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

RECEIVED
DEC 02 2019
SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

INITIAL REPLY BRIEF OF APPELLANT CITY OF CHARLESTON TO THE INITIAL BRIEF OF RESPONDENT CITY OF NORTH CHARLESTON

Susan J. Herdina (S.C. Bar No. 13165)
Email: herdinas@charleston-sc.gov
Frances I. Cantwell (S.C. Bar No. 01121)
Email: cantwellf@charleston-sc.gov
Daniel S. ("Chip") McQueeney, Jr. (S.C. Bar No. 06802)
Email: mcqueeneyd@charleston-sc.gov
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

COURT RULES

OTHER AUTHORITIES

FACTS

Appellant the City of Charleston ("Charleston") reaffirms the Statement of the Case, Facts, and Statement of Issues on Appeal set forth in its Appellant's Brief. With respect to the Statement of Facts contained in Respondent City of North Charleston's ("North Charleston's") brief, Charleston replies as follows:

1. With respect to the "Timing" section of North Charleston's Statement of Facts, while footnote 1 therein acknowledges that, on December 19, 2017, Charleston received a petition to annex Parcel 006 under the "75% petition method" authorized by section 5-3-150(1) of the South Carolina, the footnote does not tell the whole story.[1]

What is omitted is that, at that same meeting, Charleston not only voted to consider the petition to annex a number of parcels of land, including Parcel 006, but also advertised to the public its intent to hold a public hearing on the petition, as required by section 5-3-150(1)(6). **(Millbrook III Compl. ¶¶ 15-16).** While North Charleston does not "believe" such is "official" action, these acts on the part of Charleston are in lockstep with the requirements of section 5-3-150(1). See Argument IV, *supra.*

2. North Charleston states that North Charleston adopted its first ordinance attempting to annex Parcel 006 before Charleston completed its annexation of Parcel 006. (Resp.'s Br. p. 1).

---

[1] For purposes of this reply brief, Charleston utilizes the term "Millbrook Parcel" to refer to the real property owned by Respondent Millbrook Plantation, LLC ("Millbrook"), including what is currently designated by Charleston County as TMS No. 361-00-00-006 (referred to herein as "Parcel 006") and TMS No. 361-00-00-006-1 (referred to herein as "Parcel 006-1"). Charleston emphasizes that Parcel 006-1 was created sometime *after* North Charleston first attempted to annex a portion of the Millbrook Parcel. **(Millbrook I Compl. ¶ 1; Millbrook III Compl. ¶ 4; Mot. to Reconsid. pp. 10-12).** North Charleston concedes this point in its own brief: "Subsequent to North Charleston's annexation Charleston County amended its maps to effectively reduce the size of Parcel 006 and create a never-before-mapped parcel designated TMS 361-00-00-006-1." (Resp.'s Br. p. 2, n. 2) (emphasis added).

As set forth in its Appellant's Brief, Charleston asserts that North Charleston attempted to annex the entire Millbrook Parcel, not just Parcel 006. See App's Br. pp. 21-27.

What is omitted from North Charleston's Statement of Facts relevant to this point is that Charleston had taken the first public procedural steps to annex Parcel 006 before North Charleston ever started is efforts to annex the Millbrook Parcel—or any portion thereof. **(Millbrook III Compl. ¶¶ 15-16);** see Argument III, *supra.* On December 19, 2017, Charleston acted first. **(Millbrook III Compl. ¶¶ 15-16).** North Charleston did not take any action until December 21, 2017, when first reading was given to Ordinance 2017-083, under which North Charleston began an invalid attempt to annex the Millbrook Parcel. **(Millbrook III Compl. ¶ 19).**

3. North Charleston's Statement of Facts pertaining to the "Annexation Description" confirms what Charleston has contended in this case from the beginning: North Charleston Ordinance 2017-083 described the land annexed as being bound by the right-of-way of Ashley River Road, and that being the case, Ordinance 2017-083 improperly and illegally included the property now designated as Parcel 006-1, which had been in Charleston since 2005. **(Millbrook III Compl. ¶ 19);** see Argument VI, *supra.* Moreover, and contrary to what North Charleston contends, not only did the legal description of the area to be annexed by North Charleston include land in Charleston, but the map of the annexation did as well. **(Ordinance No. 2017-083).**

ARGUMENT IN REPLY

I. NORTH CHARLESTON ERRONEOUSLY CONFLATES THE SUPREME COURT'S DECLINATION TO REACH THE ISSUE OF THE ADOPTION OF THE PRIOR PENDING PROCEEDINGS RULE WITH A REFUSAL TO ADOPT THE RULE.

North Charleston mischaracterizes the circuit court's ruling on the status of the prior pending proceedings rule as being in line with precedent of the Supreme Court of South Carolina. See Resp.'s Brief p. 3. Such is not the case.

The circuit court held: "The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise declines." **(Order pp. 10-11)** (emphasis added). In City of Columbia v. Town of Irmo, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994), the Supreme Court explained: "We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court." (Emphasis added).

The difference in wording is critical. Other than the circuit court's statement that the Supreme Court declined to adopt the prior pending proceedings rule, the circuit court failed to address whether and to what extent the rule should be adopted, instead simply concluding: "Without this [the adoption of the prior pending proceedings rule], North Charleston properly annexed TMS 361-00-00-006 on December 28, 2017 with the 2017 Ordinance." **(Order pp. 10-11).** Charleston requested a substantive ruling on the issue via a motion to reconsider, which the circuit court denied without taking the opportunity to clarify its ruling. **(Mot. to Reconsid. pp. 12-13; Order Denying Mot. to Reconsid.).**

This error of law warrants reversal. In the interest of judicial economy, Charleston urges the adoption of the rule and it application to the facts of this case, or, alternatively, a remand of the issue to the circuit court, with instructions as to the application of the rule. At the very least, the matter should be remanded for the circuit court to substantively consider the rule and its application.

II. IN THIS APPEAL, UNLIKE IN IRMO, THERE IS NO ALLEGATION THAT CHARLESTON FAILED TO COMMENCE A VALID ANNEXATION PRIOR TO NORTH CHARLESTON.

In this case, Millbrook moved for dismissal under Rule 12(b)(6), SCRCP, claiming that Charleston did not have standing to challenge North Charleston's annexation based on the

allegations in the complaint. **(Mots. to Dismiss).** The circuit court considered only the allegations in Charleston's complaints and the ordinances incorporated therein. **(Order p. 2).**

In contrast, City of Columbia v. Town of Irmo, 316 S.C. 193, 194, 447 S.E.2d 855, 856 (1994), involved an appeal from an order granting summary judgment to the City of Columbia. In Irmo, the Supreme Court specifically declined to address the issue of the prior pending proceedings rule because, on the facts before it, the Town of Irmo had failed to demonstrate it had commenced "*valid legal* proceedings" prior to the adoption of Columbia's annexation ordinances. Id. at 196, 447 S.E.2d at 857 (emphasis original). In fact, the Supreme Court emphasized: "Irmo has failed to present any evidence refuting the irregularities found in its petitions or its lack of contiguity to the Columbiana property." Id. (emphasis added).

There are no allegations in Charleston's complaints that Charleston's annexation ordinance was defective or invalid. The matter before the circuit court being a motion to dismiss based on the allegations of the complaints, it was incumbent for the complaints to be read in a light most favorable to Charleston. See McCormick v. England, 328 S.C. 627, 633, 494 S.E.2d 431, 433-34 (Ct. App. 1997) (in ruling on a motion to dismiss, "[t]he question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief.").

Construing the complaints in this manner compels a finding that Charleston received a petition to annex Parcel 006 under the 75% petition method, that the City Council of Charleston voted to consider the petition, and that the City Council of Charleston voted to set a public hearing on the petition, all on December 19, 2017. **(Millbrook I Compl. ¶¶ 10-11; Millbrook III Compl. ¶¶ 15-16).** These are all valid acts as required by the statute governing annexations under the 75% petition method. Unlike the Town of Irmo, Charleston established that it took the first valid, public

procedural step toward annexing Parcel 006, in compliance with section 5-3-150(1), before North Charleston. The circuit court failed to recognize this circumstance, and the nuance of Irmo, resulting in its misconstruction and misapplication of Irmo.

III. NORTH CHARLESTON IGNORES CHARLESTON'S ASSERTION THAT THE PRIOR PENDING PROCEEDINGS RULE APPLIES WHEN, AS IN THE PRESENT CASE, A MUNICIPALITY TAKES THE FIRST PUBLIC PROCEDURAL STEP TOWARD ANNEXING PROPERTY.

North Charleston largely ignores Charleston's argument that the prior pending proceedings rule applies when the first public procedural step toward annexation occurs, instead focusing on whether the "receipt" or "acceptance" of an annexation petition by a local governing body has any legal effect.

Charleston consistently advocated to the circuit court and on pages 8-12 of its Appellant's Brief that Charleston took the first public procedural step toward annexing Parcel 006, triggering the protection of the prior pending proceedings rule. **(Mem. in Opp. to Mots. to Dismiss pp. 8-11).** North Charleston does not address this argument or attempt to distinguish Charleston's citations to treatises and case law which support the adoption of the prior pending proceedings rule in this manner. See Turner v. S.C. Dep't of Health & Envtl. Control, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008) (explaining that appellate court may treat failure to respond as concession that appellant's position is correct). As more fully set forth in Argument IV, the allegations in Charleston's complaints, viewed in a light most favorable to Charleston, establish that Charleston took the first public procedural steps toward annexing Parcel 006.

IV. CHARLESTON WAS FIRST IN LINE.

Before North Charleston ever made a move to annex the Millbrook Parcel or any portion thereof, the City Council of Charleston voted to consider a petition to annex Parcel 006 under the 75% petition method and voted to hold the statutorily-required public hearing. Per section 5-3-

150(1) of the South Carolina Code, these are the first procedural steps required before annexing property under the 75% petition method.

Sherman v. Reavis, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979), strongly supports Charleston's position on this point, confirming that an ordinance may be considered "pending" even *before* a city council gives it first reading or holds a public hearing thereon. See App.'s Br. pp. 11-12. Pursuant to Sherman, "[a]n ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning." Id. (emphasis added).

Sherman addressed the procedures for adopting and amending zoning regulations then in effect under state law, which required notice, a public hearing, and the adoption of an ordinance. Id. at 543-44, 257 S.E.2d at 736. Charleston annexed Parcel 006 under section 5-3-150(1), which also requires notice, a public hearing, and the adoption of an ordinance.

In accordance with the teaching of Sherman, Charleston alleges that, on December 19, 2017, the City Council of Charleston (1) resolved to consider the petition for annexation of Parcel 006 and other properties listed therein; and (2) advertised to the public its intention to hold a public hearing on the annexation. **(Millbrook I Compl. ¶¶ 10-11; Millbrook III Compl. ¶¶ 15-16).** These first public procedural steps by Charleston on the annexation petition are consistent with those that triggered the application of the pending ordinance doctrine in Sherman, and consistent with those that triggered the application of the prior pending proceedings rule in the treatises and case law cited in pages 8-12 of Appellant's Brief.

North Charleston's assertion that the only "official action" Charleston could have taken on an annexation petition is an up or down vote is incorrect. On December 19, 2017, City Council could have ignored the petition or taken no action with respect to it. It did not. Instead, City Council

chose to accept and consider the petition, in addition to ordering the public hearing required by law. City Council's action, taken by public vote or resolution,[2] complied with the mandates of section 5-3-150(1) and preceded North Charleston's first efforts to annex the Millbrook Parcel. Moreover, after taking these initial steps, Charleston proceeded to enact an ordinance annexing Parcel 006 and other parcels.

The prior pending proceedings rule is designed to avoid the very circumstances giving rise to this dispute, by recognizing the exclusive jurisdiction of the municipality taking the initial procedural steps to annex a property to complete its annexation and preventing the "race to the finish line" approach to annexation apparently championed by North Charleston.

V. THE NEW EVIDENCE SUBMITTED BY NORTH CHARLESTON IS OF NO MOMENT.

North Charleston's reference to a page from Charleston's website explaining the general process for annexations and section 2-24 of the City Code, governing Charleston's general procedure for adopting ordinances, is of no moment. [3] See Resp.'s Br. pp. 4-5. Neither the webpage nor section 2-24 abrogate the statutory requirements for notice and a public hearing applicable to Charleston's annexation under section 5-3-150(1) of the South Carolina Code, and Sherman belies North Charleston's notion that Charleston cannot be considered to have taken "official action" until it votes an ordinance up or down. Sherman clarifies that, under certain circumstances, a matter need not receive even a first reading to be considered "pending."

---

[2] See Glasscock Co. v. Sumter Cty., 361 S.C. 483, 489, 604 S.E.2d 718, 721 (Ct. App. 2004) ("It is clear here that the adoption of the resolution was simply a first step in the process of County Council's formal, public consideration of the contract amendments.").

[3] This evidence was not presented to the circuit court. Rule 210(c), SCACR, admonishes: "The Record shall not . . . include matter which was not presented to the lower court or tribunal."

VI. AS A MATTER OF LAW, NORTH CHARLESTON'S FIRST ATTEMPT TO ANNEX THE MILLBROOK PARCEL INCLUDED LAND PREVIOUSLY ANNEXED BY CHARLESTON IN 2005.

North Charleston concedes that Ordinance No. 2017-083 describes the boundary of the area to be annexed as the right-of-way for Ashley River Road: "North Charleston's boundary description contained a factual error-it described the Parcel 006 boundary line as reaching Ashley River Road, and in that sense overlooked Parcel 006-1." See Resp.'s Br. p. 6. Likewise, by its own admission, North Charleston recognized the error and attempted to cure it by way of a corrective ordinance. See Resp.'s Br. p. 6. In light of these admissions, the issue turns to whether the flaw in Ordinance 2017-083 was curable, and, if it was, whether Charleston nonetheless is entitled to the protection of the prior pending proceedings rule.

North Charleston and Millbrook are charged with notice of Charleston's 2005 ordinance annexing what is now designated as Parcel 006-1, described as being immediately contiguous to and on the northern side of Ashley River Road. **(Millbrook I Compl. ¶ 9; Millbrook III Compl. ¶ 14);** see Labruce v. N. Charleston, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977) ("[C]ognizance of city ordinances is presumed."). The fact that North Charleston and Millbrook overlooked the ordinance or that appropriate inquiry was not otherwise made does not serve as a basis for defeating the lawful annexation of Parcel 006 by Charleston, commenced in advance of any act by North Charleston to annex any part of the Millbrook Parcel.

Charleston does not fault North Charleston for enacting a corrective ordinance. But Charleston's position is that Ordinance 2017-83 was fatally flawed and beyond cure by way of a corrective ordinance. See Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive

defect" that may not be corrected through a subsequent ordinance). And, in any event, the corrective ordinance was for naught because of the prior pending proceedings rule.[4]

VII. PRINCIPLES OF EQUITY DO NOT SUPPORT NORTH CHARLESTON'S AFTER-THE-FACT INTERPRETATION OF ITS FIRST ATTEMPT TO ANNEX THE MILLBROOK PARCEL.

North Charleston raises numerous "equitable arguments" as to why the "factual error" in the legal description of the property included in its first attempt to annex the Millbrook Parcel should be excused.

The interpretation of an ordinance is a matter of law. See Gorman v. S.C. Reinsurance Facility, 333 S.C. 696, 699, 511 S.E.2d 98, 100 (Ct. App. 1999) ("[T]he issue of interpretation of the statute is a question of law for the court."); 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."). Long-standing case law establishes that equitable principles may not be utilized to alter the expressed intent of a legislative body. See Beaty v. Richardson, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899) ("It has, therefore, been distinctly stated (quoting from Wilberforce on Stat. Law) from early times down to the present day, that judges are not to mould the language of statutes in order to meet an alleged convenience or an alleged equity . . . .").

It is also well-established that an ordinance may not be interpreted in the after-the-fact manner advocated by North Charleston:

> Ordinances, like statutes, are to be construed as they were intended at the time of their enactment. Thus, the language used in an ordinance is to be construed in accordance with its meaning at the

[4] Before the corrective ordinance was given first reading, Charleston had taken the steps of conducting a public hearing on its petition and giving first reading to an ordinance to annex the lands described therein, including Parcel 006. **(Millbrook III Compl. ¶¶ 17; Ordinance 2018-017).** As set forth in Charleston's Appellant's Brief, these additional actions support application of the prior pending proceedings rule because they occurred prior to North Charleston taking any valid legal action to annex the same property. North Charleston ignores this argument.

> time the ordinance was enacted rather than in accordance with a meaning that might afterwards be given it. Expediency, born of changing circumstances and conditions, will not alter the meaning of plain and ordinary language used in an ordinance.

6 McQuillin Municipal Corporations § 20.51 (3d ed. 2007).

Even if equity were a consideration, Charleston should prevail. It is undisputed that North Charleston and Millbrook only began the process of annexing the Millbrook Parcel after the City Council of Charleston, in public session, announced its receipt of a petition to annex the remainder of the property, resolved to consider the annexation, and advertised its intent to hold a public hearing thereon. **(Millbrook III Compl. ¶¶ 15-16, 19-20).**

While claiming extraneous circumstances beyond its control excuse the errors in its first attempt to annex the Millbrook Parcel, North Charleston attempts to analogize Charleston's purported "delay" in adopting its annexation ordinance—a "delay" caused only by Charleston's compliance with the statutory notice and hearing requirements applicable to the annexation—as "closing the barn door after the horse has already escaped." See Resp.'s Br. p. 1. Even if the analogy is apropos, which it is not, equity would not countenance North Charleston's keeping the horse.

This is not a situation in which Charleston "manufactured" standing, as North Charleston also asserts. See Resp.'s Br. p. 7. Millbrook and North Charleston made their *own* beds. This litigation was not triggered by Charleston's actions in placing the public, including North Charleston and Millbrook, on notice of Charleston's intent to consider the annexation of Parcel 006 on December 19, 2017. It was triggered by the subsequent actions of Millbrook and North Charleston in attempting to "fast-track" an ordinance annexing the Millbrook Parcel in an attempt to beat Charleston to the finish line.

North Charleston's attempt to annex property lying within Charleston's municipal limits may be mistaken, but this does not justify a reinterpretation of an otherwise unambiguous ordinance, especially when, as here, such mistake occurred during North Charleston's "last ditch" effort to deprive Charleston of its jurisdictional priority to annex Parcel 006.

VIII. CHARLESTON HAS STANDING TO CHALLENGE NORTH CHARLESTON'S ATTEMPTED ANNEXATIONS, WHICH INFRINGE UPON CHARLESTON'S PROPRIETARY INTERESTS AND STATUTORY RIGHTS.

Argument III in North Charleston's brief is mostly derivative of its incorrect assertion that North Charleston never annexed territory within the municipal limits of Charleston. See Resp.'s Br. p. 7 n. 8. Charleston's argument on this issue is amply covered on pages 13-21 of its Appellant's Brief, but Charleston writes to emphasize that, under well-settled law, one municipality has statutory standing to challenge the annexation of property within its corporate limits by another. This important principle, which seems axiomatic, was overlooked by the circuit court and North Charleston.

Precedent of this State recognizes two categories of parties who may contest an annexation, *to wit*: those with statutory standing and those without. As to the former category, under the 75% petition method, statutory standing is accorded to the municipality or any of its residents and any person residing or owing property in the area annexed. Under the 100% method, statutory standing is accorded to those who allege an infringement of their own proprietary interests or statutory rights:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. State by State Budget & Control Bd. v. City of Columbia, 308 S.C. 487, 419 S.E.2d 229 (1992).

> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987). Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.

St. Andrew's Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604-05, 564 S.E.2d 647, 648 (2002) (emphasis added).

It is only when a party cannot allege an infringement of its own proprietary interests or statutory rights that standing to challenge a 100% annexation is limited to the Attorney General or, under special circumstances, parties who assert standing under the "public importance" exception. See St. Andrews, 349 S.C. at 604-605, 564 S.E.2d at 648; Vicary v. Town of Awendaw, 425 S.C. 350, 358-59, 822 S.E.2d 600, 604 (2018) ("We hold today a party that can demonstrate the annexing body engaged in nefarious conduct in purportedly complying with section 5-3-150 has standing to challenge the annexation.").[5]

"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 County of Lexington v. Columbia, 303 S.C. 300, 400 S.E.2d 146, 147 (1991) ("Absent an issue of overriding public concern, a political subdivision must establish it is

[5] Vicary emphasizes that there are very limited circumstances under which the courts will recognize standing to challenge an annexation under the "public importance" exception. However, Vicary does not conclude that the *sole* circumstance for applying such exception is when a party alleges "nefarious" or "deceitful" conduct.

a real party in interest in order to maintain a suit . . . . It must allege an infringement of its own propriety interests or statutory rights to establish standing.").

South Carolina precedent repeatedly recognizes that a municipality may protect its proprietary interests and statutory rights over property within its corporate limits by challenging another municipality's attempt to annex such property. 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.").

Here, Charleston alleges Ordinance 2017-083 violates its own proprietary interests and statutory rights because the Ordinance includes land already in Charleston, meeting the "statutory standing" test for challenges to 100% annexations. Charleston's standing is further buttressed by the prior pending proceedings rule. North Charleston's conclusory assertion that Ordinance 2017-083 did not include any land in Charleston is belied by North Charleston's own admissions. See Resp.'s Br. p. 2 n. 2. Even if inadvertent, the fact that Ordinance 2017-083, on its face, includes land in Charleston imbues Charleston with standing to at the very least have this issue, including whether it is curable and the effect of the prior pending proceedings rule, vetted. At this stage of

the proceedings, the Record does not support dismissal, and the circuit court erred in concluding to the contrary.

CONCLUSION

For the reasons set forth in its Appellant's Brief, as supplemented by this Reply Brief, Charleston respectfully requests that the circuit court's order of dismissal be reversed. Charleston asserts that the case should be remanded with instructions that the prior pending proceedings rule applies under the facts of this case. In the alternative, Charleston contends that the matter should be remanded with instructions as to the application of the rule. At the very least, a remand is warranted to require the circuit court to substantively address the rule.

Respectfully Submitted,

Susan J. Herdina (S.C. Bar No. 13165)
Corporation Counsel
E-mail: herdinaj@charleston-sc.gov

Frances I. Cantwell (S.C. Bar No. 01121)
Of Counsel
E-mail: cantwellf@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr (S.C. Bar No. 06802)
Assistant Corporation Counsel
E-mail: mcqueeneyd@charleston-sc.gov

50 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 724-3730

Attorneys for Appellant City of Charleston

November 25, 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

RECEIVED
DEC 02 2019
SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant City of Charleston to the Initial Brief of Respondent City of North Charleston (the "Initial Reply Brief") on Respondent City of North Charleston, by depositing a copy of it in the United States Mail, postage prepaid, on November 25, 2019, addressed to its 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 Initial Reply Brief on Respondent Millbrook Plantation LLC by depositing a copy of it in the United States mail, postage prepaid, on November 25, 2019, addressed to its attorneys of record, as follows:

Bruce E. Miller, Esquire
Bruce E. Miller, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412

November 25, 2019

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802
City of Charleston
50 Broad Street
Charleston, South Carolina 29401
E-mail: mcqueeneyd@charleston-sc.gov
(843) 724-3730
Attorney for Appellant City of Charleston

City of Charleston

WILLIAM B. REGAN LEGAL CENTER

50 Broad Street
Charleston, SC 29401
tel 843-724-3730
fax 843-724-3706

CORPORATION COUNSEL

Susan J. Herdina
herdinas@charleston-sc.gov

ASSISTANT CORPORATION COUNSEL

Janie E. Borden
bordenj@charleston-sc.gov

Stirling Halversen
halversens@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr.
mcqueeneyd@charleston-sc.gov

OF COUNSEL

Frances I. Cantwell
cantwellf@charleston-sc.gov

RECEIVED
DEC 02 2019
SC Court of Appeals

November 25, 2019

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

RE: City of Charleston v. City of North Charleston
Appellate Case No. 2019-000903

Dear Ms. Kitchings:

Please be advised that I represent Appellant City of Charleston ("Appellant") in the above-referenced matter. Enclosed for filing, please find a copy of the Initial Reply Brief of Appellant City of Charleston to the Initial Brief of Respondent City of North Charleston, along with a Proof of Service of same on opposing counsel.

Your courtesies and consideration of this matter are greatly appreciated.

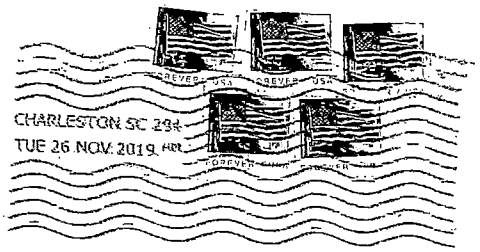
With kindest regards, I am,

Very Truly Yours,

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 06802
50 Broad Street
Charleston, South Carolina 29401
E-mail: mcqueeneyd@charleston-sc.gov
(843) 724-3730
Attorney for Appellant City of Charleston

c: J. Brady Hair, Esquire
Derk Van Raalte
Bruce E. Miller, Esquire

Daniel S. McQueeney, Jr.
City of Charleston – Legal Dept.
50 Broad Street
Charleston, SC 29401



RECEIVED
DEC 02 2019
SC Court of Appeals

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