

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

CITY OF CHARLESTON, )

Plaintiff, )

vs. )

CITY OF NORTH CHARLESTON AND )  
MILLBROOK PLANTATION, LLC, )

Defendants. )

\_\_\_\_\_  
MILLBROOK PLANTATION, LLC, )

Plaintiff, )

vs. )

CITY OF CHARLESTON, )

Defendant. )

\_\_\_\_\_  
CITY OF CHARLESTON, )

Plaintiff, )

vs. )

\_\_\_\_\_  
CITY OF NORTH CHARLESTON AND )  
MILLBROOK PLANTATION, LLC, )

Defendants. )

IN THE COURT OF COMMON PLEAS )  
FOR THE NINTH JUDICIAL CIRCUIT )

CASE NO. 18-CP-10-846 )

**FILED**  
2019 MAR -5 PM 12:34  
JULIE J. ARISTARCHO  
CLERK OF COURT

CASE NO. 18-CP-10-2131 )

**RECEIVED**

MAY 28 2019

**SC Court of Appeals**

CASE NO. 18-CP-10-2539 )

**ORDER**

**GRANTING MILLBROOK'S  
MOTION TO DISMISS**

**NATURE OF CASE**

Plaintiff City of Charleston ("City") filed two actions<sup>1</sup> alleging that the two annexation

<sup>1</sup> Pursuant to a consent motion by all parties, these two actions, along with the action filed by Millbrook challenging City's annexation of its property, were consolidated by court order, which was filed December 19, 2018.

ordinances,<sup>2</sup> by the City of North Charleston ("North Charleston"), of land owned by Defendant, Millbrook Plantation, LLC ("Millbrook"), were illegal. Millbrook filed a Motion to Dismiss, pursuant to SCRCP 12(b)(6), arguing that City has no standing to challenge a 100% annexation because the State of South Carolina, through the Attorney General, is the only party who can challenge a 100% annexation. At oral argument, Millbrook also argued, assuming City had standing, the 2017 Ordinance never included the 100' strip of land, previously annexed by City; thus, the complaints fail to state any valid claim for relief. Millbrook also seeks its attorneys' fees and costs pursuant to S.C. Ann. § 15-77-300.

Based on the allegations of the Complaint, which include and rely on the two ordinances, and the laws of this state, Millbrook's motion is granted.

#### LEGAL STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* at 395, 645 S.E.2d at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). *Patterson v. Witter*, Opinion No. 27841, Supreme Court of SC (September 5, 2018).

#### ALLEGATIONS OF COMPLAINTS

In the two complaints, City outlines many of the same allegations. This court has, for ease of identifying ordinances and separating parcels of land, changed some of the identifiers while retaining the substance of each allegation. As required, the court assumes all City's allegations to be true.

<sup>2</sup> This court refers to these as 2017 Ordinance and 2018 Ordinance. Because they are essential to each cause of action of City, they are attached as **Exhibit 1** and **Exhibit 2**.



Order Granting Millbrook's Motion to Dismiss  
Case Nos. 18-CP-10-846 and 18-CP-10-2539

1. May 10, 2005: City adopted Ordinance No. 2005-93, annexing the following property into City, which is a portion of the Millbrook Parcel:

[A]n area consisting of a hundred (100) foot strip immediately contiguous to and on the northern side of Hwy. 61, located in Charleston County, South Carolina, and [] identified by the Charleston County Assessor's Office as Property Identification Number ("TMS") 361-00-00-006 and includes all marshes, public waterways and public rights-of-way, shown within the said area to be annexed as shown more fully on the map attached hereto and made a part hereof as Exhibit A.<sup>3</sup>

2. December 19, 2017: City's Council accepted a petition signed by 75% or more of the freeholders owning at least 75% of the assessed valuation of certain real property in the area requesting annexation, which included the Millbrook Parcel.

3. December 19, 2017: City's Council voted to have a public hearing on the above-referenced petition.

4. December 21, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of City.

5. December 21, 2017: North Charleston's Council gave first reading to 2017 Ordinance, purporting to annex the Millbrook Parcel, including that portion of the Millbrook Parcel previously annexed into City.

6. December 28, 2017: Charleston County's records showed a portion of the Millbrook Parcel lying within municipal limits of City.

7. December 28, 2017: North Charleston's Council adopted 2017 Ordinance.

8. January 23, 2018: City's Council held a public hearing on the (75%)

<sup>3</sup> City later identifies this 100' strip as TMS 361-00-00-006-1 and alleges Charleston County records showed this by December 21, 2017, which is the date on which North Charleston gave first reading to 2017 Ordinance.



annexation petition and gave first reading to an ordinance annexing the Millbrook Parcel.

9. March 22, 2018: North Charleston's Council adopted 2018 Ordinance, purporting to amend or supplement 2017 Ordinance by removing from 2017 Ordinance the portion of the Millbrook Parcel annexed into the City in 2005.

10. April 10, 2018: City's Council adopted an ordinance annexing the Millbrook Parcel into City.

11. Millbrook had actual knowledge that a portion of the Millbrook Parcel was contained within the municipal limits of City before Millbrook executed the annexation petition to annex the Millbrook Parcel into North Charleston.

12. North Charleston did not request information from City about whether City's municipal limits included a portion of the Millbrook Parcel on or before December 19, 2017.

13. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2017 Ordinance, adopted by the North Charleston's Council on December 28, 2017, purporting to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance.

14. This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging 2018 Ordinance, adopted by North Charleston's Council on March 22, 2018, purporting to amend and supplement 2017 Ordinance, whereby North Charleston purported to annex, upon petition of Millbrook that certain tract of land previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel").



15. 2017 Ordinance and 2018 Ordinance violate the statutory and proprietary rights of City in that they purportedly annex land within the City's corporate limits and land over which the City had previously begun the process of annexation.

16. 2018 Ordinance purports to correct North Charleston's defective annexation of the Millbrook Parcel in the 2017 Ordinance, which included a portion of the Millbrook Parcel annexed to the City in 2005.

### STANDING

Standing refers to a "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." Black's Law Dictionary 1413 (7th ed.1999). "Standing is . . . that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." 1A C.J.S. Actions § 101 (2005). It concerns an individual's "sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*

Standing is comprised of three elements:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

*Smiley v. South Carolina Dep't of Health & Env't'l Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (alteration in original)). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. South Carolina Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

"As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). "One must be a real party in interest, i.e., a party who has a real, material, or substantial interest in the subject matter

of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.*

*Powell v. Bank of America*, 379 S.C. 437, \_\_\_, 665 S.E.2d 237, 241 (S.C. App. 2008).

City has the burden of proving it has standing. *Vicary v. Town of Awendaw*, Opinion No. 27855 (S.C. Dec. 19, 2018). This standing issue, in the context of annexation cases, has been directly addressed in *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991). *Quinn's* facts are very similar to the present action. City of Columbia, like North Charleston, had adopted an ordinance approving a 100% annexation of land in the Harbison area. The town of Irmo,<sup>4</sup> like City, attempted to adopt an ordinance annexing the same land through the 75% method. Columbia filed a 12(b)(6) motion to dismiss. The *Quinn* court stated, "The sole issue we need address is that of Respondents' *standing*." *Id.*, at 406, 401 S.E.2d at 166 (emphasis added). The court then analyzed the allegations as follows:

City's annexation of this property was pursuant to subsection (3) of S. C. Code Ann. § 5-3-150, the "100% method," which provides, in part: any area or property which is contiguous to a city or town may be annexed to the city or town by filing with the municipal governing body a petition signed [\*\*\*3] by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed . . . the annexation shall be complete and [an] . . . election. . . shall not be required.

Unlike subsection (1) of § 5-3-150, the "75% method," subsection (3) makes no provision for aggrieved *residents* to challenge an annexation.

*Id.*, at 406-07, 401 S.E.2d at 166.

Thus, just like Columbia's annexation was complete upon the enactment of the ordinance, Millbrook's annexation into North Charleston was complete on December 28, 2017. All of this was completed prior to City adopting its ordinance on April 10, 2018.

<sup>4</sup> Irmo was a respondent with *Quinn*.



South Carolina courts made the standing issue even clearer in a later action in which City was a party. Not only has the South Carolina Supreme Court ruled that a municipality has no standing to challenge a 100% annexation, but held "the only non-statutory party which may challenge a municipal annexation is the State, through a *quo warranto* action." *St. Andrews Pub. Serv. Dist. v. City Council of the City of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002). City acknowledged that the State has challenged neither the 2017 Ordinance nor the 2018 Ordinance.

The South Carolina Supreme Court again addressed the standing issue in another 100% annexation in *Campbell v. Town of Yemassee*, 391 S.C. 565, 707 S.E.2d 402 (2011).

We reject the suggestion that the perceived merits of the underlying claim may influence the standing determination. This basic principle defeats the Private Party Appellants' claim.

The ordinance recites that the annexation was achieved using the 100% petition method. If we went behind that assertion without a proper plaintiff, we would be inviting a sliding scale for standing: the more meritorious a claim appears, the more relaxed the standing requirement would be. We rejected such reasoning when we overruled *Quinn v. City of Columbia*. See *St. Andrews Public Service District*, 349 S.C. at 605, 564 S.E.2d at 648 (overruling the *Quinn* rule that a stranger to an annexation may challenge the annexation if the ordinance is "absolutely void"). **Adhering to our precedent, we must determine standing without regard to the merits of the underlying claim.**

*Id.*, at 573-74, 707 S.E. 2d at 407 (emphasis added).

In a very recent decision, the South Carolina Supreme Court reaffirmed the holdings of *St. Andrews* and *Town of Yemassee* in stating, "[T]he Court's rejection of a 'sliding scale' approach to a standing analysis remains good law when there is no allegation of nefarious conduct by the annexing body." *Vicary v. Town of Awendaw*, Opinion No. 27855 (S.C. Dec. 19, 2018). In *Vicary*, the Supreme Court noted a new exception in the 100% annexation – when "there is a credible allegation that the annexing body engaged in deceitful conduct." *Id.* In



*Vicary*, the court also noted the public importance exception to standing. More importantly, the court failed to note an exception, which City argues, that when a party alleges an infringement of a statutory and proprietary right.

Thus, it appears to this court that City not only lacks the essential requirement of standing in this action, but the only party to challenge the annexation by North Charleston is the State of South Carolina.

### CITY'S CLAIM TO STANDING

City alleges it has standing based on two (2) separate allegations,<sup>5</sup> both of which this court assumes to be true for purposes of this motion:

1. A portion of Millbrook (the 100' tract) was annexed into City in 2005. Complaint No. 846, ¶ 5; and
2. City had begun process of annexing the remainder of Millbrook before North Charleston began the process of the 2017 Ordinance. *Id.*

Two key allegations made by City:

- 2017 Ordinance purported to annex real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1, which is more particularly described in the 2017 Ordinance. Complaint No. 846, ¶ 4; and
- Prior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of City. Complaint No. 2539, ¶ 21.

Examining the complaints, it is clear that the 100' strip of land was identified by the county records, prior to and on December 21, 2017, as TMS 361-00-00-006-1. This is the land City had

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<sup>5</sup> City makes other allegations for standing, but these are consumed in these two. Complaint No. 2539, ¶¶ 8 – 10.



annexed in 2005. To succeed under any of City's causes of action, this court must interpret the 2017 Ordinance that it was annexing TMS 361-00-00-006-1.

**1. City Alleges 2017 Ordinance Attempted to Annex the 100' Strip.**

In the complaints, City makes numerous references to the 2017 Ordinance and the 2018 Ordinance. Although City does not attach these to the Complaint, City makes them, through its arguments, an essential element of each of its causes of action. "[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *See Brazell v Windsor*, 384 S.C. 512, \_\_\_, 682 S.E. 2d 824, 826 (2009). The 2017 Ordinance and the 2018 Ordinance are statutes of North Charleston. "[T]he interpretation of a statute is a question of law . . . ." *Vicary, citing, Catawba Indian Tribe of S.C. v State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Thus, this court can take City's allegations, which it considers to be true, interpret the Ordinances, and apply the law.

City alleges that the 2017 Ordinance purports to annex approximately 31 acres of real property, currently designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel"), which is more particularly described in the 2017 Ordinance. According to City, the 100' strip that City annexed in 2005 is TMS 361-00-00-006-1. City makes no claim that it annexed in 2005 the portion known as TMS 361-00-00-006.

In examining 2017 Ordinance, North Charleston stated, "An ordinance . . . annexing an area known as 52-S in Charleston County (TMS #361-00-00-006) . . . as shown on a map dated November 30, 2017 . . . . Exhibit 1 (emphasis added). Following the legal language of the ordinance, the property description is given. Included in the description are six (6) references to

"TMS #361-00-00-006" while there are no references to TMS #361-00-00-006-1, which is the 100' strip that had been annexed into City in 2005. At the end of the description, it ends with the phrase "all distances being more or less." *Id.* The 2017 Ordinance then states, "**The area proposed for annexation includes the parcel designated TMS #361-00-00-006.**"<sup>6</sup> Exhibit 1 (emphasis added). The map that is part of Ordinance 2017 shows TMS #361-00-00-006, but fails to include TMS #361-00-00-006-1.

The 2017 Ordinance never makes any claim to annex TMS # 361-00-00-006-1. This court finds that North Charleston did not attempt, in the 2017 Ordinance,<sup>7</sup> to annex property (the 100' strip) which was part of City. Without this, City's claim fails to state any valid claim for relief.

**2. City Alleges Standing based on the Prior Pending Proceedings Rule.**

City claims that it began the annexation of TMS #361-00-00-006 before North Charleston began its annexation proceedings. City argues this under what has been called the "prior pending proceedings" rule. "The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority. 1 Antieau Municipal Corporation Law § 1-A. 16 (1993); 2 McQuillan Municipal Corporation § 7.22A (1966)." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). The Supreme Court of South Carolina declined to rule on its efficacy, explaining: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." *Id.* at 196, 447 S.E.2d at 857. The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise

<sup>6</sup> The map that is part of 2017 Ordinance also states, "Area to be annexed includes TMS # 361-00-00-006." It makes no reference to TMS #361-00-00-006-1.

<sup>7</sup> City alleges that 2018 Ordinance purports to correct the 2017 defective Ordinance. Because this court has found the 2017 Ordinance not to be defective, this argument is moot.

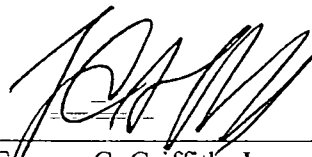
declines. Without this, North Charleston properly annexed TMS 361-00-00-006 on December 28, 2017 with the 2017 Ordinance.

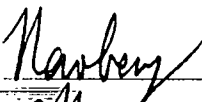
**CONCLUSION**

South Carolina Supreme Court has made clear that City has no standing to challenge the completed annexation by North Charleston. The only party able to challenge this annexation is the State of South Carolina. The South Carolina Supreme Court has declined to adopt the prior pending proceedings rule and this court likewise declines. Finally, assuming City has standing, the 2017 Ordinance fails to attempt to annex TMS 361-00-00-006-1, therefore, City fails to state a valid claim.

This court grants Millbrook's motion to dismiss and will consider an award to Millbrook of its reasonable attorneys' fees pursuant to S.C. Ann. § 15-77-300. Millbrook shall submit its motion, with supporting documentation, within thirty (30) days of the filing of this Order.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Eugene C. Griffith, Jr.  
Circuit Judge

  
\_\_\_\_\_, SC  
March 1, 2019

**AN ORDINANCE**

**ADOPTING A BILL TO BE ENTITLED AN ANNEXATION ORDINANCE OF THE CITY OF NORTH CHARLESTON ANNEXING AN AREA KNOWN AS 52-S IN CHARLESTON COUNTY (TMS #361-00-00-006) AND MAKE IT PART OF PRESENT CITY COUNCIL DISTRICT 9 AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION, DATED NOVEMBER 30, 2017, BEARING THE LEGEND "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S".**

IT IS FOUND BY THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON AS FOLLOWS:

THE FREEHOLDERS OF AN AREA LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA, CONTIGUOUS AND ADJACENT TO THE CITY OF NORTH CHARLESTON HAVE PETITIONED THE CITY COUNCIL OF THE CITY OF NORTH CHARLESTON TO ANNEX THAT AREA PURSUANT TO SECTION 5-3-150 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA AS AMENDED;

THROUGH LEGAL COUNSEL, SAID PETITION HAS BEEN PLACED BEFORE CITY COUNCIL, HAS BEEN EXAMINED AS TO FORM, REGULARITY AND AUTHENTICITY AND IT HAS BEEN FOUND THAT 100% OF THE FREEHOLD PROPERTY OWNERS OF RECORD ACCORDING TO THE ASSESSMENT AND TAX ROLLS OF THE ASSESSOR AND AUDITOR OF CHARLESTON COUNTY REPRESENTING 100% OF THE ASSESSED VALUE OF PROPERTY LOCATED IN SAID AREA HAVE SIGNED SAID PETITION FOR ANNEXATION OF THE AREA AS SHOWN ON A MAP PREPARED BY THE GIS DEPARTMENT FOR PURPOSES OF THIS ANNEXATION DATED NOVEMBER 30, 2017, AND BEARING LEGEND: AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S."

THE CITY COUNCIL OF NORTH CHARLESTON REPRESENTS THE INTERESTS OF ~~THE CITIZENS OF THE CITY OF NORTH CHARLESTON~~ AND HAS DETERMINED THAT IT IS IN THE BEST INTEREST AND WELFARE OF BOTH THE PRESENT CITY AND THE AREA PROPOSED FOR ANNEXATION THAT SAID PETITION BE ACCEPTED AND AGREED TO AND THAT THE AREA SHOULD BE ANNEXED AND MADE PART OF PRESENT CITY COUNCIL DISTRICT 9;

NOW, THEREFORE, BE IT ORDAINED BY THE ~~MAYOR~~ AND CITY COUNCIL OF THE CITY OF NORTH CHARLESTON, IN COUNCIL ASSEMBLED, THAT THE CORPORATE LIMITS OF THE CITY OF NORTH CHARLESTON SHALL HEREAFTER INCLUDE THE FOLLOWING DESCRIBED PROPERTY, MADE PART OF PRESENT ~~CITY~~ COUNCIL DISTRICT 9;

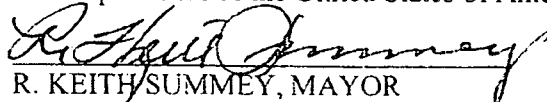
The property to be annexed, consisting of approximately 50.1 acres as shown on that certain map prepared by the GIS Department for purposes of this annexation, dated November 30, 2017 and bearing the legend "AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON SECTION 52-S", a copy of same being attached hereto for purposed of this annexation, with the property being further described by reference to said map as follows:

Beginning at Point A, at the intersection of a perpendicular line as extended from the southeasternmost corner of parcel designated TMS #181-00-00-046 with the middle of the Ashley River, which point is on the present city limits line of the City of North Charleston; thence, in a generally westerly direction a distance of 1,122 feet along the present city limits line of the City of North Charleston to Point B, which point is on the intersection of a perpendicular line as extended from the northwesternmost corner of parcel designated TMS #361-00-00-006 and the middle of the Ashley River which point is on the present city limits of the City of North Charleston; thence, in a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS #361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of way of Ashley River Road to Point D, which point is on the southeasternmost corner of parcel designated TMS #361-00-00-006; thence, in a generally northeasterly and northerly direction a distance of 2,812 feet along the easternmost property line of parcel designated TMS #361-00-00-006 t to Point A, which is the point of beginning and is on the present city limits line of the City of North Charleston, with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #361-00-00-006

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS ADOPTION BY CITY COUNCIL.

Ordained in City Council this 28<sup>th</sup> day of December, in the Year of Our Lord, 2017 and in the 241st year of Independence of the United States of America.

  
R. KEITH SUMMEY, MAYOR

ATTEST:

  
ELLEN CLARK, MUNICIPAL CLERK

APPROVED AS TO FORM:

01-11-2018

LEGAL COUNSEL

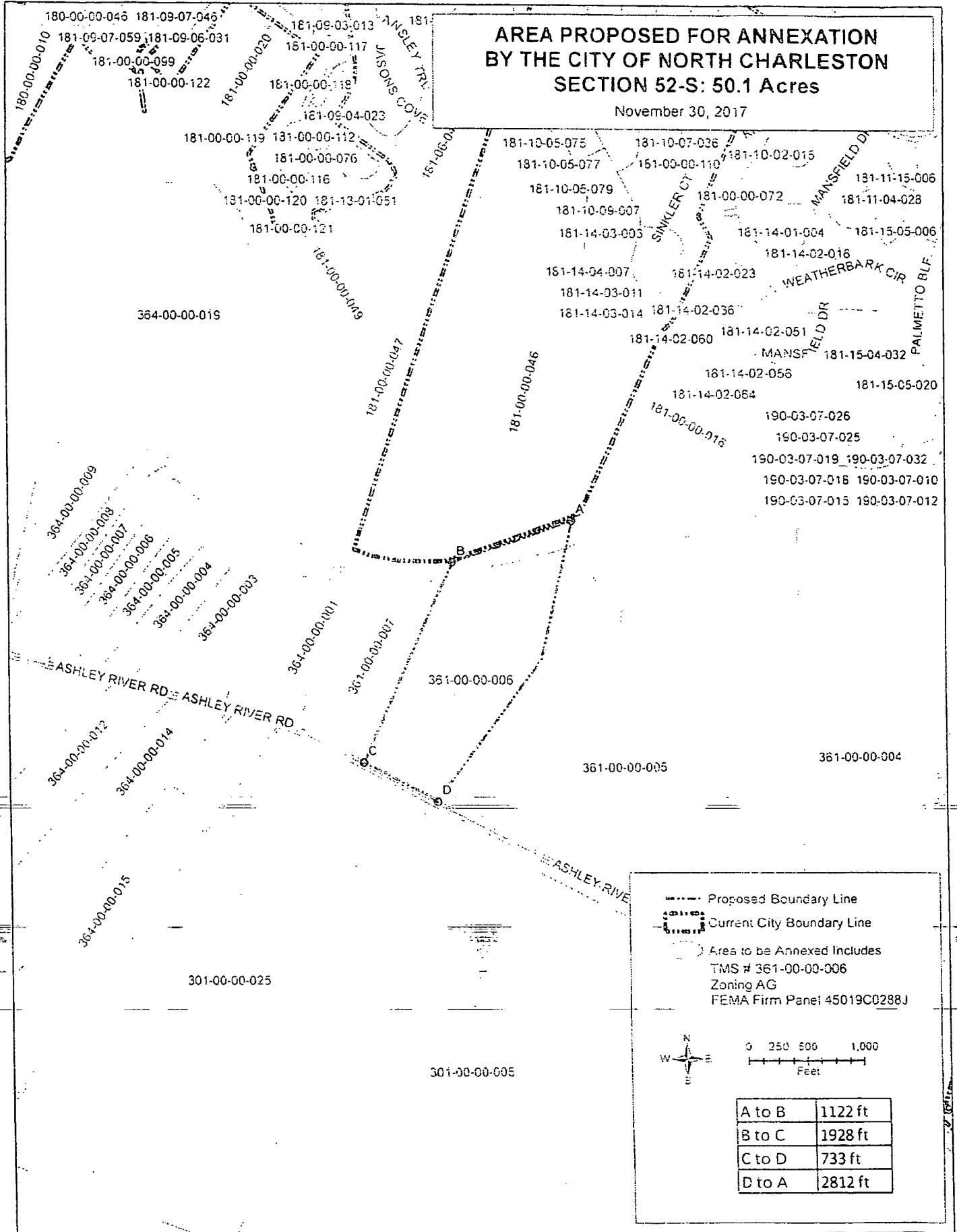




# AREA PROPOSED FOR ANNEXATION BY THE CITY OF NORTH CHARLESTON

## SECTION 52-S: 50.1 Acres

November 30, 2017



*John*

**NORTH CHARLESTON CITY COUNCIL  
SPECIAL MEETING  
AGENDA ITEM**

Meeting of December 28, 2017

**DATE:** December 27, 2017

**ITEM TITLE:** Ordinance – Final Reading & Report  
An Ordinance Annexing an Area Known as Section 52-S Charleston County (TMS #361-00-00-006), Ashley River Rd and make it part of present City Council District 9, Proposed Zoning AG, Agricultural District

**SUBMITTED BY:** Julie Elmore, Executive Department  
Adam MacConnell, Executive Department

**CONTACT PERSON:** Adam MacConnell, 740-5821

**SUMMARY EXPLANATION:**

This annexation is for a 50 acre parcel identified as TMS #361-00-00-006, in Charleston County located on Ashley River Road and known as Millbrook Plantation. This property is in the vicinity of the City's recently annexed Runneymede Planation. Proposed City zoning is AG. 100% of the freeholders representing 100% of the assessed value have signed a petition for this annexation; therefore, no public hearing is required. Services to this property will be effective immediately after final reading and will be assigned to City Council District 9.

**STAFF RECOMMENDATION:**

Approval of the Annexation

**CITY COUNCIL COMMITTEE RECOMMENDATIONS:**

**CITY COUNCIL ACTION:**

On December 21, 2017 the City Council voted to approve the Ordinance for first reading and moved it to final reading. (7-1-0)

Exhibits  
\_\_\_\_ Resolution \_\_\_\_ Ordinance \_\_\_\_ Contract \_\_\_\_ Minutes \_\_\_\_ Plan/Map \_\_\_\_ Transfer of Funds \_\_\_\_ Other



AN ORDINANCE

CORRECTING ORDINANCE #2017-083 TO CONFORM TO A RECENT CHANGE IN THE COUNTY TMS MAPPING

**Whereas**, The City of North Charleston recently annexed Parcel TMS #361-00-00-006; and

**Whereas**, the clearly expressed intent of the ordinance was to annex parcel 006; and

**Whereas**, based upon then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road; and

**Whereas**, County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, TMS #361-00-00-0061; and

**Whereas**, it was North Charleston's intent to annex unincorporated parcel TMS #361-00-00-006, not TMS #361-00-00-061; and

**Whereas**, the attached ordinance would amend Ordinance #2017-083 to make the boundaries consistent with this intent and consistent with the now-corrected County data for parcel -006.

**Now, Therefore, Be it Ordained by the Mayor and Council, in Council assembled, that Ordinance #2017-083 be hereby amended to clarify the exclusion from annexation of any portion of property now shown on County tax map records as TMS #361-00-00-0061 (a 100' deep strip parallel to Ashley River Road as shown on the map herein), with all other portions of Ordinance #2017-083 to remain unchanged.**

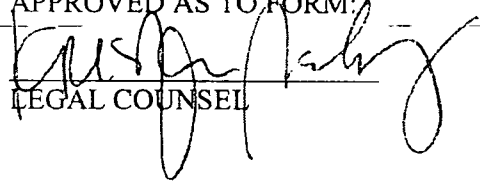
THE WITHIN ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION BY CITY COUNCIL.

Ordained in City Council this 22<sup>nd</sup> day of March, in the Year of Our Lord, 2018, and in the 241<sup>st</sup> year of Independence of the United States of America.

  
R. KEITH SUMMEY, MAYOR

ATTEST:  
  
ELLEN CLARK, MUNICIPAL CLERK

APPROVED AS TO FORM:

  
LEGAL COUNSEL



**NORTH CHARLESTON CITY COUNCIL  
AGENDA ITEM**

Meeting of March 22, 2018

**Date:** March 19, 2018

**Item Title:** Ordinance -- Final Reading  
An Ordinance Correcting Ordinance 2017-083 to conform to a recent change in County TMS mapping.

**Submitted by:** Derk Van Raalte, Legal Department 843-740-2550

**Contact Person:** Derk Van Raalte, 843-740-2550

**SUMMARY EXPLANATION:**

The City of North Charleston recently annexed Parcel 361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

**STAFF RECOMMENDATION:**

Staff recommends approval.

**BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:**

**COUNCIL COMMITTEE RECOMMENDATION:**

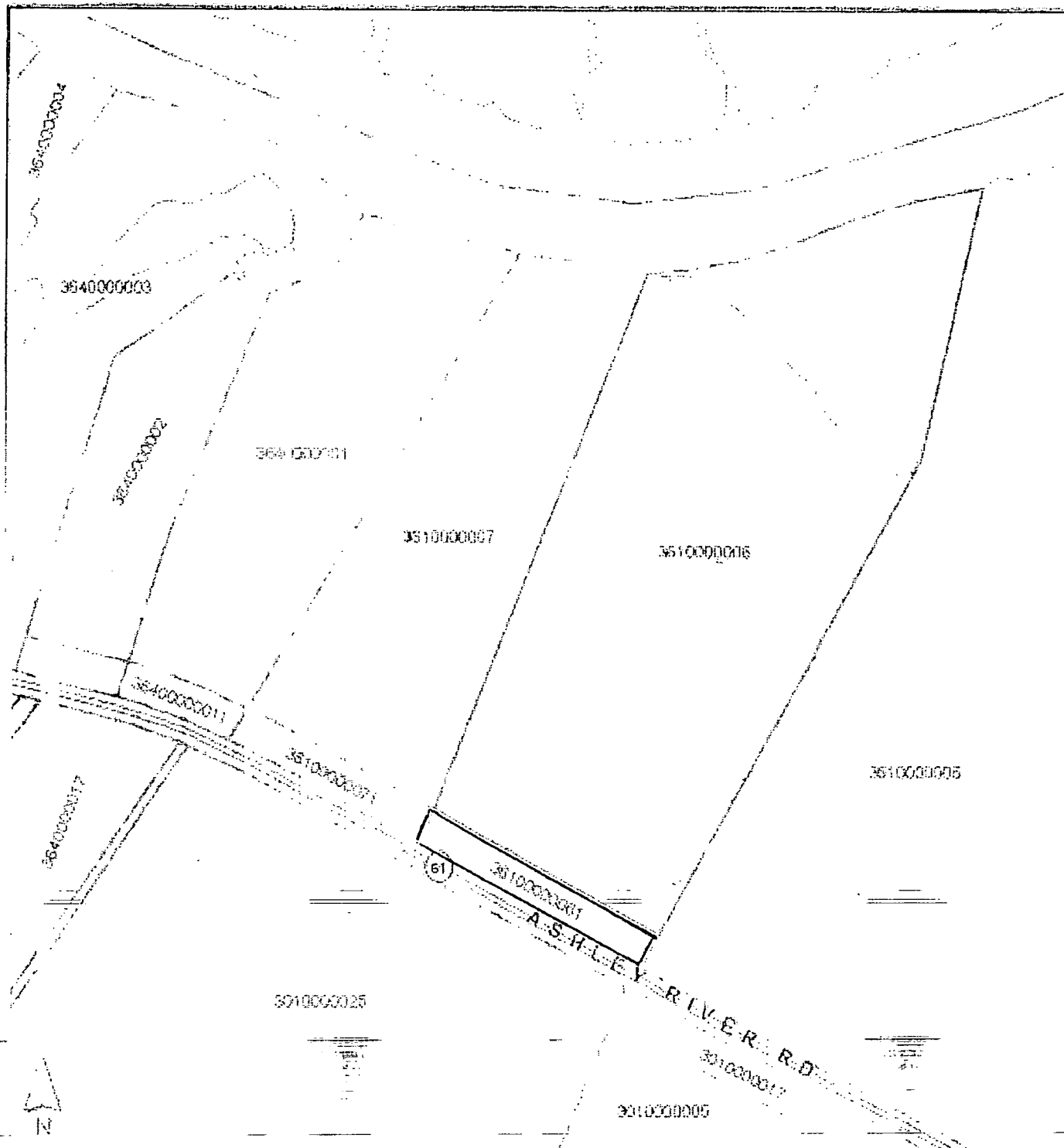
**COUNCIL ACTION:**

At a special meeting on March 15, 2018 the City Council voted unanimously to approve the Ordinance for first reading and moved it to final reading. (8-0-0)

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Exhibits  
     Resolution    X      Ordinance    Contract      Minutes    X      Plan/Map      Transfer of Funds      Other

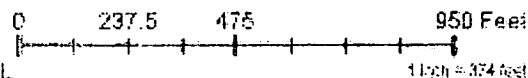




### Charleston County SC

Parcel ID: 3610000006  
 OWNER1: MILLBROOK PLANTATION LLC  
 PROP\_ST\_NO: 4056  
 PROP\_ST\_NAME: ASHLEY RIVER  
 PROP\_TYPE: RD  
 ACREAGE: 31.00

CLASS\_CODE: 800 - AGRICULTURAL  
 PLAT\_BOOK\_PAGE: L17- 0511  
 DEED\_BOOK\_PAGE: 0834-213  
 Jurisdiction: CITY OF NORTH CHARLESTON



Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the

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