Recd 10/22/13

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012-CP-28-062

Herbert Farber	**Camden Committee for Responsible Government**	**City of Camden**
	PLAINTIFF(S)	**DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED FOR RECORD
KERSHAW COUNTY, S.C.
2013 OCT 21 PM 1:52
CLERK OF COURT
KERSHAW COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

ATTEST True, Correct & Certified Copy of Original on File in this Court

Clerk of Court Kershaw County

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **21st day of October, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **21st day of October, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Weston Adams III PO Box 12519 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Danny Calvert Crowe PO Box 1473 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Joyce McDonald

Joyce McDonald - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Herbert Farber and Camden Committee for Responsible Government, Inc., Plaintiffs, vs. City of Camden, Defendant.	CASE NO. 2012-CP-28-00062 **ORDER**

This action for declaratory judgment and injunctive relief came before the Court for a non-jury trial on November 1, 2012. Present at the trial were Weston Adams, III and Tommy E. Lydon, attorneys for the Plaintiffs; and Danny C. Crowe, attorney for the Defendant. By agreement of the parties through their attorneys, the case was tried in Richland County.

This case involves the issue of whether the planned construction of a recreational facility by the City of Camden ("the City") can be lawfully financed through the use of the City's local hospitality tax revenues. The Complaint seeks a declaration by the Court that the City's planned use of hospitality tax revenues to construct the facility is illegal because the recreational facility is not "tourism-related" as required by S.C. Code Ann. § 6-1-730(A)(2); an order permanently enjoining Defendant from expending local hospitality tax revenues for the purpose of constructing the facility; and Defendant to pay attorneys' fees and costs. The City, in its Answer, asserts that the use of hospitality tax revenues for construction of the facility is lawful and within the discretion afforded the City by law. The City also asserts in its Answer that the determination of whether projects are "tourism-related" pursuant to Section 6-1-730(A) is governed by the statutory definition of "tourist" in the related S.C. Code Ann. § 6-1-760(A).

As framed by the pleadings, resolution of this case turns on whether or not the recreational facility is "tourism-related" as required by S.C. Code Ann. § 6-1-730(A)(2). For purposes of capital projects (such as the planned construction of the recreational facility) and issuance of bonds paid by local hospitality tax revenues (which is also planned by the City), a "tourist" is defined in S.C. Code Ann. § 6-1-760(A) as a "person who does not reside in but

rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project. . . ."

After considering the testimony of the witnesses, the exhibits, and the submissions and arguments of counsel, including the City's Rule 41(b) motion, this Court declares that the City's proposed recreational facility is "tourism-related" within the meaning of Sections 6-1-730(A) and 6-1-760(A), and the City's use of local hospitality tax revenues to construct the facility is lawful.

FINDINGS OF FACT

As required by Rule 52(e), SCRCP, the Court makes the following findings of fact based upon the preponderance of the evidence presented:

1. Beginning in 2011 the City intended to acquire land for, and to plan, design and construct, a recreational facility. In early 2011 the City acquired an 8.9 acre parcel of land in the City's downtown area as the facility site. Before the land acquisition, and continuing thereafter, the City entered into discussions with the YMCA of Columbia to arrange for the YMCA to operate and maintain the facility and its programs when the facility was constructed and, in advance of construction, to participate in development of the design of the facility to accommodate the facility's operational needs.

2. The recreational facility, as conceptualized by the end of 2011, is a brick two-story building of 44,000 square feet with an estimated construction cost of $6.2 million. The interior building design included a gymnasium, a wellness center, a space ("shell") for later construction of an indoor pool, locker rooms, a community room, and childcare and youth activity rooms. (Plaintiffs' Exhibit 22 and Defendant's Exhibit 7). According to City Manager Kevin Bronson ("Bronson"), the additional acreage for the facility included tennis courts and athletic fields. Reference to the facility as a "gym" does not negate or detract from the intended scope of the facility project as shown by the depictions and descriptions. Bronson further testified that, other than completion of architect's drawings, no further action has been taken on construction or financing since the filing of this action in January 2012.

3. The City's intent to use hospitality tax revenues to pay for construction of the recreation facility is established by the testimony of Bronson and by Resolution 12-010 of the City Council, adopted April 10, 2012. (Defendant's Exhibit 6). The Resolution provides that the City, pending a review of available financing alternatives, intends to incur debt, secured by or

payable from City hospitality fees, for funding for acquiring, constructing and equipping a "regional recreation facility." The Resolution also declares the City's belief that the facility, as proposed, constitutes a "tourism-related ... recreational ... facility" as provided in Section 6-1-730. The Resolution further states that the City "intends and expects that the Facility will be used by residents of the City as well as 'tourists,' as such term is defined in Section 6-1-760 of the Code of laws of South Carolina, 1976, as amended[.]"

4. The testimony of Bronson, which the Court finds credible and persuasive, established that early in the project development, the City focused on the use of hospitality tax revenues as a funding source. Bronson testified that alternative funding possibilities were limited for the City and that he was aware that other municipalities, including Clover, Pickens, and Hartsville, had financed recreational facilities through hospitality tax revenues. Bronson also testified that he made it clear to YMCA representative Bryan Madden at the outset of their discussions that hospitality tax would be the revenue source and, for that reason, a tourism component would be critical for the project. Bronson further testified that following receipt of the legal opinion of its bond counsel, Margaret Pope, regarding the use of hospitality tax revenues for the facility in a public meeting in August 2011, the Council continued its intent to use the hospitality tax revenues to construct the facility.

5. According to Bronson's further testimony, the City intended the recreation facility project to serve several purposes. These included providing a location for recreational and social activities for residents and non-residents, replacement of the aging Rhame Arena as a recreation and event location, an inducement to economic redevelopment and private investment in the Redevelopment Area/Tax Increment Financing District within which the facility site was located, and a draw for social and commercial activity in the downtown area.

6. The evidence shows that the City, because of its intent to finance construction using hospitality tax revenues, and the YMCA, because of its interest in using facility memberships and program fees to pay for operations and maintenance, wanted the market for intended users of the facility to extend beyond the City limits and include non-City residents. The City received information from the YMCA on the predicted market draw of the facility beyond the City. The YMCA based its willingness to participate as the project operator of the facility on its projections of facility membership revenues.

7. Prior to formalizing its relationship with the City on the facility, the YMCA commissioned a demographic market study by the outside firm SEER Analytics to determine the market draw and anticipated memberships for the Camden facility. At a meeting of the City's Camden Sports Complex Advisory Committee on October 4, 2011, a YMCA representative explained the YMCA's reliance on the SEER Analytics study:

> This organization goes into the community and does phone calls to residents. SEER provides a very detailed study to the Y to give the units of members. With this information provided from SEER the Y can make an educated decision if the venture would be feasible. The Y would not move forward if the SEER report did not indicate appropriate levels of estimated memberships.
>
> (Plaintiffs' Exhibit 20, page 7).

SEER Analytics conducted two market studies on the Camden facility. The first, dated April 2011, used a predicted market area based on automobile drive times from the facility of 3 minutes, 5 minutes, and 7 minutes. This report described this area as 75 square miles. (Plaintiffs' Exhibit 11). The second market study, dated May 2011, used a predicted market area based on automobile drive times from the facility of 5 minutes, 10 minutes, and 15 minutes. This report described this area as 71 square miles. (Plaintiffs' Exhibit 23). Although the two reports contain inconsistencies between them in the square mileage and populations of the predicted market areas, the YMCA concluded by September 8, 2011 that the SEER Analytics study supported its participation: "Based on that demographic study, we believe that our YMCA could effectively manage and operate this facility at zero cost to the City." (Plaintiffs' Exhibit 16, page 3; Defendant's Exhibit 4). Bronson testified that the potential market areas in both SEER studies extended beyond the City limits and into Kershaw County.

8. Through argument and the examination of Bronson, the Plaintiffs attempted to establish, by inference, that the City intended the facility only for City residents or that the City described the facility to include non-residents only after the City made the decision to use hospitality tax revenues. The Plaintiffs emphasized the reference in some documents to "the community" and the failure of some documents introduced in evidence to refer to "tourists" or "tourism." However, the Court finds this argument and evidence to be unpersuasive.

9. Instead, the Court finds that the evidence establishes that the City's intent that the facility be used by non-City residents is shown and established by such evidence as:

(a) Bronson's reference immediately after the acquisition of the property site to development of the property to serve the City and County (Plaintiffs' Exhibit 4);

(b) the SEER Analytics demographic market potential studies;,

(c) the Mayor's reference in the City's press release (Plaintiffs' Exhibit 13) to the recreation facility as "a great addition to Camden and Kershaw County;"

(d) the City's references in Council's Resolution 11-024 dated September 13, 2011, and in the City's Memorandum of Understanding with the YMCA, to a "regional recreation facility" and to the City's authority to "provide and promote regional recreational programing and services to persons visiting the City as well as its residents" (Defendant's Exhibit 5);

(e) the discussion of tourists in the meetings and final report of the City's Camden Sports Complex Advisory Committee in the period of September through November 2011 (Plaintiffs' Exhibit 20; Defendant's Exhibits 8, 9 and 10);

(f) the references in the City's application to TD Bank for New Market Tax Credits in November 2011 (Plaintiffs' Exhibit 22, pages 1 and 3) to the Camden Regional Recreation Facility to proposed recreation operations and sports to "attract visitors from across the region," and to "the regional scope of the project;" and

(g) the previously discussed and explicit "intent" language of the City's Resolution 12-010 in April 2012 (Defendant's Exhibit 6).

10. The testimony of the Plaintiff Herbert Farber ("Farber") provided no persuasive evidence on the issue of *legality* of the use of hospitality tax revenues. Farber offered his lay opinions that the facility would not attract tourists and that there were other and better uses for the hospitality tax revenues. Farber testified that he believed the City was acting unreasonably in using the hospitality tax revenues for the facility, referencing a petition signed by members of the community who did not want the hospitality funds to be used in this manner. Instead, Farber testified the funds should be used in the downtown area, horse community, or historic Camden area. Regardless of whether these statements are true and better uses for hospitality tax revenues are available, these concerns do not address the legality of using the revenues for the construction of this facility.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, this Court concludes as a matter of law:

1. The Local Hospitality Tax Act, Chapter 1, Article 7 of Title 6 of the South Carolina Code of Laws, governs the imposition of hospitality taxes by municipalities. S.C. Code Ann. § 6-1-730 specifies the uses for the revenue generated by the local hospitality tax. Subsection (A) reads:

> The revenue generated by the hospitality tax must be used exclusively for the following purposes:
> (1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
> (2) tourism-related cultural, recreational, or historic facilities;
> (3) beach access and renourishment;
> (4) highways, roads, streets, and bridges providing access to tourist destinations;
> (5) advertisements and promotions related to tourism development, or;
> (6) water and sewer infrastructure to serve tourism-related demand.

(Emphasis added). S.C. Code Ann. § 6-1-760 amended, effective June 28, 2010, added subsection (A), which further defines the uses as follows:

> With respect to capital projects and as used in this section, "tourist" means a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.

2. In interpreting a statute, courts should give the words of a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hardee v. McDowell, 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009) (quoting Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct. App. 2001)). "Where the statute's language is plain and unambiguous, and conveys a definite meaning, the rules of statutory construction are not needed and the court has no right to impose another meaning." Id. (quoting Bayle, 344 S.C. 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 legislative intent or will." Id. (quoting Bayle, 344 S.C. at 122, 542 S.E.2d at 740). "Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id. (quoting Bayle, 344 S.C. at 122, 542 S.E.2d at 740).

3. The definition of "tourist" in Section 6-1-760(A) applies to this case. The proposed construction of the Camden recreational facility is a capital project to be funded by bonds pledged to be paid by revenue from the City's hospitality tax. The definition of "tourist" in Section 6-1-760(A) is plain, clear, and unambiguous on its face. Under that definition, a person who is not a City resident is a "tourist" if the person enters the City for reasons of recreation or leisure. Applied to this case, this definition clearly includes persons visiting the recreational facility who live outside of the Camden City limits but within Kershaw County.

4. The Court concludes that the City intended the recreational facility at issue in this case to attract and to be used both by City residents and by non-City residents who are "tourists" within the meaning of Section 6-1-760(A).

5. The determination of whether the recreational facility involved in this case is "tourism-related" within the meaning of Section 6-1-730(A) is governed by the definition of "tourist" in Section 6-1-760(A). The term "tourism-related," as used in Section 6-1-730(A) and in the Local Hospitality Tax Act, is unadorned with any other limiting or restricting language.

In the Court's view, the plain and common sense meaning of "tourism-related" is "related to tourists." There is no language accompanying the term to indicate that the use of the recreational facility, in order to be "tourism-related," must be solely tourism-related, primarily tourism-related, substantially tourism-related, or tourism-related to any certain percentage of use. It is clear that, had the legislature wished to impose such limitations, it could have done so by adding language in the statute. It is not the function of the Court to add in words, limitations, or requirements to alter the plain meaning of the language used by the legislature. In the absence of any requirement or specification of any percentage of use by tourists in the language of Section 6-1-730(A) or in any related provision of the Local Hospitality Tax Act, the Court concludes that a recreational facility is "tourism-related" within the meaning of Section 6-1-730(A) if it is intended to attract and to be used by both City residents and non-City residents.

By similar statutory interpretation and analysis of legislative intent, the Court concludes, contrary to the assertions of the Plaintiffs, that there is no requirement in the pertinent statutes or otherwise in the law that the original intent of the public project be to provide a recreational facility for tourists or solely for tourists. Additionally, the Court concludes that there is no requirement that a municipality undertakes studies of anticipated tourist use or evaluations of the amount of hospitality tax to be generated by the facility. While such studies may provide

additional information upon which the municipality may decide the viability of a capital improvement project, that information simply aids the governing body in fulfilling its duty in deciding to proceed with the project; it does not address the legality of specific funds expended for capital improvements.

6. The Opinion of the Attorney General dated December 20, 2006 (2006 S.C. AG LEXIS 270), cited at trial by the Plaintiffs, was written before the broad definition of "tourist" was added to Section 6-1-760(A) in the Local Hospitality Tax Act in 2010. Additionally, the rationale of the Opinion does not foreclose use of a recreational facility by both residents and tourists or foreclose a determination that a recreational facility attracts and serves tourism. The determination of what buildings or facilities are "tourism-related" under Section 6-1-730(A) should be given a reading that allows a measure of discretion for municipalities.

7. The Court concludes that this case involves the authority of the City to use hospitality tax revenues for a recreational facility and not the wisdom of its use of hospitality tax revenues for that purpose. Plaintiffs' argument, as indicated by Farber's testimony, that there are other or better uses for all or some of the hospitality tax revenues is not a matter for this Court but is a matter for the City Council as the local legislative body. This Court cannot substitute its judgment on policy matters for that of the Council. Additionally, this Court should not consider the wisdom, as a matter of public policy or as a matter of politics, of the City's decision to spend hospitality tax revenues in any amount, or in any particular amount, for the recreational facility. "[I]t is not the function of the courts to pass upon the wisdom or expediency of municipal ordinances or regulations." DeTreville v. Groover, 219 S.C. 313, 329, 65 S.E.2d 232, 240 (1951).

8. The City of Camden's proposed recreational facility is "tourism-related" within the meaning of S.C. Code §§ 6-1-730(A) and 6-1-760(A).

9. The City of Camden's proposed use of local hospitality tax revenues to construct the facility is lawful pursuant to Sections 6-1-730(A) and 6-1-760(A).

ORDER

Based upon the foregoing, **IT IS ORDERED** that the declaratory relief, injunctive relief, and award of attorneys' fees requested by the Plaintiffs are **DENIED**.

IT IS FURTHER ORDERED that judgment in this case shall be entered in favor of the Defendant City of Camden.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

October 18, 2013
Columbia, South Carolina