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

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

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

(Internal citations omitted).

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Circuit Judge

March 1, 2019
Newberry, South Carolina