THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

National Trust for Historic Preservation
in the United States and the City of Charleston, Respondents/Appellants,

v.

City of North Charleston, Appellant/Respondent.

RESPONDENT/APPELLANT CITY OF CHARLESTON'S INITIAL APPELLANT'S BRIEF

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STATEMENT OF THE CASE

This matter arises from multiple notices of appeal challenging the circuit court's decision in an annexation dispute. In the present brief, Respondent/Appellant the City of Charleston ("Charleston") challenges the circuit court's ruling that Charleston lacks standing to challenge the underlying annexation.[1]

On December 21, 2017, North Charleston adopted Ordinance No. 2017-080 (the "Contested Ordinance"), which purports to annex an acre of land (the "Acre"), designated as Charleston County TMS No. 301-00-00-797, located southwest of Highway 61, also known as Ashley River Road. **(MacConnell Aff. ¶ 2; Ordinance).** North Charleston adopted the Contested Ordinance under the auspices of section 5-3-100 of the South Carolina Code, available when "the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto . . . ." **(Ordinance).** In the Contested Ordinance, North Charleston represents that the Acre "belongs entirely" to North Charleston. **(Ordinance).**

Pursuant to section 5-3-270 of the South Carolina Code, on February 16, 2018, Respondent/Appellant The National Trust for Historic Preservation in the United States (the "National Trust") and Charleston filed and served a notice of intent to challenge the Contested Ordinance, and, on March 20, commenced an action challenging the Contested Ordinance. **(Notice of Intent; Summons & Compl.).** The complaint sought a determination that the Contested Ordinance was invalid because (1) the Acre did not "belong entirely" to North Charleston; (2) the Contested Ordinance included property owned by the National Trust since 1980 and previously annexed by Charleston in 2005; (3) the Acre was not contiguous or adjacent to North Charleston's

[1] Pursuant to the scheduling order of the South Carolina Court of Appeals entered on October 15, 2019, the cross-appeal of Appellant/Respondent City of North Charleston ("North Charleston") is being briefed separately.

municipal limits; and (4) the Contested Ordinance violated the long-standing public policy against "leap frog" annexations. **(Compl. ¶ 38).**

The National Trust alleged standing to challenge the Contested Ordinance based on its ownership of a portion of the property being annexed and under the "public importance exception" to the general framework for standing to challenge municipal annexations. **(Compl. ¶¶ 4, 5, 6, 32, 35).** Charleston alleged standing to challenge the Contested Ordinance because Charleston previously annexed a portion of the Acre in 2005 and because the purported annexation would permit North Charleston to "leap frog" over privately-owned territory previously annexed by Charleston. **(Compl. ¶¶ 33, 34, 35).**

North Charleston answered the complaint on April 17, 2018, interposing a general denial and asserting affirmative defenses that the National Trust and Charleston did not have standing and that the complaint failed to state a claim. **(Answer).** North Charleston also asserted counterclaims, requesting a declaration that it was the sole owner of the Acre. **(Answer ¶¶ 57-63; p. 11, ¶¶ b, c).** Charleston and the National Trust replied to the counterclaims on May 17, 2018, and May 21, 2018, respectively. **(Replies).**

North Charleston moved to dismiss the complaint pursuant to Rule 12, SCRCP, and Rule 56, SCRCP, arguing that the National Trust and Charleston lacked standing to challenge the Contested Ordinance. **(No. Chas. Mot. to Dismiss).** Simultaneously, North Charleston moved for partial summary judgment, arguing that the Acre was "adjacent to" its municipal limits, as a matter of law. **(No. Chas. Mot. for Partial Summ. J.).** The National Trust and Charleston later moved for summary judgment based on, among other things, the lack of contiguity or adjacency between the Acre and North Charleston's municipal limits. **(Plts.' Mot for Summ. J.).** The circuit court

heard these motions on December 10, 2018, and requested that the parties prepare proposed orders, which the parties then submitted. **(Tr. p. 60; Charleston's Proposed Orders).**

On March 1, 2019, the circuit court entered an order (the "Original Order") dismissing the complaint and finding that neither the National Trust nor Charleston had standing to challenge the Contested Ordinance. **(Original Order).** The circuit court also held: "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." **(Original Order pp. 1-2).** The circuit court refiled the Original Order on March 5, 2019 (the "Refiled Order"). **(Refiled Order).** As used herein, references to the "Order" include the "Original Order" and the "Refiled Order," which are identical.

On the issue of standing, the circuit court limited standing to challenge an annexation, in the absence of an allegation of deceitful conduct, to (1) the owners of the property being annexed; and (2) the Attorney General. **(Order p. 5).** The circuit court also concluded, as a matter of law, that the Contested Ordinance did not attempt to annex any property owned by the National Trust. **(Order pp. 7-8).** With respect to the public importance grounds for standing, the circuit court held that only the Attorney General could contest a "leap frog" annexation on public importance grounds, and that only an allegation of "deceitful conduct" would support standing in favor of the National Trust or Charleston. **(Order pp. 8-9).**

Charleston received written notice of entry of the Original Order on March 4, 2019, and written notice of the entry of the Refiled Order on March 6, 2019. **(Charleston's Mot. to Reconsid.).** On March 14, 2019, Charleston and the National Trust served separate motions to reconsider the Original Order and the Refiled Order as they pertained to the issue of standing. **(Mots. to Reconsid.).** The circuit court denied both motions by order entered on May 1, 2019 (the

"Reconsideration Order"). **(Reconsideration Order).** Charleston received written notice of entry of the Reconsideration Order on May 2, 2019. **(Charleston's Notice of Appeal).**

On April 29, 2019, North Charleston filed a "Notice of Cross Appeal" of the circuit court's decision on adjacency, conditioned upon the National Trust or Charleston filing a "primary appeal." **(North Chas. Notice of Cross-Appeal).** On May 24, 2019, Charleston served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. **(Charleston's Notice of Appeal).** On May 31, 2019, the National Trust served a Notice of Appeal of the Original Order, the Refiled Order, and the Reconsideration Order. **(National Trust's Notice of Appeal).**

FACTS

In 1967, Georgia-Pacific Investment Company ("GPIC") acquired title to more than 12,000 acres of land, including real property lying to the southwest of Highway 61. **(Forsberg Aff. ¶ 4.a; Deed E89/131; Order p. 2 ¶ 1).** On January 2, 1980, GPIC conveyed a portion of this property (the "National Trust Property") to The Nature Conservancy. **(Forberg Aff. ¶ 4.c; Deed O121/206; Order p. 2 ¶ 2).** On January 28, 1980, The Nature Conservancy conveyed the National Trust Property to the National Trust. **(Forsberg Aff., ¶ 4.d; Deed O121/209; MacConnell Aff. ¶ 4.c; Order p. 2 ¶ 2).** Both deeds describe the National Trust Property as follows:

> [T]hat certain tract or parcel of land, in fee, situate, lying and being along the southern right of way line of Highway 61, County of Charleston, State of South Carolina, containing Twenty Six and Fifty Three Hundredths (26.53) acres, more or less, and more particularly described as follows:
>
> > Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway, and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the property owned by

> Grantor along the southern right-of-way line of Highway 61

(Deed O121/206; Deed O121/209). The deed from GPIC also reserved to GPIC the right to establish eighteen (18) easements across the National Trust Property to provide access from Highway 61 to the remainder of GPIC's property. **(Deed O121/206).** At the time, Charleston County designated the National Trust Property as TMS No. 301-00-00-017. **(Deed O121/206; Deed O121/209; Order p. 2 ¶ 2).** In 2005, Charleston annexed the National Trust Property. **(Compl. ¶¶ 17, 23; Answer ¶¶ 17, 23; Compl. (-0848) ¶¶ 13, 21; Answer (-0848) ¶¶ 13-21; Order, p. 2).**

In 1989, GPIC conveyed its remaining property, consisting of 2,294.17 acres to Whitfield Construction Company ("Whitfield"). **(Forsberg Aff. ¶¶ 4.e, 4.f; Plat BP/129; Deed A186/320; Order p. 2 ¶ 4).** The deed to Whitfield expressly refers to the deed from GPIC to The Nature Conservancy in providing that sixteen (16) of the easements reserved in such deed were being assigned to Whitfield. **(Deed A186/320).**

In 2009, Whitfield recorded plats (the "Easement Plats") showing eighteen (18) separate access easements running through the National Trust Property. **(Plats L09/0225-0229; Order p. 3 ¶ 6).** The Easement Plats show the width of the National Trust Property as variable, in some places being less than the 100-foot width stated in the deed to the National Trust, and in some places being in excess of the 100-foot width stated in the deed to the National Trust. **(Plats L09/0225-0229).** The Easement Plats also contained the following disclaimer: "THIS PLAT IS TO SHOW THE LOCATIONS OF THE EXISTING ACCESS EASEMENTS ONLY[.] THIS IS NOT A BOUNDARY SURVEY." See S.C. Code Regs. Ann. § 49-430.C(14) (defining "boundary survey). **(Plats L09/0225-0229).**

At the time the Easement Plats were created, the National Trust Property was located in Charleston. **(Forsberg Aff. ¶¶ 4.g, 6; L09/0225-0229).** Nothing on the plats indicates that the National Trust or Charleston reviewed and approved the plats, the location of the easements, or the width of the National Trust Property. **(Forsberg Aff. ¶¶ 4.g, 6; Plats L09/0225-0229; Order p. 5 ¶ 13).**

In 2017, Whitfield created the Acre, shown as "New Parcel 1" on Plat S17/0224 (the "Acre Plat"). **(Forsberg Aff. ¶¶ 4.g, 4.h, 6; Plat S17/0224).** Adam MacConnell, a project manager for North Charleston, confirmed that the Acre Plat shows Charleston County TMS No. 301-00-00-797. **(MacConnell Aff. ¶¶ 2, 4.d; Plat S17/0224; Forsberg Aff. ¶ 5).** The Acre Plat utilized the Easement Plats to establish the boundaries for the Acre. **(Forsberg Aff. ¶¶ 5, 6; S17/0224; Order p. 4 ¶ 11).**

The Acre Plat shows "Access Easement #3," as created by the Easement Plats, running from Highway 61 across the National Trust Property to the property corners of the Acre. **(Forsberg Aff. ¶ 6; Plat S17/0224; Compl. (-0848) ¶ 23; Answer (-0848) ¶ 23).** The stated width of the National Trust Property on the Easement Plats for Access Easement #3 and on the Acre Plat is shown as 99.69 feet on the north side and 99.7 feet on the south side. **(Forsberg Aff. ¶ 6; L09/0225-0229; S17/0224).** This width conflicts with the stated width of the National Trust Property as being 100 feet from the southern right-of-way line of Highway 61, as delineated in the National Trust's title history, resulting in an overlap, or encroachment, of the Acre onto National Trust Property. **(Forsberg Aff. ¶¶ 6-8; O121/206; O121/209).**

Daniel C. Forsberg, a professional engineer and land surveyor licensed by the State of South Carolina with over 39 years of experience, submitted an affidavit confirming that (1) the Acre Plat includes approximately 62 square feet of the National Trust Property as part of the Acre;

(2) the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property; and (3) TMS No. 301-00-00-797 includes a small portion of the National Trust Property. **(Forsberg Aff. ¶¶ 1-2, 6, 8).**

After recording the Acre Plat, Whitfield conveyed the Acre, by reference to the Acre Plat, to Tim Whitfield Construction and Development LLC, which then conveyed the Acre by deed incorporating the Acre Plat (the "Acre Deed") to North Charleston. **(Forsberg Aff. ¶¶ 4.i, 4.j; Deed 0667/666; Deed 0673/028).**

The Contested Ordinance describes the Acre utilizing the same measurements depicted on the Acre Plat and states "the area proposed for annexation includes one acre identified as parcel designated TMS #301-00-00-797." **(Ordinance).** The legal description in the Contested Ordinance describes the property being annexed by reference to the "easternmost," "northernmost," "westernmost," and "southernmost" corners of TMS No. 301-00-00-797. **(Ordinance).** The boundary lines in this legal description include the "northeasternmost," "northwesternmost," "southwesternmost," and "southeasternmost" property lines of TMS No. 301-00-00-797. **(Ordinance).** The map incorporated into the Contested Ordinance identifies the parcel being annexed as 301-00-00-797. **(Ordinance).** According to Forsberg, "if North Charleston annexed the Acre . . . as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." **(Forsberg Aff. ¶ 9).** Forsberg's affidavit was not refuted.

STANDARD OF REVIEW

Although North Charleston originally couched its motion as a motion to dismiss based on a lack of standing, the circuit court considered "the pleadings, affidavits, exhibits, memoranda, and arguments of counsel," before granting the motion. **(Order p. 1).** "A trial court may properly

grant a motion for summary judgment when '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.'" Brockbank v. Best Capital Corp., 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000), quoting Rule 56(c), SCRCP.

"Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." Id. "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Id. at 378-79, 534 S.E.2d at 692. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." Id. at 379, 534 S.E.2d at 692.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN LIMITING STANDING TO CHALLENGE THE CONTESTED ORDINANCE TO A PROPERTY OWNER OF THE ANNEXED LAND OR THE ATTORNEY GENERAL.

The circuit court committed an error of law in determining that, absent deceitful conduct, the only parties who may challenge a 100% annexation are the owners of the annexed land and the Attorney General. **(Order p. 5).** Charleston agrees that the owner of real property being annexed has standing to challenge any attempt to annex its own property. However, the test for standing includes not only those asserting an infringement of "proprietary interests," but also those asserting an infringement of "statutory rights." The Supreme Court of South Carolina has repeatedly recognized statutory and proprietary rights of municipalities over properties within their jurisdiction, including the right to contest annexations of property within their municipal limits.

"The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing." Glaze v. Grooms, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996); see also St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002) ("In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights."). The common phraseology arises from case law addressed specifically to the standing of political subdivisions. See County of Lexington v. Columbia, 303 S.C. 300, 300, 400 S.E.2d 146, 147 (1991) (recognizing that, in the absence of "an issue of overriding public concern," a political subdivision seeking to challenge a municipal annexation "must allege an infringement of its own interests or statutory rights to establish standing.").

It is axiomatic that a municipality has standing to challenge the annexation of property already lying within such municipality's corporate limits. See Forest Acres v. Forest Lake, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (Town of Forest Acres had standing to challenge purported detachment of property without its consent); Forest Acres v. Seigler, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953) (permitting challenge to annexation of property within municipality's corporate limits, looking to case law emphasizing that detachment statutes afford "substantial right recognized in plaintiff, as a corporate entity, over its corporate territory"); Tovey v. Charleston, 237 S.C. 475, 479-80, 117 S.E.2d 872, 874 (1961) ("We have held that under our statutes governing extension and reduction of corporate limits, a portion of one municipality may not be annexed to another without submitting the question of said detachment to the voters of the municipality whose area is to be reduced.").

Since 2005, Charleston has had the statutory right to exclusive municipal jurisdiction over the portion of the Acre owned by the National Trust and previously annexed by Charleston, as well

as proprietary functions and interests of governmental dominion and control over this property, to include matters pertaining to taxation, land use, and the like. See, e.g., S.C. Code Ann. § 5-7-30 (listing municipality's statutory rights with respect to property within its boundaries); S.C. Code Ann. § 5-21-110 (right to levy and collect taxes on personal and real property); S.C. Code Ann. § 5-7-80(1) (authority to abate nuisances); S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee); S.C. Const. Ann. Art. VIII, § 15 (outlining constitutional right of municipal consent); S.C. Code Ann. § 5-3-150(1) (statutory right to annex property under 75% Annexation Method); S.C. Code Ann. § 5-3-280 (prescribing procedure under which corporate limits may be reduced).

As set forth in Arguments II and III, Charleston alleged and produced evidence that the Contested Ordinance included property previously annexed to Charleston. Charleston therefore has standing under well-established case law in South Carolina.

II. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN GRANTING SUMMARY JUDGMENT TO NORTH CHARLESTON BECAUSE THE RECORD EVIDENCE ESTABLISHES AT LEAST A GENUINE ISSUE OF MATERIAL FACT THAT THE ACRE INCLUDES A PORTION OF THE NATIONAL TRUST PROPERTY ANNEXED BY THE CITY IN 2005.

According to the circuit court, "North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797." **(Order p. 7).** The circuit court thus described the issue for determination as "what land is actually part of that parcel." **(Order p. 7).** The circuit court then declared that a "TMS number and map do not supersede a deed." **(Order p. 7).** "Thus, the reference in the [Contested Ordinance] to 'TMS 301-00-00-797' is subservient to the deed as well." **(Order p. 7).**

The disconnect with this ruling is that the record evidence creates at least a genuine issue of material fact that the Acre Deed, the Acre Plat, and TMS No. 301-00-00-797 include property owned by the National Trust and annexed by Charleston in 2005. In fact, Forsberg's affidavit is the only evidence of "what is included in that parcel." **(Forsberg Aff. ¶¶ 1-2).**

A party opposing summary judgment is entitled to have the evidence and all reasonable inferences drawn therefrom viewed in the light most favorable to it. See David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) ("In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party."). It is well-recognized that even testimony from an *unlicensed* surveyor is admissible on the question of the proper boundary between two properties. See, e.g. Williams v. Moore, 400 S.C. 90, 102, 733 S.E.2d 224, 230 (Ct. App. 2012) ("While Coker was not a licensed land surveyor, the trial court found his training and experience qualified him as an expert as to the boundary line in this case, and we do not see any reason to doubt that qualification."); cf. S.C. Code Ann. § 27-1-20 (permitting circuit court to appoint surveyors at nomination of parties in disputes involving title or boundaries).

Forsberg opines, to a reasonable degree of certainty based on his education and experience that "if North Charleston annexed the Acre as described by Plat S17/0224 [the Acre Plat] or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." **(Forsberg Aff. ¶ 9)** (emphasis added). Forsberg refers to the area shown on the Acre Plat as the "Acre" **(Forsberg Aff. ¶ 4.h; Plat S17/0224)**; explains that the Acre Deed conveys the property described on the Acre Plat to North Charleston **(Forsberg Aff. ¶¶ 4.i, 4.j; Deed 0673/28; Plat S17/0224)**; and also concludes, to a reasonable degree of certainty based

on his education and experience, that "the Acre overlaps the National Trust Property, encroaching on 62 square feet of the National Trust Property." **(Forsberg Aff. ¶ 8).**

It is undisputed that, if the National Trust Property is part of the Acre, so is territory previously annexed by Charleston in 2005. **(No. Chas. Mem. in Supp. Mot. to Dismiss, p. 3, n. 4).** Even the circuit court recognized: "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." **(Order p. 2 ¶ 5).**

The facts cited by Forsberg could not more clearly bear this out. The National Trust Property is 100 feet wide and hugs the southern right-of-way line of Highway 61, a circumstance that has existed since 1980. **(Forsberg Aff. ¶¶ 4.c, 4.d; O121/206; O121/209).** The National Trust Property is in the City of Charleston, a circumstance that has existed since 2005. **(Compl. ¶ 23; Answer ¶ 23).** The Acre Deed incorporates the Acre Plat, which shows the northeastern-most boundary line of the Acre commencing at points 99.69 and 99.7 feet from the southern right-of-way of Highway 61. **(Plat S17/0224; Deed 0673/028).** These numbers are what they are, and demonstrate on their face that the property described in the deed to North Charleston includes a portion of National Trust Property, which Property is within the municipal limits of Charleston. **(Forsberg Aff. ¶ 9).**

Instead of considering Forsberg's affidavit, the circuit court apparently reasoned that, because a grantor cannot convey an interest in land greater than what the grantor owns, the Acre Deed could not convey any portion of the National Trust Property to North Charleston, and because the Contested Ordinance recited that the property described therein "belongs entirely" to North Charleston, the Contested Ordinance only annexed land owned by North Charleston, regardless of how the annexed property was actually described. **(Order pp. 6-7).**

This reasoning misapplies general principles of real property law. The rules for interpreting a deed are the same as those for interpreting contracts, and it is the intention of the parties at the time the deed is executed that controls, not after-discovered extrinsic evidence. See Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987) ("In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy."); Klapman v. Hook, 206 S.C. 51, 56, 32 S.E.2d 882, 883 (1945) ("The vital question is the intent of the grantor at the time the deed is executed.").

There is no legal or factual support for the circuit court's apparent conclusion that TMS No. 301-00-00-797 included some subset of the property described as being conveyed to North Charleston in the Acre Deed, as shown on the Acre Plat. There is no evidence that Charleston County mapped 301-00-00-797 by something other than the legal description in the Acre Deed, and, even if there were, Forsberg's affidavit explains that the "tax map sequence (TMS) number is derived from the legal description of the parcel as set out in the most recently recorded deed or plat." **(R. p. 28, ¶ 5).**

Forsberg continued: "The legal description for the Acre references Plat S17/0224 [the Acre Plat]." **(R. p. 28, ¶ 5).** "As a result, Charleston County has assigned a tax map sequence (TMS) number to this property, that being TMS No. 301-00-00-797." **(R. p. 28, ¶ 5).** "[I]f North Charleston annexed the Acre as described on [the Acre Plat] or as designated by TMS No. 301-00-00-797, then the land that was annexed included a small portion of the National Trust Property." **(R. p. 29, ¶ 29).** This at least establishes a genuine issue of material fact as to whether Charleston County mapped TMS No. 301-00-00-797 utilizing the Acre Deed and the Acre Plat, as opposed to some other parcel.

The circuit court also relied on the rule that a purchaser generally may not convey more than he owns to support an interpretation of the Acre Deed that the grantor intended to convey something less than what is shown on the Acre Plat. **(Order p. 6).** But this rule is not one of interpretation or construction. Rather, it is a rule of priority utilized in deciding boundary disputes and quiet title actions.[2] The cases cited by the circuit court in favor of the proposition bear this out. See F.C. Enters. v. Dibble, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) (concluding that purchaser at tax sale purchased subject to lease and option because tax deed could convey only what delinquent owner held at time of tax sale); Cummings v. Varn, 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992) (recognizing plaintiffs could not recover against defendant in possession of tract because plaintiffs could not show perfect chain of title); Griggs v. Griggs, 199 S.C. 295, 301, 19 S.E.2d 477, 479 (1942) (holding that grantee, who held perfect paper title to premises prior to acquiring conditional deed from grantor, should prevail even against allegations that conditional deed was invalid because grantor had no title to convey under the conditional deed); Hutto v. Ray, 192 S.C. 364, 366, 6 S.E.2d 747, 748 (1940) (finding in favor of plaintiffs because grantee of Hutto could take only Hutto's life estate in premises). In the present case, the rule clearly favors the National Trust's claim that it owns a portion of the Acre. But it contributes nothing to the determination of what the grantor intended to convey to North Charleston via the Acre Deed.

Additionally, the circuit court mistakenly relied upon the quitclaim nature of the Acre Deed. Again, this confuses the issue of interpreting a deed with the issue of determining the impact

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[2] There are many inherent problems with converting this rule into one of interpretation or construction. The most obvious is that the evidence required to determine what the grantor owned at the time of the conveyance would impermissibly go beyond the four corners of the deed to determine what the parties intended. See Gardner, 293 S.C. at 25, 358 S.E.2d at 392 ("The intention of the grantor must be found within the four corners of the deed."). There is also no question that, in a lawsuit between the grantor and North Charleston over title to the land described in the Acre Deed, North Charleston would prevail notwithstanding this rule.

or effect of the deed in light of other claims to the same property. See Martin v. Ragsdale, 71 S.C. 67, 76, 50 S.E. 671, 674 (1905) ("The authorities are conflicting as to whether a person can interpose the defense of purchaser for valuable consideration without notice, when he derives his title from one holding under a mere quit claim deed."). It also conflates the quantity of the land describes in the deed with the quality of the right, title, or interest being conveyed.

Here, the issue is what land is included in the Acre Deed, the Acre Plat, TMS No. 301-00-00-797, and the Contested Ordinance, not the extent or quality of title North Charleston acquired by virtue of its deed. See Milton P. Demetre Family Ltd. P'ship v. Beckmann, 413 S.C. 38, 55, 773 S.E.2d 596, 605 (Ct. App. 2014) ("A quitclaim deed is a lawful means of conveying title."); Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) ("A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.").

While North Charleston and the circuit court give much weight to a reference in the Acre Deed to "p/o TMS No. 301-00-00-005," the tax map sequencing (TMS) number assigned by Charleston County to the property owned by Whitfield, this reference is not contained within the legal description of the property, and the explicit incorporation of the Acre Plat to show the "size, shape, dimensions, buttings and boundings" of the Acre controls over the general recitation of the TMS number for the purported parent tract. See S.C. Code Ann. § 30-5-250 (when a recorded deed refers to a recorded plat, "such reference shall be equivalent to setting forth in extenso in such deed . . . the boundaries, metes, courses or distances of such real estate as may be delineated or shown on any such plat . . . .").

Charleston proffered more than sufficient evidence to demonstrate that land within its municipal borders was included in the Contested Ordinance, cloaking it with standing to challenge

the Contested Ordinance. At the very least, viewing the evidence and all reasonable inferences that may be drawn from it in the light most favorable to Charleston, there exists in the record a genuine issue of material fact on the overlap, rendering the award of summary judgment to North Charleston erroneous.

III. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN INTERPRETING THE CONTESTED ORDINANCE TO INCLUDE ONLY PROPERTY BELONGING TO NORTH CHARLESTON AND LYING OUTSIDE CHARLESTON'S MUNICIPAL LIMITS.

The issue before the circuit court was what land was encompassed by the Contested Ordinance, a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Bayle v. S.C. DOT, 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct. App. 2001). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Id. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. at 122, 542 S.E.2d at 739-40. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Id. at 122, 542 S.E.2d at 740. "Therefore, the courts are bound to give effect to the expressed intent of the legislature."

It was North Charleston's responsibility to ensure the sufficiency of the legal description of the property being annexed, not Charleston's. Cf. Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) ("We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property. Ordinance 0-07-89 bestowed authority to annex only the property listed and described in the petitions. Hence, no subsequent action by the City could validate a portion of the ordinance which was a nullity upon origination."); 2 McQuillin The Law

of Municipal Corporations § 7.5 (3d ed. 2006) ("The description of municipal boundaries or of municipal territory is invalid and ineffective where it is indefinite and uncertain").

The Contested Ordinance affirmatively states the territory annexed includes TMS No. 301-00-00-797, the tax map number assigned to the property surveyed on the Acre Plat. **(Ordinance).** The legal description of the area to be annexed by the Contested Ordinance identifies the corners of the property to be annexed as based on the "easternmost," "northernmost," "westernmost," and "southernmost" corners of TMS No. 301-00-00-797. **(Ordinance).** The property lines of the annexed area reference the "northeasternmost," "northwesternmost," "southwesternmost," and "southeasternmost" property lines of TMS No. 301-00-00-797. **(Ordinance).** The map attached to the Contested Ordinance identifies the area to be annexed as "301-00-00-797." **(Ordinance).**

North Charleston was thus unequivocal in establishing that North Charleston intended to annex TMS No. 301-00-00-797, which Forsberg explained includes "a small portion of the National Trust Property." **(Forsberg Aff. ¶ 9).** In this respect, even the circuit court held: "North Charleston City Council stated an intent to annex the property known as TMS 301-00-00-797." **(Order p. 7).**

North Charleston's after-acquired knowledge regarding the state of its title also does not negate that the property description in the Contested Ordinance is the controlling factor of the extent of the land included in the annexed area. Legislation is construed in light of conditions obtaining at the time of enactment, not based on after-acquired knowledge of the governing body. See Durant v. Bennett, 54 F.2d 634, 639 (D.S.C. 1931) ("As has been pointed out by the Supreme Court in many cases, a statute must be construed ... in the light of the condition obtaining at the time the statute was passed."); see also State ex rel. Attorney Gen. v. Kizer, 164 S.C. 383, 387, 162 S.E. 444, 449 (1932) (adopting Durant as the opinion of the South Carolina Supreme Court).

The circuit court appears to acknowledge the potential of "the 4" plat error," but then dismisses its efficacy because it was created long before North Charleston took ownership to the property and was unknown to North Charleston and "most recent surveyors." **(Order p. 9).** These circumstances do not alter the boundaries of the land North Charleston attempted to annex under the Contested Ordinance. North Charleston had the opportunity to protect itself against errors in its chain of title and errors in the description of the territory to be annexed. By contrast, neither the National Trust nor Charleston had this opportunity, as neither had notice of the Easement Plats or the Acre Plat. **(Order p. 5 ¶ 13).**

The circuit court committed an error of law in interpreting the Contested Ordinance. The Contested Ordinance unequivocally attempted to annex property owned by the National Trust and annexed by Charleston in 2005. As a result, the circuit court erred in finding that Charleston lacked standing to challenge the Contested Ordinance, which infringes upon Charleston's proprietary interests and statutory rights over the portion of the Acre owned by the National Trust. As a result, the circuit court's ruling that Charleston lacks standing to challenge the Contested Ordinance should be reversed.

IV. THE CIRCUIT COURT MISTAKENLY RULED THAT NORTH CHARLESTON DID NOT CLAIM OWNERSHIP OVER ANY PORTION OF THE NATIONAL TRUST PROPERTY BY IGNORING NORTH CHARLESTON'S REPEATED ALLEGATIONS THAT NORTH CHARLESTON OWNED THE ENTIRETY OF THE ACRE.

The reasoning of the circuit court is further misinformed because it is influenced, in part, on an erroneous factual finding that North Charleston was not claiming ownership to any portion of the National Trust Property. **(Order p. 5).** The circuit court also suggested that the issue of title to the Acre was "not a question of fact that this Court is tasked to resolve since the issue was not requested as relief in the pleadings." **(Order p. 8).** Such is simply not the case. In fact, the circuit

court's analysis of what property is included in the Acre Deed and within TMS No. 301-00-00-797 directly contradicts this conclusion. **(Order pp. 6-7).**

The National Trust and Charleston asserted that the National Trust owned a portion of the property shown on the Acre Plat **(S17/0224)**, described in the Acre Deed **(Deed 0673/028)**, designated as Charleston County TMS No. 301-00-00-797, and purportedly annexed under the Contested Ordinance. **(Compl. ¶¶ 31-32).** The complaint defines the Acre as "real property designated as TMS 301-00-00-797." **(Compl. ¶ 4).** In its answer, North Charleston also defines TMS No. 301-00-00-797 as the "Acre." **(Answer ¶ 4).** But North Charleston denies every single allegation in the complaint relating to the National Trust's ownership of a portion of the Acre. **(Answer ¶¶ 4, 15, 28, 31).**

North Charleston also counterclaimed seeking "a determination of its fee simple title in this action and, further, that the Plaintiffs are forever barred from claiming any right title or interest in North Charleston's property. **(Answer ¶ 63).** In fact, North Charleston's counterclaims accuse the National Trust and Charleston of making "unconscionable claims and pretensions against North Charleston's title, claiming that boundaries to North Charleston's property were other than those established by survey or deed and encroaches onto National Trust's property." **(Answer ¶ 61)** (emphasis added). North Charleston's prayer for relief similarly placed title at issue in this action by clearly requesting a determination as to ownership of the Acre. **(Answer p. 11, ¶¶ b, c).** Thus, at least as late as April 17, 2018, when North Charleston filed its answer, North Charleston claimed that it owned the Acre. **(Answer)**

North Charleston cannot have it both ways. It cannot claim sole ownership of TMS No. 301-00-00-797 for purposes of quieting title, accuse the National Trust and Charleston of making "unconscionable" assertions against such title, and then disavow ownership of any portion of TMS

No. 301-00-00-797 that may overlap with the National Trust Property in an effort to defeat the National Trust's standing argument. See Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (precluding parties from adopting a position in conflict with one earlier taken in the same or related litigation).

To the extent North Charleston concedes that the National Trust, not North Charleston, holds title to a portion of the property described in the Acre Deed, shown on the Acre Plat, or designated as TMS No. 301-00-00-797, then the circuit court's decision on standing should be reversed and judgment entered against North Charleston because the Contested Ordinance infringes on the National Trust's proprietary interests, the Contested Ordinance infringes on Charleston's proprietary interests and statutory rights, and the territory annexed did not "belong entirely" to North Charleston.

In any event, North Charleston's allegations not only establish that the issue of ownership of the Acre has been submitted to the Court for resolution, but also emphasize that, even at the time it filed its answer, North Charleston *believed* it owned the Acre, as shown on the Acre Plat, in the Acre Deed, and by reference to TMS No. 301-00-00-797. Thus, as discussed in Argument III, it is clear that, when North Charleston attempted to annex the Acre, it intended to annex the Acre as shown on the Acre Plat, as described in the Acre Deed, and by reference to TMS No. 301-00-00-797. Because this territory includes property owned by the National Trust and previously annexed by Charleston, the circuit court erred in finding that Charleston lacked standing to challenge the Contested Ordinance.

V. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW IN HOLDING THAT CHARLESTON LACKED STANDING TO CHALLENGE THE CONTESTED ORDINANCE IN ORDER TO PROTECT THE INTEGRITY OF ITS BORDERS.

Even if the appellate court agrees with the circuit court that, as a matter of law, the Contested Ordinance attempted to annex only territory belonging entirely to North Charleston, such territory is physically separated from the corporate limits of North Charleston by land in Charleston, that being Highway 61 and the National Trust Property. **(Order p. 3 ¶ 8).** If not judicially vetted, the Contested Ordinance will establish that one municipality, by acquiring property outside its limits and then annexing it under the device of section 5-3-100, may ignore the borders of another. If not judicially vetted, the Contested Ordinance will establish precedent that a municipality may undertake annexations that jump over, or "leap-frog," the corporate limits of another municipality, as and when convenient.

The public importance exception has been relaxed under discreet, limited circumstances when future guidance is paramount. The facts of this case qualify as such a circumstance. "In numerous recent cases, this Court has found that standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." Davis v. Richland Cty. Council, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). "The linchpin of the public importance exception is the need for future guidance." Vicary v. Town of Awendaw, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018).[3] "An appropriate balance between the competing policy concerns underlying the issue of standing must be realized." Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

[3] As stated, Vicary emphasized that the "linchpin" for "public importance" standing is the extent to which future guidance is necessary. In this respect, the circuit court erroneously interpreted Vicary as adopting a "bright-line" test that *only* an allegation of deceitful conduct triggers such standing.

"Citizens must be afforded access to the judicial process to address alleged injustices." Id. "On the other hand, standing cannot be granted to every individual who has a grievance against a public official." Id. "Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits." Id. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

While the "nefarious conduct" alleged against the Town of Awendaw in Vicary is not present here, this case, like Vicary, involves novel issues, inextricably connected to the public need for court resolution for future guidance. These issues will also escape judicial review, absent standing being conferred under the "public importance" exception, and the factual scenario posed by this case is subject to being repeated in other locales across the State. On the other hand, governments would not be subject to "numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits," if Charleston were granted standing to proceed under the particular circumstances of this case. See id.

Charleston, as the municipality whose boundaries are being leaped, is particularly well-suited to assert public importance standing here, ensuring that standing is not granted to "every individual who has a grievance." The Supreme Court of South Carolina has recognized the standing of a municipality to contest cases when another entity attempts to include properties within its jurisdiction, or claimed to be so. See Forest Acres v. Forest Lake, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (concluding Town of Forest Acres may maintain action to invalidate purported detachment of its territory via annexation by Forest Lakes).

The same must hold true for maintaining the sanctity of a municipality's borders. A municipal border establishes a jurisdictional line that serves as a barrier to expansion by nearby municipalities. It establishes and preserves to a municipality an area for future growth into contiguous properties. If municipal borders can be leap-frogged, they become essentially meaningless. If not inherent to its right of home rule, the statutory scheme of annexation and its judicial interpretation devolve to Charleston the right to maintain the integrity of its borders, to include right to exclude other municipalities, like North Charleston, from establishing a foothold in areas of growth that its boundaries establish. A sound public policy demands that municipalities have access to the courts to protect its boundary rights, and this Court should so hold.

The circuit court has already issued a ruling denying the ability of one municipality to "leap frog" another under the auspices of the "adjacent to" requirement in section 5-3-100, concluding: "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." **(Order p. 13).** In other words, whatever the term "adjacent to" means in section 5-3-100, it is destroyed, as a matter of law, by intervening property within another municipality.

There is no case interpreting section 5-3-100 or any State precedent authorizing one municipality to "leap frog" another municipality's boundaries, absent affirmative legislative authority. In the absence of an adjudication of these issues, municipalities will be given no guidance as to when section 5-3-100 applies, especially when, as in the present case, the annexing municipality asserts that the term "adjacent to" means "near" or "in close proximity." It is also easy to see how a municipal "turf war" could ensue if the term "adjacent to" is left undefined or

so broadly interpreted. A ruling in favor of Charleston on the issue of standing—and on the merits—may effectively end such practice altogether.

As a result, such a ruling would not only serve the need for "future guidance" imperative to application of a "public importance" exception, but also decrease—not increase—the number of potential lawsuits involving similar annexation attempts. Therefore, it appears imperative, of significant public importance, and in furtherance of maintaining sound public policy, that standing be accorded to Charleston to challenge the Contested Ordinance. See ATC, 380 S.C. at 199, 669 S.E.2d at 341 ("The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.").

CONCLUSION

For the reasons set forth herein, it is submitted that the circuit court's ruling that Charleston lacks standing to challenge the Contested Ordinance should be reversed.

Respectfully Submitted,

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Attorneys for the City of Charleston

November 15, 2019
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2018-CP-10-0851
Appellate Case No. 2019-000728

National Trust for Historic Preservation
in the United States and the City of Charleston, Respondents/Appellants,

v.

City of North Charleston, Appellant/Respondent.

PROOF OF SERVICE

I certify that I have served Respondent/Appellant City of Charleston's Initial Respondent's Brief, Initial Appellant's Brief, and Designation of Matter, on Appellant/Respondent City of North Charleston ("North Charleston"), by depositing a copy of them in the United States Mail, postage prepaid, on November 15, 2019, addressed to North Charleston's attorneys of record, as follows:

J. Brady Hair, Esquire
Derk Van Raalte
Legal Department
2500 City Hall Lane
North Charleston, SC 29406

I also certify that I have served the referenced documents on Respondent/Appellant National Trust for Historic Preservation in the United States (the "National Trust") by depositing a copy of them in the United States mail, postage prepaid, on November 15, 2019, addressed to the National Trust's attorneys of record, as follows:

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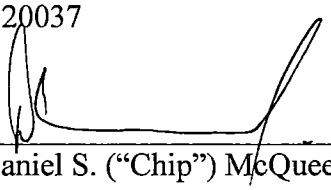
November 15, 2019



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November 15, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: National Trust for Historic Preservation v. City of North Charleston
Appellate Case No. 2019-000728

Dear Ms. Kitchings:

Please be advised that I represent Respondent/Appellant City of Charleston ("Appellant") in the above-referenced matter. Enclosed for filing, please find a copy of the following: (1) Respondent/Appellant City of Charleston's Initial Respondent's Brief; (2) Respondent/Appellant City of Charleston's Initial Appellant's Brief; (3) Respondent/Appellant City of Charleston's Designation of Matter; and (4) Proof of Service of each of the foregoing documents on all other counsel of record.

Your courtesies and consideration of this matter are greatly appreciated.

With kindest regards, I am,

Very Truly Yours,

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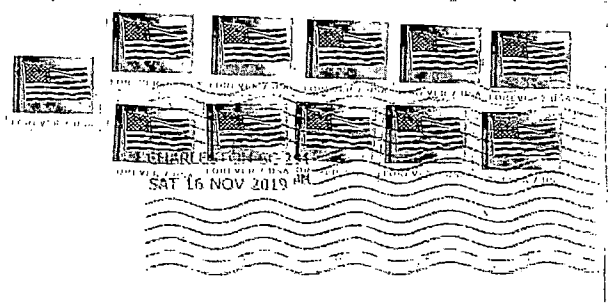

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