

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

Appellate Case No. 2012-212137

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants Of Whom City of Greenville and Mayor Knox H. White are the Respondents/Appellants,.....Respondents/Appellants.

**RECORD ON APPEAL
VOL. I**

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SC COURT OF APPEALS

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2008CP2302255

South Carolina Public Interest Foundation vs. Greenville City Of

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 29th day of January 2009, and a copy mailed first class this 29th day of January 2009, to attorneys of record or to parties (when appearing pro se) as follows:

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CPFORM4M

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

The South Carolina Public Interest) Civil Action No. 2008-CP-23-2255
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, Individually and)
as Taxpayers of the City of Greenville,)
South Carolina, and on behalf of Others)
Similarly Situated,)

Plaintiffs,)

vs.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

OPINION & ORDER

2009 JUN 29 P 4:32

This matter came before the Court with a brief, but complicated, procedural history. This action was commenced on March 24, 2008. In May, the Plaintiffs filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. That September, the City of Greenville and Mayor White (collectively referred to as "the City") and The Cliffs at Glassy, Inc. ("The Cliffs"), moved respectively for summary judgment pursuant to Rule 56. On October 2, 2008, a hearing upon these motions was held, at which time the Court granted the Defendants' motions for summary judgment and denied the Plaintiffs' motion for judgment on the pleadings.¹

¹ Prior to the October 2 hearing, but after the Defendants moved for summary judgment, the Plaintiffs filed a motion to supplement the Complaint pursuant to Rule 15(d). With the Defendants' consent, the Complaint was amended. Therefore, the Court's order of judgment against the Plaintiffs was based upon the First Amended Complaint.

On October 28, the Plaintiffs filed motions to alter or amend the judgment and to again, supplement the Complaint.² The Defendants opposed these motions. A hearing on this matter was held December 17, 2008.³ After due consideration, the Court declined to alter its previous order granting summary judgment.

This opinion has been issued in order to explain the disposition of this case.

I. FACTUAL & PROCEDURAL BACKGROUND

This lawsuit involves the location of a common boundary between the City and The Cliffs, and a resulting property transfer that was intended to bring certainty to the location of that boundary. The line in dispute is a portion of the western boundary of the City's North Saluda Reservoir. The northern terminus of the boundary is located at a point on top of Corbin Mountain, which sits along the border between North and South Carolina. From the northern terminus, the boundary runs a southeasterly course to a point approximately two thousand feet away. Throughout this opinion, this southeasterly running line is referred to as "the Corbin Mountain Line."

The earliest known depiction of the Corbin Mountain Line is shown on map of northern Greenville County dating from 1918–1921. (Register of Deeds, Greenville County, S.C., Plat Book Y, Pages 114–18.) The map was drawn by Howard Wiswall, a civil engineer who had been retained by the Saluda Land & Lumber Company to identify

² Procedurally, the Plaintiffs filed only one motion, which was for leave to supplement the Complaint. However, summary judgment cannot be set aside with a simple Rule 15 motion. Instead, the Plaintiffs must proceed under the more exacting Rule 59(e), which authorizes the filing of motions to alter or amend judgments that have not been reduced to a written order.

³ The Plaintiffs attached a revised complaint to their motion for leave to supplement. This pleading was captioned as the Second Amended Complaint. However, immediately prior to the hearing on December 17, the Plaintiffs submitted a Third Amended Complaint for the Court's consideration. The Third Amended Complaint formed the basis of the Court's decision of December 17, 2008.



relative timber rights in mountainous portions of Greenville and Pickens Counties. Wiswall shows the Corbin Mountain Line running southeasterly from the top of Corbin Mountain at 20 degrees; however, the Wiswall map does not describe the terminal points of the Corbin Mountain Line with any evidence of or reference to monumentation.

In the 1950s, the City acquired the tract of land to the east of the Corbin Mountain Line. This tract was incorporated into and became a part of the North Saluda Reservoir. At that time, a crew working on behalf of the City attempted to mark the Reservoir's western boundary, which in this case, was the Corbin Mountain Line. The City's crew did this by leaving hacks and blazes on trees. In surveying, a tree with two marks (either hacks or blazes) indicates the course of a property line; a tree with three marks indicates a property corner. A number of trees along the Corbin Mountain Line were marked with two hacks or blazes, witnessing the location of the property boundary. One particular tree bears three markings, which indicates a property corner. This tree is located on a ridgeline approximately 2000 feet southeast of the crest of Corbin Mountain.

In 2000, The Cliffs acquired the tract of land to the west of the Corbin Mountain Line. A local surveying company, Lindsey & Associates, Inc. ("Lindsey"), was commissioned to survey properties acquired by The Cliffs. Lindsey conducted a survey of the Corbin Mountain Line, and identified the tree with three hack marks as its southern terminus. Lindsey created a plat of his survey, and identified the southern terminus of the Corbin Mountain Line as "Station 115."

Lindsey also tried to locate the northern terminus of the Corbin Mountain Line, which was believed to be the crest of Corbin Mountain. However, at some point in time, the mountain's historical crest had been graded and leveled for construction. This

(3)

affected the location of the Line in two ways. *First*, grading the crest of Corbin Mountain changed the mountain's geography and created a new crest on the mountain that differed in location from the historical crest. *Second*, the precise location of the historical crest was not preserved for future reference. Using historical evidence, Lindsey identified a location where he believed the historical crest to have been. This point was chosen as the northern terminus of the Corbin Mountain Line.

Lindsey's survey of the Corbin Mountain Line was consistent with the City's understanding of the location of its own property boundary. Lindsey and the City understood Station 115, the tree with three marks, to witness the southern terminus. Lindsey and the City also found that the northern terminus was the crest of Corbin Mountain. Finally, Lindsey's survey of the Corbin Mountain Line resulted in a line that followed the hacks and blazes left by the City's crew. Therefore, in reliance upon the undisputed location of the Corbin Mountain Line, The Cliffs began to develop its properties for residential estates.

In 2004, there was some concern that a roadway constructed by The Cliffs for the use of its residents crossed over the Corbin Mountain Line and encroached upon City property. Lindsey surveyed the alleged encroachment and found: (1) that the roadway did, in fact, encroach onto approximately 0.29 acres of City property, (Register of Deeds, Greenville County, S.C., Plat Book 1069, Page 58); and (2) that a fire tower constructed by the City appeared to encroach onto 0.04 acres of property owned by The Cliffs. At that time, neither the City nor The Cliffs took any action to exclude the other from their encroachments.

Four years later, the Plaintiffs commenced this civil action. The central cause of action alleged is for purpresture, a claim that is more broadly preserved today in the doctrine of public nuisance. Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 573, 614 S.E.2d 619, 620-21 (2005). Simply stated, a purpresture is an encroachment by private use upon public rights and easements. Lowcountry Open Land Trust v. South Carolina, 347 S.C. 96, 109, 552 S.E.2d 778, 785 n.8 (2001). Actions for purpresture are comparable to corporate derivative suits, in that citizens may bring actions on behalf of their government to enjoin unlawful, unrestrained encroachments onto public property. See, e.g., Sloan v. City of Greenville, 235 S.C. 277, 111 S.E.2d 573 (1959).

However, at about the same time that this action was commenced, the City and The Cliffs came to the following agreement: (1) that the Corbin Mountain Line would be established at the location depicted by Lindsey's 2004 survey; (2) that the 0.29 acres which encroached upon City property would be quitclaimed to The Cliffs; (3) that the 0.04 acres which encroached upon The Cliffs' property would be quitclaimed to the City; (4) that The Cliffs would reconstruct a fire tower on City property; and (5) that The Cliffs would pay the City (and parties related to the City) a certain amount in cash. The value of the consideration paid by The Cliffs to the City and related parties totaled \$210,166.44.

On April 28, 2008, the Greenville City Council issued an ordinance that authorized the foregoing agreement. (City of Greenville, S.C., Ord. No. 2008-33.) Through this ordinance, the City was to "convey its interest in fee simple to approximately 0.29 acre[s] of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc." (Id., § 2.) "The title conveyance by The City to The Cliffs at

Glassy, Inc., [was to] be in consideration of a payment from [T]he Cliffs at Glassy, Inc. . . . " (Id., § 3.) The City and The Cliffs were to "execute mutual releases of claims against one another and mutual acknowledgement of the boundary separating the properties respectively titled in their names." (Id., § 5.) "The identification of the locations of these property transfers and recognition of the mutual boundary [were to] be based upon the same plats and legal descriptions as have been agreed to" (Id., § 7.) Finally, "[t]he City Manager [was] authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for . . . upon receipt of the payment described in Section 3." (Id., § 7.)

On June 19, 2008, the City Attorney signed a deed for 0.29 acres in favor of The Cliffs, and provided the deed to the closing attorney to hold in trust. Closing occurred on June 23, 2008. On June 24, the deed was duly recorded.

II. DISPOSITION OF THE FIRST HEARING

The hearing on October 2 was held as to determine: (1) whether the City had allowed an unlawful encroachment onto public property; (2) whether the City had acted without authority in transferring property to The Cliffs; and (3) whether the City's transfer of property had been unconstitutional pursuant to Article III, § 31 of the South Carolina Constitution. Summary judgment was entered against the Plaintiffs as to each of these claims.

A. Standard of Review

Summary judgment is to "be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is



entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c). To rebut a motion for summary judgment, the non-moving party must come forward with specific facts showing the existence of genuine, triable issues, and may not rest merely upon the allegations or denials set forth in his pleading. S.C. R. Civ. P. 56(e). If the non-moving party cannot set forth specific facts showing the existence of genuine, triable issues, summary judgment is proper. Id.

B. Summary judgment was properly granted with respect to purpresture pursuant to the doctrine of mootness.

The Plaintiffs contend that The Cliffs has unlawfully encroached onto municipal property, and that the City has failed to enjoin The Cliffs from continuing in the encroachment. However, the Defendants correctly argue that the issue of purpresture is moot. On June 23, 2008, The Cliffs received a deed for 0.29 acres from the City, thereby terminating any unlawful encroachment upon municipal property. (Register of Deeds, Greenville County, S.C., Book 2329, P. 817-20)

The Court will generally refrain from deciding issues that have become moot. Sloan v. Greenville County, ___ S.C. ___, ___ S.E.2d ___, 2008 WL 4693071, *3 (Ct. App. Oct. 22, 2008); Sloan v. South Carolina Dep't of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). A case becomes moot when judgment, if rendered, will have no practical legal effect. Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

In this case, the Court was requested to declare that a purpresture existed with respect to the 0.29 acres that were the subject of the June 2008 conveyance. However, whether or not a purpresture may have existed at some point along the Corbin Mountain Line is irrelevant. The Court is concerned only with whether a purpresture continues to exist. The deed by which the City transferred property to The Cliffs removed any



condition of encroachment that may have been occurring. Once The Cliffs came into ownership of the property, it could no longer have been committing an encroachment.

In an action for purpresture, the only relief that can be obtained is an order enjoining further encroachment. However, The Cliffs now owns the very property that was the subject of encroachment. Under these circumstances, the Court will not order the rightful owner of property to quit his possession or surrender his title. Accordingly, summary judgment was properly granted with respect to the Plaintiffs action for purpresture.

C. **The June 2008 conveyance was not ultra vires and will not be rescinded.**

The Plaintiffs also claimed that the June 2008 conveyance was not properly authorized and should be set aside. However, the Defendants persuasively argued that the transaction was not ultra vires and should be sustained.

In relevant part, the enabling ordinance provides that "[t]he City Manager shall be authorized to approve and execute such deeds . . . upon receipt of the payment." (City of Greenville, S.C., Ord. No. 2008-33 ¶ 7.) On June 19, 2008, the City signed the deed regarding the property to be transferred to The Cliffs, and transferred the deed to the closing attorney to hold in escrow. On June 23, The Cliffs transferred the full amount of cash due and owing under the conveyance agreement to the escrow account of the closing attorney, whereupon the attorney made appropriate disbursements of real property and cash incident to closing. All deeds were recorded on June 24, 2008.

It is the Plaintiffs' contention that under the enabling ordinance, the City could not sign any deed until The Cliffs had rendered full performance of its obligations under the agreement. But this interpretation is inconsistent with the language of the ordinance.



The analysis begins with reference to familiar rules of statutory construction. "The cardinal rule of statutory construction is . . . to ascertain and effectuate the actual intent of the legislature," Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989), which in this case is the City Council. It is presumed that the legislature did not insert idle verbiage or superfluous language, but that each word of a legislative enactment is necessary, and that it has its own, independent meaning. Lee v. Thermal Eng'g Corp., 352 S.C. 81, 94, 572 S.E.2d 298, 305 (Ct. App. 2002).

The Plaintiffs contend that the phrase "approve and execute," as it is used in the ordinance, requires the City to withhold any act of approval or execution (such as signing a deed and tendering the deed to a closing attorney) until The Cliffs has rendered full performance. However, to accept the Plaintiffs' interpretation would require the closing between the Cliffs and The City to have occurred in a way that deviated from modern real estate practice. The process of most closings involves an escrow agent receiving consideration from the parties and making an appropriate, simultaneous distribution of cash and property. In fact, this is the way that the closing occurred between the City and The Cliffs on June 23, 2008.

The more credible interpretation is the one provided by the City and The Cliffs. The Defendants distinguish between approval and execution and argue that approval is a condition precedent to execution. For the City to approve the property conveyance, it must lend its assent, which is evidenced by all necessary signatures. Approval was complete upon acquiring all necessary signatures; however, approval and execution were complete only upon the closing agent's simultaneous distribution of cash and property on June 23, 2008.



The Court is persuaded by the Defendants' interpretation. But even if that interpretation were not correct, the violation of the ordinance cited by the Plaintiffs is technical only, and would have no practical effect upon the outcome of an otherwise legitimate transfer of property.

D. The June 2008 conveyance did not violate the South Carolina Constitution.

The Plaintiffs further contend that the property transfer violated the South Carolina Constitution, specifically Article III, § 31, and should be set aside. However, Section 31 does not prohibit municipalities from making transfers of property to private corporations.

In relevant part, Section 31 provides that "[l]ands belonging to or directly under the control of the State shall never be donated, directly or indirectly, to private corporations Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals." S.C. Const. art. III, § 31. A clear line of precedents establish that Section 31 applies only to the State of South Carolina in its capacity as sovereign proprietor. It does not touch or concern lands owned by other governmental subdivisions, such as cities and counties. E.g., McKinney v. City of Greenville, 262 S.C. 227, 244, 203 S.E.2d 680, 689 (1974) (observing that Section 31 is "inapplicable" where "no lands belonging to or under the control of the State [in its capacity as sovereign proprietor] are involved"); Bobo v. City of Spartanburg, 230 S.C. 396, ___, 96 S.E.2d 67, 70 (1956); Haesloop v. City Council, 123 S.C. 272, 278, 115 S.E. 596, 598 (1923) ("[W]e think[] the reference in this constitutional provision is to public lands belonging to and controlled by the state in its capacity as sovereign proprietor.").



In addition, the Plaintiffs have provided no evidence to suggest that The Cliffs paid anything less than fair market value for the land that was conveyed. The evidence shows that the City was paid a very reasonable amount, over two hundred thousand dollars for less than one-third of an acre in northern Greenville County.

The Court is satisfied that the transaction between the City and The Cliffs was conducted at arms' length in a manner that was both fair and reasonable. The Court is further convinced that Section 31 does not restrict the sale of municipal property to private corporations. Summary judgment was therefore properly granted with respect to the constitutional claim.

III. DISPOSITION OF THE SECOND HEARING

After the Court entered summary judgment against the Plaintiffs on October 2, the Plaintiffs filed motions to alter or amend the judgment and to amend the Complaint. This time, the Plaintiffs took the position that the City and The Cliffs had come to an incorrect agreement about the location of the entire Corbin Mountain Line. According to the Plaintiffs, the Corbin Mountain Line should have been placed at a location further west. The Plaintiffs therefore claimed that a continuing encroachment existed along the entire length of the Corbin Mountain Line and should be enjoined.

Motions to alter or amend are made through Rule 59(e). The purpose of this Rule is to provide a means through which the Court may reconsider matters that were encompassed in a decision on the merits. Arnold v. South Carolina, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) (citations omitted). However, this rule cannot be used to inject an issue into the case that was not previously before the Court, id., which the Plaintiffs appear to have attempted. To be specific, the first time that the Plaintiffs took

(11)

the position that the City and The Cliffs had come to an incorrect agreement about the location of the Corbin Mountain Line was after summary judgment had already been granted on October 2. This fact alone was more than enough reason to merit summary dismissal on December 17.

However, the Plaintiffs' motion to file an amended Complaint was denied on December 17 pursuant to an alternative procedural basis: claim preclusion. The doctrine of claim preclusion exists to bring a measure of finality to repetitive litigation. See, e.g., Garris v. Governing Bd., 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). It is generally applicable when: (1) the parties in subsequent litigation are the same as those in prior litigation; (2) the subject matter in subsequent litigation is the same as that in prior litigation; and (3) the prior litigation was resolved through a prior adjudication by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250, 452 S.E.2d 832, 833 (1994).

On October 2, the Defendants were awarded summary judgment with respect to purpresture on the procedural grounds of mootness. As previously addressed, the issue before the Court on October 2 was moot because the City had made a proper conveyance of land to The Cliffs which resolved any unlawful encroachment. The conveyance was based on the location of "the common property line," (Register of Deeds, Greenville County, S.C., Deed Book 2329, Page 817-20), which was itself a reference to Lindsey's survey of the location of the Corbin Mountain Line, (id., Plat Book 1069, Page 58). This deed, as well as the ordinance that enabled the City's conveyance, (City of Greenville, S.C., Ord. No. 2008-33), establish a mutual intent to regard Lindsey's survey of the Corbin Mountain Line as the recognized boundary between the City and The Cliffs. This



fact was necessarily decided by the Court on October 2 in determining that any claim of unlawful encroachment had been mooted.

As of the December 17 hearing, the claim remained moot. There were no new or additional facts that occurred which could have changed the legal relationship among the parties to this action. Instead, the Plaintiffs had requested that the Court review the prudence of the City's decision to establish the location of the Corbin Mountain Line according to Lindsey's survey. But to exercise such review would far exceed the scope of the Court's proper judicial function. As a matter of sound judicial policy, the Court steadfastly refrains from supplanting its judgment for that of a governing political body which has exercised lawful, discretionary authority in a manner that is both reasonable and legitimate.

The City and The Cliffs have mutually agreed upon the location of their common boundary. Therefore, the Court will not pass upon the wisdom of the City and The Cliffs in giving preference to Lindsey's survey to establish that line. Instead, the scope of the Court's review is limited to whether an unlawful encroachment exists with regard to the line that was actually agreed to.

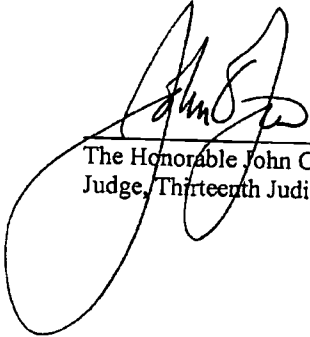
In this case, there is no unlawful encroachment. Any purpresture that may have existed was resolved by the transfer of property in June 2008. That transfer mooted the purpresture issue pending before the Court on October 2, and it remained moot on December 17. A claim that has been deemed moot remains moot, and due to the doctrine of preclusion, cannot support a subsequent action without some change in material fact.



IV. CONCLUSION

For the foregoing reasons, summary judgment was entered in favor of the Defendants on October 2, 2008. The Plaintiffs' motion for judgment on the pleadings was denied. Additionally, the Court declines the invitation to reconsider its previous decision, and shall not grant the Plaintiffs leave to amend the Complaint.

It is SO ORDERED.



The Honorable John C. Few
Judge, Thirteenth Judicial Circuit

Entered this 22 day of January 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward D. Sloan, Jr., individually and as a
citizen, resident, taxpayer and registered
elector of the State of South Carolina, and
on behalf of all others similarly situated,
Plaintiffs,

v.

Friends of the Hunley, Inc. and Warren F.
Lasch, its Chairman,
Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO. 01-CP-40-2956A

Order Granting Attorneys' Fees
and Costs under
S.C. Code Ann. § 30-4-100(b)

FILED
RICHLAND COUNTY
2001 FEB 24 AM 9:05
JANETTE W. McBRIDE
C.C.P. & G.S.

This action came before the Court on the Plaintiff's motion for an award of attorneys' fees and costs pursuant to S.C. Code Ann. § 30-4-100(b) and § 15-77-300. The Court finds that an award of fees is appropriate under S.C. Code Ann. § 30-4-100(b), and makes the following finding of facts and conclusions of law.

1. On June 29, 2001, Mr. Sloan served a Freedom of Information Act (FOIA) request upon Defendants.
2. On or about July 10, 2001, Mr. Richard Tapp, attorney for the Defendants responded, "[Friends] is not subject to being compelled to respond pursuant to [FOIA]." This response "constitute[d] the final opinion of the public body as to the public availability of the requested public record." S.C. Code Ann. § 30-4-30.
3. On July 21, 2001, Plaintiff, individually and as a citizen and resident of the State of South Carolina, filed a complaint for injunctive relief and declaratory judgment against Friends and Lasch.
4. Friends is a non-profit organization incorporated under the non-profit corporation provisions of S.C. Code Ann. § 33-31-10 through -450, dedicated to raising and

preserving the H.L. Hunley, a submarine that sank in 1864 in the service of the Confederate States of America.

5. In his First Cause of Action, Plaintiff alleges that Friends received more than 13 million dollars of public funds and, as such, is a "public body" as defined in S.C. Code Ann. § 30-4-20(a) (Complaint, par. 9).

6. The Freedom of Information Act authorizes a declaratory judgment claim.

Any citizen of the State may apply to the circuit court for either or both a *declaratory judgment and injunctive relief* to enforce the provisions of this chapter.

S.C. Code Ann. § 30-4-100 (emphasis added).

7. Defendants denied that Friends is a public body and subject to FOIA (Amended Answer, par. 13).

8. Nevertheless, Defendants produced some of the requested documents stating,

The documents are being tendered not due to any concession that [Friends] is subject to the Freedom of Information Act. Rather, they are being tendered in the spirit of cooperation.

Aug. 16, 2000 Letter from Richard Tapp with documents tendered.

9. Later, Defendants' counsel produced more documents, again stating,

As with prior tendered documents, the financial statements are being tendered not due to any concession that [Friends] is subject to the Freedom of Information Act, but rather in the spirit of cooperation and to further persuade your client [...]. On behalf of Friends, we continue to reserve all rights.

Jan. 11, 2002 Letter from Richard Tapp with documents tendered.

10. FOIA governs public bodies. Pursuant to FOIA, "[a]ny person has a right to inspect or copy any public record of a public body." S.C. Code Ann. § 30-4-30. Under FOIA, a "public body" includes "any organization, corporation, or agency

supported in whole or in part by public funds or expending public funds." S.C. Code Ann. § 30-4-20.

11. The Complaint prayer for relief requested legal and equitable relief beyond simple production of documents. Plaintiffs requested an order "declaring that defendants are subject to FOIA, and that defendants have violated FOIA." Complaint, prayer for relief, par. (A).
12. The Defendants vigorously disputed the applicability of FOIA throughout the litigation, yet Plaintiff prevailed, first by receiving the documents requested.
13. When this case was pending at the Court of Appeals, before oral argument, the Supreme Court, on its own motion pursuant to Rule 204, certified the case for review. "Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance." SCACR 204.
14. The Supreme Court selected this case as the Case of the Month.
15. On the Friday before oral argument at the Supreme Court, Defendants' counsel wrote to the Court stating that Defendants would no longer contest that FOIA applied to Friends of the Hunley.
16. The following week, when pressed by the Supreme Court during oral argument, Defendants conceded that Friends of the Hunley is a "public body" and thereby subject to FOIA. This concession came after four years of vigorous litigation disputing the issue.
17. Plaintiff is thus a prevailing party and should be awarded attorneys' fees under S.C. Code Ann. § 30-4-100(b). "[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by

modifying the defendant's behavior in a way that directly benefits the plaintiff."

Farrar v. Hobby, 506 U.S. 103, 111-12, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992).

18. "Under FOIA, [i]f a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) citing S.C. Code Ann. § 30-4-100(b) (1991).
19. "Under this section, the only prerequisite to an award of attorneys fees and costs is that the party seeking relief must prevail, in whole or in part. Where a plaintiff prevails on his request for declaratory relief, it is within the trial judge's discretion to award attorney's fees and costs to the plaintiff." *Campbell v. Marion County Hospital District*, 354 S.C. 274, 288 580 S.E.2d 163, 170 (Ct. App. 2003) citing *Cockrell v. Trustees of Dist. 20 Constituent Sch. Dist.*, 299 S.C. 155, 382 S.E.2d 923 (1989); see also *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 443 S.E.2d 574 (1994) (as § 30-4-100(b) provides attorney's fees may be awarded, judge has discretion to award fees).
20. "A party prevails in the context of a FOIA action when the action was reasonably necessary to compel the disclosure, and the action had a substantial causative effect on the delivery of the information to the plaintiff." *Scharret v. Berkley*, 249 Mich.App. 405, 414, 642 N.W.2d 685 (2002).
21. The Court also finds persuasive the rationale and decision of the Montana Supreme Court in *Havre Daily News, LLC v. City of Havre*, in which a newspaper sued to acquire public documents from the City. The City produced the documents and moved to dismiss for mootness. The Court granted the City's

motion, and the newspaper moved for fees. The City opposed the motion because judgment had been granted to the City. The Court nevertheless awarded fees.

Although Havre correctly observes that the Newspaper did not technically "prevail" in its action in the District Court, the court granted summary judgment in favor of Havre precisely because Havre mooted the case by providing the Newspaper with unredacted copies of the Reports. Absent Havre's conduct, the case would not have become moot. In mooted the case, Havre provided the Newspaper with the very relief it sought to procure through litigation; thus, the Newspaper has prevailed in substance, albeit without court intervention. Given these circumstances, we will consider the Newspaper to be the prevailing party with respect to its request for unredacted copies of the Reports. Otherwise, a similarly situated party could, after extensive litigation, at the eleventh hour, and facing imminent defeat, simply moot a case in order to dodge this fee-shifting statute.

Id., 333 Mont. 331, 351, 142 P.3d 864, 878 (2006).

22. Likewise in the case at bar, the Friends of the Hunley, "after extensive litigation, at the eleventh hour, and facing imminent defeat, [attempted to] simply moot [the] case in order to dodge this fee-shifting statute." Here the action to moot the case was not the production of documents, but conceding the applicability of FOIA during oral argument at the Supreme Court. Under these circumstances, Plaintiff is a prevailing party.

23. The Plaintiff asked the Court in the alternative, to award fees under S.C. Code Ann. § 15-77-300. Having found for Mr. Sloan under FOIA, the Court finds it unnecessary to address the recovery of fees under § 15-77-300.

24. "As a general rule, the amount of attorneys fees to be awarded in a particular case is within the discretion of the trial judge." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) citing *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) and *Litchfield*

Planatation Co. v. Georgetown County Water Sewer Dist., 314 S.C. 30, 442 S.E.2d 574 (1994) (finding that as 30-4-100(b) provides attorneys fees *may* be awarded, judge has discretion to award fees); *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003) (where one party prevails in his claim for information under FOIA, Circuit Court has discretion to award attorneys fees).

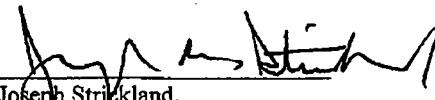
25. As to the amount, "[t]here are six factors for the trial court to consider when determining an award of attorneys fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) *citing* *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). "Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors." *Id. citing Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427.

26. First, as to the nature, extent and difficulty of the case, the court notes that the Defendants' vigorous denial that it was a "public body" and subject to FOIA was unwavering all the way until oral argument before the Supreme Court. Plaintiff was required to expend considerably more time and effort on the case because the Defendants transformed a simple FOIA request and the applicability of FOIA into complex and drawn out litigation.

27. Second, as to the time necessarily devoted to the case, this litigation has taken nearly eight years to resolve. Plaintiff was required to participate in extensive pre-trial discovery gathering evidence on the nature of the Defendants as an entity, and proving the application of FOIA. Through discovery, boxes of documents have been collected, multiple depositions have been taken and motion hearings held. Furthermore, the Plaintiff has now been through trial, to the Court of Appeals (where the case was fully briefed), before the Supreme Court (which heard oral argument), and now back to the trial court.
28. Third, as to the professional standing of counsel, Plaintiff's counsel are experienced, skilled attorneys of high professional standing in the community. Indeed, Mr. Sloan and his counsel are well known to the trial and the appellate courts of this State. *See, inter alia, South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).
29. Fourth, as to the contingency of compensation, counsel did not work on a contingency. Mr. Sloan paid these fees out of his own pocket as they accrued. He should be reimbursed for his fees and expenses.

30. Fifth, as to beneficial results obtained, only after litigation had begun did Defendants produce the documents Plaintiff originally requested under FOIA, and only after the litigation progressed to oral argument before our Supreme Court, did Defendants concede that they were indeed a public body subject to FOIA. These were the objectives the Plaintiff set out to achieve. Furthermore, Plaintiff's litigation benefits every citizen of this State by achieving the openness in government that the General Assembly envisioned when it enacted the South Carolina Freedom of Information Act.
31. Sixth, as to the customary legal fees for similar services, Plaintiff has presented Mr. Carpenter's affidavit supported by detailed time records showing that Plaintiff incurred attorneys' fees and costs totaling \$139,029.51 for this matter. Based upon a review of Mr. Carpenter's affidavit and the court's familiarity with attorney fees customarily charged in this legal community, the time spent and the hourly rates requested by Mr. Carpenter and his firm are reasonable and modest. In fact, Plaintiff's counsel has discounted their normal rates due to the public interest nature of Plaintiff's litigation.
32. The Court finds that Plaintiff's actual attorneys' fees and costs were reasonable, and that Plaintiff is entitled to a full award of attorney's fees and costs.
33. The Court is informed that during some earlier stage in the litigation, Plaintiff was awarded and received from the Defendants attorneys fees of \$500.
34. Therefore, the Court awards attorneys fees and costs of \$138,529.51.

So ordered this 23rd day of February, 2009



Joseph Strickland,
Special Circuit Judge Presiding

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23-2255
2009 MAR -4 P 2: 57
The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as taxpayers of the City of GREENVILLE CO. S.C.)
Greenville, South Carolina, and on behalf of all others similarly situated,)
Plaintiffs,)
v.)
City of Greenville, Mayor Knox H.)
White, and The Cliffs at Glassy, Inc.,)
Defendants.)

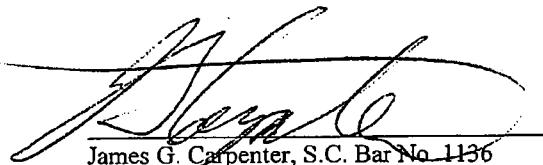
Offer of Judgment
SC Code Ann. § 15-35-400
SCRCP 68

Plaintiffs, tender this Offer of Judgment pursuant to S.C. Code Ann. § 15-35-400 and SCRCP 68 to Defendants City of Greenville and Mayor Knox H. White:

1. Plaintiffs will dismiss this action with prejudice, on grounds of mootness.
2. Plaintiffs will not further challenge the validity of either of the City's two conveyances to the Cliffs at Glassy, Inc., or the circumstances related to or arising out of either conveyance.
3. The City will pay to the Plaintiff South Carolina Public Interest Foundation \$40,000 in attorneys' fees and litigation costs pursuant to Plaintiffs' claim under S.C. Code Ann. § 15-77-300.

This Offer of Judgment is made pursuant to S.C. Code Ann. § 15-35-400 and SCRCP 68, and does not reflect any admission on the part of any party. Acceptance of this offer terminates this action and forever bars Plaintiffs from raising any further issues concerning the subject matter of this litigation.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

Defendants City of Greenville and Mayor Knox H. White accepted this Offer of Judgment this _____ day of March, 2009.

Kathleen Kempe
P.O. Box 2207
Greenville, SC 29602
Attorney for Defendants City of
Greenville and Mayor Knox H. White

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23-2255

2009 MAR -4 P 2: 57
The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as a taxpayers of the City of)
Greenville, South Carolina, and)
behalf of all others similarly situated,)
Plaintiffs,)

v.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)
Defendants.)

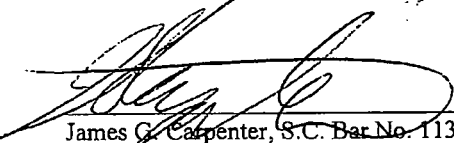
Certificate of Service

The undersigned attorney hereby certifies that he served a copy of the foregoing Offer of Judgment upon counsel for the defendants by first-class mail postage prepaid, this Wednesday, March 04, 2009, addressed as follows:

Kathleen Kempe
P.O. Box 2207
Greenville, SC 29602

Rivers Stillwell
P.O. Box 10084
Greenville, SC 29603-0084

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Plaintiffs

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
JUDGMENT IN A CIVIL CASE
2011 AUG 18 A 11:44
CASE NO: 2008CI2302253

South Carolina Public Interest Foundation vs. Greenville City Of

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.
- ☐ **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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Dismissing the Action in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to dajones@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter:

☐ DFW
☐ VMM

☐ **James G. Carpenter** The Carpenter Law Firm, PC
819 East North Street, Ste. 230 Greenville, SC
296013101

PRESIDING JUDGE -

Kathleen Gayle Kempe City of Greenville P.O. Box
224 Greenville, SC 29602
Rivers Samuel Stilwell Nelson Mullins Riley &
Seatonough, LLP P.O. Box 10084 Greenville, SC

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2003

29603
Steven E. Buckingham Nelson Mullins Riley &
Scarborough LLP P.O. Box 10084 Greenville, SC
29603-0084

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul H. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as a taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)

v.)

City of Greenville, Mayor Knox H.)
White, and The Cliffs at Glassy, Inc.,)
Defendants.)

Consent Order

1. On March 24, 2008, Plaintiffs filed a Complaint alleging that for many years the Defendant Cliffs at Glassy, Inc. ("Cliffs") had trespassed by on land owned by the Defendant City of Greenville ("City").
2. On June 19, 2008, the City by its deed conveyed its title to .29 acres of land described therein to the Defendant Cliffs. This deed was recorded June 24, 2008, Greenville County Deed Book 2329 on pages 817-20.
3. On January 30, 2009, this Court entered an Order and Judgment.
4. On February 12, 2009, Plaintiffs moved to Alter or Amend the Order and Judgment.
5. On February 13, 2009, the City by its deed quitclaimed its title to additional land described therein to the Defendant Cliffs. The Quitclaim deed was recorded February 16, 2009 at the Greenville County Deed Book 2353, on pages 1209-11.
6. The deed referenced in paragraph 5 supplemented the deed referenced in

2912

paragraph 2, ended the City's ownership of the subject land, and thereby ended the trespass on the subject land by the Defendant Cliffs

7. On February 17, 2009, Cliffs filed a Memorandum in Response to the Plaintiffs' Motion to Alter or Amend.
8. On February 25, 2009, Plaintiffs filed a Reply Memorandum.
9. When the City disposed of its ownership of the land being trespassed upon, the trespass ended, and this case became moot.
10. The Court hereby revokes its January 30, 2009 Order, and dismisses this action on the grounds of mootness.

It is SO ORDERED.

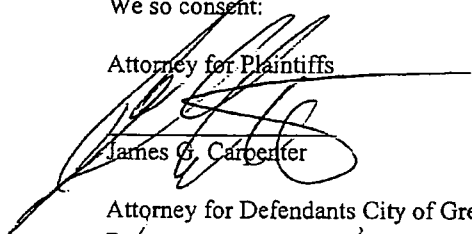
June _____, 2011



D. Garrison Hill
Circuit Judge Presiding

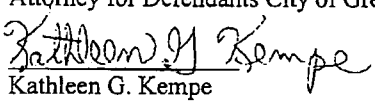
We so consent:

Attorney for Plaintiffs



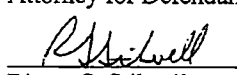
James G. Carpenter

Attorney for Defendants City of Greenville and Mayor Knox H. White



Kathleen G. Kempe

Attorney for Defendant The Cliffs at Glassy, Inc.



Rivers S. Stilwell



ATTORNEYS AND COUNSELORS AT LAW

*JAMES G. CARPENTER
james.carpenter@carpenterlawfirm.net

JENNIFER J. MILLER
jennifer.miller@carpenterlawfirm.net

L. WARREN CLAYTON, III
warren.clayton@carpenterlawfirm.net

*LICENSED IN S.C. & N.C.

RECEIVED
JUN 28 2011

June 27, 2011

The Hon. Garrison Hill
Circuit Court Judge
305 E. North St.
Greenville, SC 29601

D. GARRISON HILL
SC CIRCUIT COURT JUDGE

Re: *SCPIF v. City of Greenville*,
Civil Action No. 2008-CP-23-2255

Dear Judge Hill:

I enclose the proposed consent order disposing of the Cliffs case, signed by all counsel. If this meets your approval, please sign it and have it entered.

Respectfully submitted,

James G. Carpenter

Enclosure

CC via email, w/ enclosure: Kathleen Kempe; Rivers Stillwell

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP2302255

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

2011 NOV -7 A 11: 26

South Carolina Public Interest Foundation, et al. vs. City of Greenville, et al.

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

Plaintiff's Motions for attorney's fees pursuant to S.C. Code 15-77-300 is granted for all fees and expenses incurred prior to June 24, 2008, the date of recording of the deed of the 0.29 acres. Mr. Carpenter is requested to submit a proposed order in WORD format to ghillj@sccourts.org on or before November 18, 2011, with a copy to Ms. Kempe.

Dated at Greenville, South Carolina, this .

Court Reporter: Hollie Jenkins

Han Lin

PRESIDING JUDGE - D. GARRISON HILL

This judgment was entered on the 11/7/11, and a copy mailed first class this 11/7/11, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter, Esquire
819 East North Street, Suite 230
Greenville, SC 29601

Kathleen G. Kempe, Esquire
P.O. Box 2207
Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

ENTERED COMPUTER

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as a taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)

v.)

City of Greenville, Mayor Knox H.)
White, and The Cliffs at Glassy, Inc.,)
Defendants.)

**Order Granting
Attorneys Fees and Costs
pursuant to S.C. Code Ann. § 15-77-300**

FILED CLERK OF COURT
GREENVILLE CO. S.C.
NOV 23 2009

2009 NOV 23 P 12:44

This action came before the Court upon the motion of the Plaintiff for an award of attorneys' fees and costs pursuant to S.C. Code Ann. § 15-77-300. The Court finds that the motion should be granted. The Court makes the following findings of fact and conclusions of law:

1. On March 24, 2008, Plaintiffs filed a Complaint alleging that for many years the Defendant Cliffs at Glassy, Inc. ("Cliffs") had trespassed on land owned by the Defendant City of Greenville ("City").
2. On June 19, 2008, the City by its deed conveyed its title to .29 acres of land described therein to the Defendant Cliffs. This deed was recorded June 24, 2008, Greenville County Deed Book 2329 on pages 817-20. On June 24, 2008, the City received \$100,000 from Cliffs as part of the consideration.
3. On February 13, 2009, the City by its deed quitclaimed its title to additional land described therein to the Defendant Cliffs. The Quitclaim deed was recorded February 16, 2009 at the Greenville County Deed Book 2353, on pages 1209-11.

11/18/08

Verified

4. The deeds referenced above ended the City's ownership of the subject land, and thereby ended the trespass on the subject land by the Defendant Cliffs.
5. On May 4, 2009, Plaintiffs moved the Court pursuant to SCRCP 54, S.C. Code Ann. § 15-77-300 and § 15-37-10 through -220 for costs and attorneys fees incurred in this case from the Defendant City, and filed an affidavit of counsel.
6. A citizen must prove three elements to claim attorney's fees: (1) the citizen was the prevailing party; (2) the government entity must have acted without substantial justification; and (3) no special circumstances would have made the award of attorney's fees unjust. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002).
7. A recent ruling from the South Carolina Supreme Court modified the definition of a prevailing party. *Sloan v. Friends of the Hunley*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011). Historically, the Supreme Court had held that a prevailing party is "one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Id.*, citing *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E. 2d 709, 711 (1990) (alteration in original) (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (Alaska 1964)).
8. In contrast, in *Sloan*, the Supreme Court ruled:

Under the facts of this case, we find that *Sloan is the prevailing party* under section 30-4-100(b). When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed.

Id. (emphasis added), citing *Litchfield Plantation Co. v. Georgetown County Water &*

Order

²
114 # 298

Sewer Dist., 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions.").

9. The Court explained its ruling:

Here, Sloan's complaint prompted Friends to do what a series of FOIA letter-requests could not accomplish—produce the requested documents. Accordingly, *Sloan prevailed and is entitled to an award of attorney's fees.*

* * *

We affirm the trial court's finding that Sloan is a prevailing party under FOIA and is thus entitled to an award of his attorney's fees.

Id. (emphasis added)

10. In this ruling, the Supreme Court held for the first time that a litigant can be a prevailing party and that fees can be awarded in the absence of an actual court ruling for the plaintiff. The Court was persuaded by the Montana Supreme Court's ruling (cited in the plaintiffs' earlier motion) that a party prevailed when a public entity mooted a case by turning over the requested documents, but in doing so provided the relief sought through litigation without court intervention. *Id. citing Havre Daily News, LLC v. City of Havre*, 142 P.3d 864, 878 (Mont. 2006).
11. Similarly, the Court ruled that when a party seeks an injunction under FOIA, if the relief sought is obtained "'via . . . unilateral change in position by the agency,' he is entitled to fees under the federal FOIA statute." *Id. citing Wildlands CPR v. U.S. Forest Serv.*, 558 F. Supp. 2d 1096, 1098 (D. Mont. 2008).
12. Furthermore, the Court agreed with the courts of the State of Washington: "[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act." *Id. citing Spokane*

Order

³
4114 # 328

Research & Def. Fund v. City of Spokane, 117 P.3d 1117, 1125 (Wash. 2005) (en banc) (alteration in original) quoting *Coal. on Gov't Spying v. King County Dep't of Pub. Safety*, 801 P.2d 1009, 1013 (Wash. Ct. App. 1990).

13. In *Sloan*, the Supreme Court reasoned that Defendants would not have produced the requested documents if Mr. Sloan had not filed suit and therefore FOTH could not avoid attorneys' fees simply because no court had adjudicated its status as a "public body." Such a result would "undercut the policy behind the act." *Id.*
14. Likewise, in the case at bar, Mr. Sloan and SCPIF are prevailing parties. For several years, The Cliffs at Glassy, Inc. had encroached upon City-owned land, committing a purpresture. Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it.
15. Plaintiffs established that Defendant City had failed to repel a purpresture and remedy the situation for several years. Plaintiffs' lawsuit obtained the relief sought, "a unilateral change in position by the agency" ending the purpresture, and Plaintiffs prevailed. *Sloan v. Friends of the Hunley*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011).
16. Second, Defendant City acted without substantial justification in pressing its claims in this lawsuit. Courts look to whether the governmental defendant had a reasonable basis in law and fact. *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004). Defendant City did not have a reasonable basis in law and fact. Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it. Defendants were not "substantially justified" in pressing their claims in this lawsuit.
17. Finally, no special circumstances make an award of fees unjust. Plaintiffs funded this

Order

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MH 428

litigation with their resources. The State benefits when civic minded citizens bring such actions. "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948), quoting *Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139. The Court continued, "Citizens should be encouraged to bring suits like these." *Id.* Plaintiff's action benefitted the City by prompting \$100,000 in income from the sale.

18. Under these circumstances, the defense of these matters was not substantially justified. Plaintiffs established that Defendant City had failed to repel a purpresture, and remedy the situation for years. Accordingly, Plaintiffs meet the qualifications for an award of attorneys' fees under S.C. Code Ann. § 15-77-300.
19. Attorneys for Plaintiffs are entitled to recover costs in this matter.

In every civil action commenced or prosecuted in the courts of record in this State, except cases in chancery, the attorneys for the plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party as prescribed in §§ 15-37-20, 15-37-60, 15-37-70, and 15-37-120 to 15-37-160, and Chapter 21 of Title 8, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, ***such costs to be allowed as of course*** to the attorneys for the plaintiff or defendant and all officers of the court thereto entitled accordingly as the action may terminate and to be inserted in the judgment against the losing party. ***In cases in chancery the same rule as to costs shall prevail*** unless otherwise ordered by the court.

S.C. Code Ann. § 15-37-10 (emphasis added). Accordingly, Plaintiffs should be awarded costs.

20. As to the amount, this case presented a substantial financial risk for Plaintiffs. The City and the public benefited from this litigation. Plaintiffs' counsel attached an affidavit and

5
JH #578

Order

statements documenting attorneys' fees and costs. From the beginning of the litigation until June 24, 2008, Plaintiffs incurred \$7,287.50 in attorneys' fees and \$150.00 in costs pursuing this matter. Defendant City's actions ending the purpresture brought \$100,000 into the City coffers, benefitting the City citizens and taxpayers. Plaintiffs are entitled to an award of attorneys' fees and costs.

21. Plaintiffs' actual attorneys' fees and costs were reasonable. "There are six factors for the trial court to consider when determining an award of attorneys fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) citing *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). "Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors." *Id.* citing *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427.
22. First, as to the nature, extent and difficulty of the case, Defendant City's failure to remedy the purpresture had existed for years until Plaintiffs brought this action. Defendant City failed to have its own survey performed and failed to properly defend the real property owned by the City.
23. Second, as to the time necessarily devoted to the case, Plaintiffs spent significant time in gathering evidence and researching deeds to prove the extent of the purpresture.
24. Third, Plaintiffs' counsel are experienced attorneys of high professional standing and well known to the courts of this State. *See, inter alia, South Carolina Public Interest*

⁶
HHS #688

Order

Foundation v. Harrell, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).

25. Fourth, counsel did not work on a contingency fee, but rather Plaintiffs paid these fees as they accrued. They should be reimbursed for their fees and expenses.
26. Fifth, Plaintiffs obtained beneficial results. Defendants divested the property only after litigation had begun. Plaintiffs' litigation benefits every citizen of the City by requiring that City not tolerate encroachments.
27. Sixth, as to the customary legal fees for similar services, Plaintiffs have presented Counsel's affidavit supported by detailed time records showing that Plaintiff incurred attorneys' fees and costs. Based upon Counsel's affidavit and the court's familiarity with attorney fees customarily charged in this legal community, the time spent and the hourly rates requested by Counsel are reasonable. Counsel have discounted their normal rates due to the public interest nature of this litigation.
28. The Court finds that Plaintiffs' actual attorneys' fees and costs through June 24, 2008, the date of filing of the deed and the payment for the transfer of .29 acres from the City to the Cliffs, were reasonable and awards attorney's fees in the amount of \$7,287.50, and costs of \$150.00 for the filing fee, for a total award of \$7,437.50.

417 #748

Order

SO ORDERED, this 23rd day of Nov., 2011.

D. Garrison Hill

D. Garrison Hill
Circuit Judge Presiding

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP232255

South Carolina Public
Interest Foundation, and
Edward D. Sloan, Jr., and
Robert M. Lloyd,
individually and as
taxpayers of the City of
Greenville, SC, and on
behalf of others similarly
situated

2012 MAR 14 A 8:53
FILED-CLERK OF COURT
GREENVILLE CO S.C.
WILL B WICKENS

City of Greenville,
Mayor Knox H. White
and the Cliffs at Glassy,

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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)

☒ Statement of Judgment by the Court:

Plaintiffs move to alter or amend this Court's November 23, 2011 order granting Plaintiffs attorneys' fees and costs through June 24, 2008 to include attorneys' fees and costs incurred from June 24, 2008 through February 13, 2009. Plaintiffs' Motion to Alter or Amend is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

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.

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

Man in

Date _____

3/14/12

3/14/12

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP232255

South Carolina Public
Interest Foundation, and
Edward D. Sloan, Jr., and
Robert M. Lloyd,
individually and as
taxpayers of the City of
Greenville, SC, and on
behalf of others similarly
situated

2012 MAY 14 A H: 28

City of Greenville,
Mayor Knox H. White
and the Cliffs at Glassy,
Inc.

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.
- ☐ **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.

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

The City of Greenville's Motion to Alter or Amend is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

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.

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

Handwritten signature: *Handwritten signature*

Date _____

5/14/12

5/14/12

Rivers Shilwell

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M
SCCA SCRCF Form 4C (Revised 10/2011)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23- 2265
2008 MAR 24 P 4: 57
The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)
v.)
City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)
Defendants.)

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENSIMER

**Complaint for Injunctive Relief
(Purpresture or Encroachment)**

Plaintiffs, complaining of the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including but not limited to the protection of land owned by the State and its political subdivisions from purpresture or encroachment by a corporation.
2. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and a taxpayer of the City of Greenville.
3. Plaintiff Robert M. Lloyd is a citizen, resident, taxpayer, and registered elector of the City of Greenville.
4. Defendant City of Greenville ("City") is a political subdivision of the State of South Carolina, and its principal office is 206 S. Main St., Greenville, SC 29601.
5. Defendant Knox H. White is the City Mayor and is named in his official capacity.

6. Defendants The Cliffs at Glassy, Inc. ("Cliffs") is a corporation organized and existing under the laws of the State of South Carolina.
7. This Court has jurisdiction under the common law of South Carolina as set out in *Sloan v. City of Greenville*, 235 S.C. 277, 111 S.E.2d 573 (1959); *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and similar cases.
8. Venue is properly placed in Greenville County.
9. Plaintiffs possess standing to bring this action.
10. Upon information and belief, the City purchased and owns real property in Greenville County located at a point approximately 600 feet south of Corbin Mountain Fire Tower approximately as shown on the plat by Lindsay and Associates, Inc., dated November 5, 2004 (Exhibit A).
11. The Cliffs appropriated to its private use land that belongs to the City when it constructed a road that crosses over the City's land and allowed residents of its gated development to use the road, without permission or excuse.
12. Upon information and belief, the City had knowledge of this purpresture or encroachment on its lands as early as 2003.
13. Upon information and belief, the City has taken no action to repel this encroachment or purpresture, or to protect the City's land in any way.

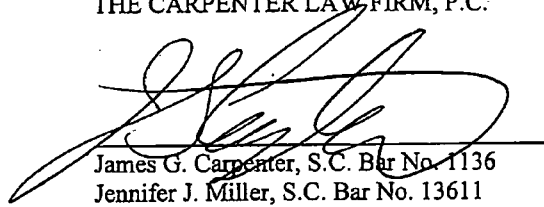
WHEREFORE, Plaintiffs pray the court for an order:

- a) As to the City:
 - a. Requiring the City immediately, and no later than May 1, 2008, to mark the property line by erecting two permanent markers on the property line

between the property of the City and the property of the Cliffs, at the ends of the purpresture or encroachment and installing a straight fence of at least one strand of wire between the said markers waist high and maintain it until July 1, 2008;

- b. Requiring the City, by May 1, to submit a written report to the Court and the Plaintiffs of its process to locate the markers and property line, including a drawing showing the markers and property line;
- b) As to the Cliffs:
 - a. Declaring that the actions of the Cliffs constitute an unlawful encroachment or purpresture upon lands owned by the City;
 - b. Requiring Cliffs immediately, and no later than June 1, 2008, to remove the said purpresture or encroachment from land owned by the City and to restore the land to its pre-purpresture condition to the maximum practicable extent;
 - c. Requiring the Cliffs, to abstain from obstructing the Plaintiffs' occasional visits to the site during normal business hours until July 1, 2008, to inspect the site and its restoration;
- c) As to both:
 - a. Awarding the Plaintiff attorneys' fees and costs of litigation pursuant to S.C. Code Ann. § 15-77-300; and
 - b. Granting such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

A large, stylized handwritten signature in black ink, likely belonging to James G. Carpenter, is written over a horizontal line.

James G. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.)
and Robert M. Lloyd, individually)
and as taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)

Plaintiffs,)

v.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

ANSWER OF DEFENDANTS
CITY OF GREENVILLE AND
KNOX H. WHITE, MAYOR

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKHAM

2008 APR 23 A 10:39

The Defendants, City of Greenville, a Political Subdivision of the State of South Carolina, and Knox H. White, Mayor, named in his official capacity, answering the Complaint of the Plaintiffs, would respectfully allege and show to the Court:

1. That the Defendants have no knowledge of the public interest as stated in Paragraph 1 for which the South Carolina Public Interest Foundation is dedicated and therefore demand strict proof thereof.

2. That the Defendants admit such allegations concerning the Plaintiffs in Paragraphs 2 and 3 of the Complaint that are matters of public records but would deny any remaining portions and demand strict proof thereof.

3. That the Defendants admit Paragraph 4 and 5 concerning the City and the Mayor but would deny that the Mayor is the proper party to this lawsuit as this lawsuit concerns the governing body of the City of Greenville which is the entire city council.

4. That the Defendants admit such allegations in Paragraph 6 concerning the Cliffs that are matters of public records but would deny any remaining portions and demand strict proof thereof.

5. That the Defendants deny that this Court has jurisdiction as stated in Paragraph 7 as this is a legislative matter not subject to civil action so long as the governing body otherwise complied with the general law of the state.

6. That the Defendants admit that venue as stated in Paragraph 8 is properly placed in Greenville County but only if the Court finds it has jurisdiction and that the Plaintiffs have standing.

7. That the Defendants deny that the Plaintiffs have standing as stated in Paragraph 9 and demand strict proof thereof.

8. That the Defendants admit such allegations concerning the City's real estate interests as shown on the referenced plat in Paragraph 10 and that are matters of public records.

9. That the Defendants have no knowledge of the allegations concerning the Defendant, Cliffs, in Paragraph 11 and would therefore demand strict proof thereof.

10. That the Defendants admit that portion of Paragraph 12 that implies some knowledge about a potential encroachment or purpresture but would deny they had all the facts at that time and would demand strict proof that they did.

11. That the Defendants would deny the allegations of Paragraph 13 that state the Defendants have taken no action. The Defendants would affirmatively state that on April 4, 2008 there was first reading of an Ordinance which contains the details of a settlement agreement with the Defendant, Cliffs. Said settlement agreement was reached after much research into deeds, surveys and land values, complex legal analysis, and negotiation. The Ordinance, which is on the agenda for April 28, 2008 for second and final reading, is attached.

12. Each and every allegation of the Plaintiffs' complaint not previously expressly admitted, modified, or explained is denied.

FOR A FIRST DEFENSE-No Controversy

13. The Defendants re-allege and incorporate herein by reference the allegations set forth above.

14. The Defendants deny that the Plaintiffs have a justiciable controversy to be determined by this Court, and that this case should therefore be dismissed..

FOR A SECOND DEFENSE-Failure to state a claim

15. The Defendants re-allege and incorporate herein by reference the allegations set forth above.

16. The Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against the Defendants and that this case should therefore be dismissed.

FOR A THIRD DEFENSE-Standing

17. The Defendants re-allege and incorporate herein by reference the allegations set forth above.

18. The Plaintiffs do not have standing to bring this lawsuit, and therefore, this case should be dismissed.

FOR A FOURTH DEFENSE-Legislative Matter

19. The Defendants re-allege and incorporate herein by reference the allegations set forth above.

20. The subject matter of this lawsuit is exclusively a legislative matter, not a ministerial function. The elected body can not be subjected to civil actions so long as they comply with the general law of the state. Plaintiffs have not alleged any violation of law.

FOR A FIFTH DEFENSE-Frivolous lawsuit

21. The Defendants re-allege and incorporate herein by reference the allegations set forth above.

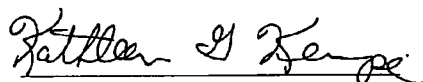
22. The Plaintiffs did file this lawsuit knowing that the relief they sought was totally within the discretion of an elected body and therefore not subject to civil action. This case should be dismissed and the Defendants' legal fees paid.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendants pray the Court for:

1. Dismissal of this lawsuit for failure to state a claim, failure to state a justiciable controversy, failure to have standing and for demanding a legislative action within the discretion of the elected body;
2. Defendants' costs and attorney fees for answering a frivolous lawsuit;
3. Such other and further relief as the Court deems just and proper.

Greenville, South Carolina

Date: April 23, 2008



Kathleen G. Kempe
(S.C. Bar No. 003382)
Attorney for the Defendants
CITY OF GREENVILLE
Post Office Box 2207
Greenville, South Carolina 29602
Telephone: (864) 467-4420
Fax: (864) 467-4424
kempek@greatergreenville.com

ORDINANCE

TO TRANSFER TITLE TO 0.29 ACRE OF PROPERTY TO THE CLIFFS AT GLASSY, INC. ON MOUNTAIN SUMMIT ROAD IN CONSIDERATION OF \$100,000 AND TO ACQUIRE CLEAR TITLE TO 0.04 ACRE AT THE TOP OF CORBIN MOUNTAIN AS A SETTLEMENT.

WHEREAS, some time ago The Cliffs at Glassy, Inc., constructed Mountain Summit Road, a private road benefiting The Cliffs at Glassy, Inc., along the boundary of the North Saluda Reservoir Property, which is titled in the name of the City of Greenville and managed by the Greenville Water System; and

WHEREAS, the road as constructed has been determined to constitute an encroachment upon the North Saluda Reservoir Property, and a fire tower acquired by the Water System to use in its management activity has been determined to encroach upon property of The Cliffs at Glassy, Inc., at the top of Corbin Mountain; these locations are referenced on a plat prepared by Lindsey and Associates and dated November 5, 2004; and

WHEREAS, The Cliffs at Glassy, Inc., has previously reached a settlement with the Water System involving the relocation of the fire tower to its present location, and the acceptance from The Cliffs at Glassy, Inc., certain access easements across property for which the Cliffs has a deed of title; and

WHEREAS, The Cliffs at Glassy, Inc., has also reached agreement with the Nature Conservancy of South Carolina for an encroachment upon its conservation easement, since amended, which had the same boundaries as the North Saluda Reservoir Property; and

WHEREAS, City Council desires to bring finality to a boundary line separating the North Saluda Reservoir Property from property for which the Cliffs at Glassy, Inc., has deeds of title; and

WHEREAS, Council desires not to disturb substantively any agreement previously reached by the Water System and the Nature Conservancy, and City Council also desires to dedicate all proceeds from the settlement being approved to an account maintained for the sole purpose of protecting municipal reservoir property to which the City of Greenville holds title.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE THAT:

SECTION 1. Title in fee simple to approximately 0.04 acre of real property at the top of Corbin Mountain shall be accepted from the Cliffs at Glassy, Inc. The property so accepted shall be incorporated into the North Saluda Reservoir property managed by the Water System to the

same extent it is otherwise authorized to maintain the remained of the North Saluda Reservoir property.

SECTION 2. The City shall convey its interest in fee simple to approximately 0.29 acre of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc.

SECTION 3. The title conveyance by The City to The Cliffs at Glassy, Inc., shall be in consideration of a payment from the Cliffs at Glassy, Inc., in the amount of one hundred thousand (\$100,000) dollars payable to the City of Greenville.

SECTION 4. The proceeds of the payment from The Cliffs at Glassy, Inc., shall be used exclusively to enhance and protect the environmental conditions of reservoir property and to establish, maintain and protect the property lines of reservoir property, titled in the name of the City of Greenville. Such actions will be exercised in deference to the Nature Conservancy and the Greenville Water System in the exercise of their rights, duties, and obligations under existing agreements and statutory authority. Council shall be authorized to act by resolution to implement such measures or to direct the City Manager or the City Attorney, or both to achieve the objectives of this Section 4.

SECTION 5. As a condition of the transfers identified in Section 1 and Section 2 of this Ordinance, the City and The Cliffs at Glassy, Inc., shall execute mutual releases of claims against one another and mutual acknowledgment of the boundary separating the properties respectively titled in their names. The parties shall covenant to act in good faith to forego future incursions, encroachments, or trespass upon the property titled in the name of the other and to notify promptly one another, as well as the Water System and the Nature Conservancy, of activity that might be or appear to be an actual or pending encroachment when they have knowledge of such circumstances.

SECTION 6. Nothing contained in this Ordinance shall be deemed to compromise or impede the agreements separately reached by the Water System and the Nature Conservancy in settlement of claims arising from the same set of circumstances giving rise to the City's settlement and release of claims.

SECTION 7. The City Manager shall be authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for, as well as other documents reasonably appropriate for the transaction, upon receipt of the payment described in Section 3 above, provided such documents assure the implementation of the terms of this Ordinance. The identification of the locations of these property transfers and recognition of the mutual boundary shall be based upon the same plats and legal descriptions as have been accepted and agreed to by the Nature Conservancy and the Water System in their separate agreements with The Cliffs at Glassy, Inc.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2008.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.)
and Robert M. Lloyd, individually)
and as taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)

Plaintiffs,)

v.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

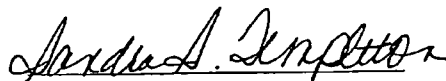
CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DATE: 2008 APR 23

2008 APR 23 A 10:39

I hereby certify that the Defendants' (City of Greenville and Knox H. White, Mayor)
ANSWER, was served on the Plaintiff through Plaintiff's attorney, James G. Carpenter, by placing
copies of the same in the United States Mail with property postage affixed this 23rd day of April
2008 and addressed as follows:

James G. Carpenter, Esq.
The Carpenter Law Firm, PC
819 E. North Street
Greenville, SC 29601



Sandra S. Templeton
Legal Assistant to Kathleen G. Kempe
Assistant City Attorney

April 23, 2008
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	
as a taxpayers of the City of	)	
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Knox H. White,	)	
Mayor, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

Reply

CLERK OF COURT
GREENVILLE CO. S.C.
WICKENS

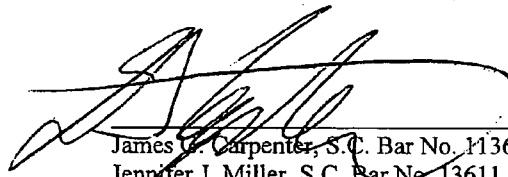
2008 APR 25 P 3:20

The City and Mayor's Fifth Defense—Frivolous Lawsuit, appears to be a counterclaim; therefore Plaintiffs Reply as follows::

1. In Reply to paragraph 21, plaintiffs incorporate their allegations in the Complaint.
2. In Reply to paragraph 22, plaintiffs deny the allegations.

WHEREFORE, Plaintiffs pray for Judgment for Plaintiffs on the Fifth Defense or counterclaim, and for Judgment as prayed for in the Complaint.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James W. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

The South Carolina Public Interest) Civil Action No. 2008-CP-23-2255
 Foundation, and Edward D. Sloan, Jr.,)
 and Robert M. Lloyd, Individually and)
 as Taxpayers of the City of Greenville,)
 South Carolina, and on behalf of Others)
 Similarly Situated,)

Plaintiffs,)

vs.)

City of Greenville, Knox H. White,)
 Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

**ANSWER & AFFIRMATIVE
 DEFENSES OF DEFENDANT
 THE CLIFFS AT GLASSY, INC.**

FILED
 IN THE
 COURT OF
 COMMON
 PLEAS
 COUNTY OF
 GREENVILLE
 SOUTH CAROLINA
 MAY 9 2009

2009 MAY -9 P 3:56

Comes now Defendant The Cliffs at Glassy, Inc. ("The Cliffs"), by and through its undersigned counsel, and respectfully submits the following Answer & Affirmative Defenses to the Complaint. Except as hereinafter specifically admitted, each and every allegation of the Complaint is denied.

FOR A FIRST DEFENSE

1. Responding to Paragraph 1, The Cliffs admits that the South Carolina Public Interest Foundation is a non-profit corporation organized and existing under the laws of the State of South Carolina. To the extent that the remaining averments may require a further response, The Cliffs is without knowledge or information sufficient to form a belief as to their truth, and so deny the same.

2. Responding to Paragraph 2, The Cliffs is without knowledge or information sufficient to form a belief as to the truth of the averments, and so denies the same.

3. Responding to Paragraph 3, The Cliffs is without knowledge or information sufficient to form a belief as to the truth of the averments, and so denies the same.

4. Paragraph 4 is admitted.

5. Responding to Paragraph 5, The Cliffs admits that Knox H. White is the Mayor of the City of Greenville. To the extent that the averments contained herein are stated in the form of a legal conclusion, no response is required. To the extent that the remaining averments may require a further response, the same are denied.

6. Paragraph 6 is admitted.

7. Responding to Paragraph 7, to the extent that the averments contained therein are stated in the form of a legal conclusion, no response is required. To the extent that the remaining averments may require a further response, the same are denied.

8. Responding to Paragraph 8, and assuming for the purposes of this response only that jurisdiction is otherwise proper, The Cliffs would admit that venue is proper in the Circuit Court of Greenville County.

9. Paragraph 9 is denied.

10. Responding to Paragraph 10, The Cliffs admits that the property in question is titled in the name of the City of Greenville. To the extent that the averments

of this Paragraph may require a further response, the Cliffs is without knowledge or information sufficient to form a belief as to their truth, and so denies the same.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied.

14. The Paragraph beginning with "WHEREFORE," and including all subparts, is denied.

FOR A SECOND DEFENSE
(Lack of Standing)

15. The responses set forth to the preceding averments are incorporated by reference to the extent they are not inconsistent herewith.

16. Pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, the Complaint must be dismissed as to some or all the Plaintiffs because of a lack of standing to sue.

FOR A THIRD DEFENSE
(Failure to State a Claim)

17. The preceding averments and responses are incorporated by reference to the extent they are not inconsistent herewith.

18. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint must be dismissed because it fails to state facts sufficient to constitute a cause of action.

FOR A FOURTH DEFENSE
(Authorized Use)

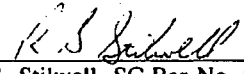
19. The preceding averments and responses are incorporated by reference to the extent they are not inconsistent herewith.

20. To the extent that The Cliffs may have used property owned by the City of Greenville, such use was authorized or consistent with the City's permission, express or implied.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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Greenville, SC 29601
(864) 250-2300

Attorneys for Defendant The Cliffs at Glassy, Inc.

Greenville, South Carolina

May 9, 2008

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

The South Carolina Public Interest Foundation, and
Edward D. Sloan, Jr., and Robert M. Lloyd,
individually and as a taxpayers of the City of
Greenville, South Carolina, and on behalf of all
others similarly situated,

☒ Plaintiff

CASE NO.

2008-CP-23-2255

v.

City Of Greenville, Knox H. White, Mayor, And The
Cliffs At Glassy, Inc.,

☐ Defendant.

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
JUL 13 2008
J. WIDENSIEMER

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

James G. Carpenter, Bar No. 1136

Address:

819 E. North St. Greenville, SC 29601

phone: 235-1269 fax: 331-3083

e-mail: james.carpenter@carpenterlawfirm.net

other:

Defendant's Attorney:

Kathleen Kempe, Bar No. 003382

Address:

PO Box 2207, Greenville, SC 29602

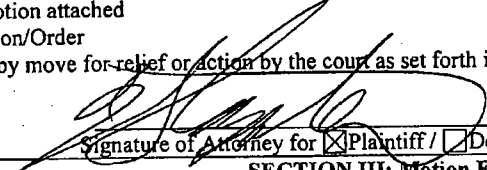
phone: 467-4420 fax: 467-4424

e-mail: kempek@greatergreenville.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Judgment on the Pleadings	
Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant	May 12, 2008 Date submitted
SECTION III: Motion Fee	
☒ PAID - AMOUNT: _____ ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____	
Collected by: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
2008 MAY 12 P 4:49 CIVIL ACTION NO. 08-CP-23-2255
The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as taxpayers of the City of Greenville, S.C.)
Greenville, South Carolina; and on)
behalf of all others similarly situated,)
Plaintiffs,)
v.)
City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)
Defendants.)

Motion for Partial Judgment on the Pleadings Against the City and Mayor

Plaintiffs move the Court for Partial Judgment on the Pleadings, as against the City of Greenville and Knox H. White, Mayor, and would show unto the Court:

1. Plaintiffs filed suit on March 24, 2008, and Defendants City of Greenville and Knox H. White, Mayor, filed an Answer on April 23, 2008.
2. From the Complaint and the City's Answer, the following facts are alleged and not in material dispute.
3. South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including but not limited to the protection of land owned by the State and its political subdivisions from purpresture or encroachment by a corporation. Complaint, par. 1; Answer, par. 1.
4. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and a taxpayer of the City of Greenville. Complaint, par. 2; Answer, par. 2.

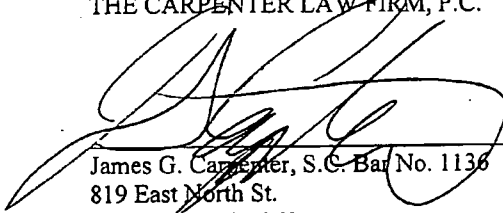
5. Plaintiff Robert M. Lloyd is a citizen, resident, taxpayer, and registered elector of the City of Greenville. Complaint, par. 3; Answer, par. 2
6. Defendant City of Greenville ("City") is a political subdivision of the State of South Carolina, and its principal office is 206 S. Main St., Greenville, SC 29601. Complaint, par. 4; Answer, par. 3
7. Defendant Knox H. White is the City Mayor and is named in his official capacity. Complaint, par. 5; Answer, par. 3
8. Defendants The Cliffs at Glassy, Inc. ("Cliffs") is a corporation organized and existing under the laws of the State of South Carolina. Complaint, par. 6; Answer, par. 4.
9. Venue is properly placed in Greenville County. Complaint, par. 8; Answer, par. 6.
10. The City purchased and owns real property in Greenville County located at a point approximately 600 feet south of Corbin Mountain Fire Tower approximately as shown on the plat by Lindsay and Associates, Inc., dated November 5, 2004 (Exhibit A). Complaint, par. 10; Answer, par. 8.
11. The Cliffs appropriated to its private use land that belongs to the City when it constructed a road that crosses over the City's land and allowed residents of its gated development to use the road, without permission or excuse. Complaint, par. 11; Answer, par. 9.
12. The City had knowledge of this purpresture or encroachment on its lands. Complaint, par. 12; Answer, par. 10
13. The City has taken no action to repel this encroachment or purpresture, or to

protect the City's land, except to have first and second readings of an ordinance, as attached to the Answer. .

WHEREFORE, Plaintiffs pray the court for Partial Judgment on the Pleadings, as to the City and the Mayor:

- a) Requiring the City immediately to mark the property line by erecting two permanent markers on the property line between the property of the City and the property of the Cliffs at the ends of the purpresture or encroachment and installing a straight fence of at least one strand of wire between the said markers waist high and maintain it until July 1, 2008;
- b) Requiring the City immediately to submit a written report to the Court and the Plaintiffs of its process to locate the markers and property line, including a drawing showing the markers and property line;
- c) Awarding the Plaintiff attorneys' fees and costs of litigation pursuant to S.C. Code Ann. § 15-77-300; and
- d) Granting such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	
	)	2008 SEP -8 P 1:54
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	
as a taxpayers of the City of	)	
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

**Motion for Leave to File
Supplemental Complaint
SCRCP 15(d)**

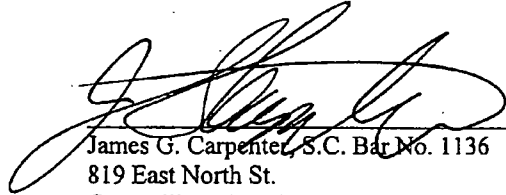
Plaintiffs, by their undersigned attorney, move the Court, pursuant to SCRCP 15(d), for leave to file the Supplemental Complaint, attached hereto, and in support of the motion would show unto the Court the following:

1. Plaintiffs filed suit on March 24, 2008, and Defendants City of Greenville and Knox H. White, Mayor, (collectively "City") filed an Answer on April 23, 2008.
2. On April 28, 2008, City enacted Ordinance 2008-33 (**Exhibit A**) authorizing the City to convey its title to certain land to The Cliffs at Glassy, Inc. ("Cliffs").
3. **Exhibit A, Section 7** required that City receive consideration of \$100,000 cash at or prior to its execution of the deed.
4. On June 19, 2008, City executed a deed of conveyance (**Exhibit B**).
5. On June 24, City received \$100,000 from Cliffs as part of the consideration for the conveyance.
6. On June 24, 2008, **Exhibit B** was recorded in Book DE2329, Pages 817-820.

7. City did not receive \$100,000 cash from Cliffs prior to or contemporaneously with City's execution and conveyance of **Exhibit B**, as required by **Exhibit A, Section 7**.
8. The Grantee of **Exhibit B** was a corporation.
9. The conveyance of this land to a corporation is a significant event occurring after the filing of the Complaint.
10. South Carolina Constitution, Article III, Section 31 (**Exhibit C**), provides, "Lands belonging to or under the control of the State shall never be donated, directly or indirectly to private corporations Nor shall such land be sold to corporations . . . for a less price than that for which it can be sold to individuals."
11. The Constitution, Article III, Section 31 imposed a duty on City to ascertain whether an individual would have given more consideration to City for its title to the land conveyed by **Exhibit B** than did Cliffs.
12. Upon information and belief, City failed to ascertain whether an individual would have paid more to City for its title to the land conveyed by **Exhibit B** than did Cliffs.

WHEREFORE, Plaintiffs pray the court for leave to file the Supplemental Complaint attached hereto.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

James G. Carpenter, S.C. Bar No. 1136
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Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	2008 SEP -8 P 1:54
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	FILED-CLERK OF COURT
as a taxpayers of the City of	)	GREENVILLE CO. S.C.
Greenville, South Carolina, and on	)	PAUL B. WICKENSIMER
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

**Supplemental Complaint for
Declaratory and Injunctive Relief**

Plaintiffs, complaining of the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including but not limited to the protection of land owned by the State and its political subdivisions from purpresture or encroachment by a corporation, and assuring that State and local governments comply with the law in relation to publicly owned property.
2. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, and a taxpayer of the City of Greenville.
3. Plaintiff Robert M. Lloyd is a citizen, resident, taxpayer, and registered elector of the City of Greenville.
4. Defendant City of Greenville ("City") is a political subdivision of the State of South Carolina, and its principal office is 206 S. Main St., Greenville, SC 29601.

5. Defendant Knox H. White is the City Mayor and is named in his official capacity.
6. Defendant The Cliffs at Glassy, Inc. ("Cliffs") is a corporation organized and existing under the laws of the State of South Carolina, and is named as a Defendant because its interests may be affected by this litigation.
7. This Court has jurisdiction under the common law of South Carolina as set out in *Sloan v. City of Greenville*, 235 S.C. 277, 111 S.E.2d 573 (1959); *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and similar cases.
8. Venue is properly placed in Greenville County.
9. Plaintiffs possess standing to bring this action.
10. Upon information and belief, the City owns real property in Greenville County located approximately 600 feet south of Corbin Mountain Fire Tower approximately as shown on the plat by Lindsay & Associates, Inc., dated August 8, 2000, and filed in the Register of Deeds office August 21, 2000, file no. 00-255, also designated 42-L-49.

FIRST CAUSE OF ACTION

11. Plaintiffs incorporate by reference all the foregoing paragraphs.
12. Cliffs appropriated to its private use land that belonged to City without permission or excuse when it constructed a road that crossed over City's land and allowed residents of its gated development to use the road.
13. Upon information and belief, City had knowledge of this purpresture or encroachment on its lands as early as 2003.

14. Upon information and belief, for several years, City took no action to repel this encroachment or purpresture or to protect City's land in any way, and thereby violated its duty to the citizens and taxpayers of City.

SECOND CAUSE OF ACTION

15. Plaintiffs incorporate by reference all the foregoing paragraphs.
16. Plaintiffs filed suit complaining of this purpresture on March 24, 2008, Defendants City and Mayor White filed an Answer on April 23, 2008.
17. On April 28, 2008, the City enacted Ordinance 2008-33 (**Exhibit A**) authorizing the City to convey its title to the land in question to Cliffs.
18. **Exhibit A, Section 7** required that the City receive consideration of \$100,000 cash at or prior to its execution of the conveyance.
19. On June 19, 2008, City executed a deed of conveyance (**Exhibit B**).
20. On June 24, 2008, **Exhibit B** was recorded in Book DE 2329, Pages 817-820.
21. On June 24, 2008, City received \$100,000 from Cliffs as part of the consideration.
22. Upon information and belief, City did not receive \$100,000 cash from the grantee prior to or contemporaneously with City's execution and conveyance of **Exhibit B**, as required by **Exhibit A**.

THIRD CAUSE OF ACTION

23. Plaintiffs incorporated by reference all the foregoing paragraphs.
24. South Carolina Constitution, Article III, Section 31 (**Exhibit C**), provides, "Lands belonging to or under the control of the State shall never be donated, directly or

indirectly to private corporations Nor shall such land be sold to corporations . . . for a less price than that for which it can be sold to individuals.”

25. Cliffs, the Grantee of **Exhibit B**, is a corporation.
26. The Constitution, Article III, Section 31 imposes a duty on the City to ascertain whether an individual would have paid more to City for its title to the land conveyed by **Exhibit B** than did Cliffs.
27. Upon information and belief, City failed to ascertain whether an individual would have paid more to City for its title to the land conveyed by **Exhibit B** than did Cliffs.

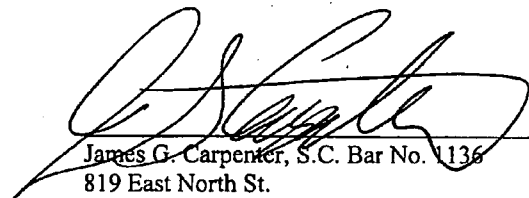
WHEREFORE, Plaintiffs pray the Court for a judgment and order:

- a) Declaring that City, by failing to eject the encroachment for at least seven years, failed to fulfill its duties to the Plaintiffs, the citizens and taxpayers of City.
- b) Declaring that City did not receive \$100,000 cash from the grantee prior to or contemporaneously with City’s execution and conveyance of **Exhibit B**, as required by **Exhibit A, Section 7**.
- c) Declaring that the Constitution, Article III, Section 31 imposed a duty on City to ascertain whether an individual would have paid more to City for its title to the land conveyed by **Exhibit B** than did the grantee, and that City failed to fulfill that duty.
- d) Declaring that **Exhibit B** is invalid.
- e) Enjoining the City immediately, and no later than November 1, 2008, to mark the property line by erecting two permanent markers on the property line between the property of City and the property of Cliffs, at the ends of the purpresture or

encroachment and installing a straight fence of at least one strand of wire between the said markers waist high and maintain it perpetually;

- f) Enjoining City to submit a written report to the Court and Plaintiffs of its process to locate the markers and property line, including a drawing showing the markers and property line;
- g) Awarding Plaintiff attorneys' fees and costs of litigation pursuant to S.C. Code Ann. § 15-77-300; and
- h) Granting such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



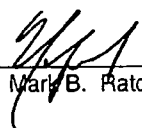
James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr. and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of all others similarly situated,	)	2008 SEP 30 CASE NUMBER: 2008-CP-23-2255
	)	
	)	
	)	FILED CLERK OF COURT
	)	GREENVILLE CO. S.C.
	)	PAUL P. WICKENSIMER
Plaintiffs,	)	Affidavit of Mark B. Ratchford
	)	
v.	)	
	)	
City of Greenville, Knox H. White, Mayor, and The Cliffs at Glassy, Inc.,	)	
	)	
Defendants.	)	

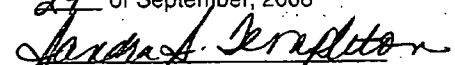
PERSONALLY appeared before me, the undersigned, who, being first duly sworn, deposes and states to the Court as follows:

1. I am Mark B. Ratchford, a S.C. certified General Real Estate Appraiser.
2. I was retained by the City of Greenville to help evaluate the valuation impact of an encroachment of a road on property owned by the City of Greenville.
3. It was a challenging valuation because of the lack of comparable situations.
4. I did not prepare a written report and the conclusion was made that the encroachment did not have a measurable adverse impact on the remaining portion of the property.

SO SAITH THE AFFIANT.


Mark B. Ratchford

SWORN to before me this
29 of September, 2008


Notary Public for South Carolina
My commission expires 8-10-2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23-2255
2008 OCT 28 P 4:47
The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as taxpayers of the City of GREENVILLE CO. S.C.)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)
v.)
City of Greenville, Mayor Knox H.)
White, and The Cliffs at Glassy, Inc.,)
Defendants.)

**Motion for Leave to File
Second Supplemental Complaint
SCRCP 15(d)**

Plaintiffs, by their undersigned attorney, move the Court, pursuant to SCRCP 15(d), for leave to file the Second Supplemental Complaint, attached hereto, and in support of the motion would show unto the Court the following:

1. Upon information and belief, the City owns real property in Greenville County, the western boundary of which begins at the crest of Corbin Mountain running south 20 degrees east for 31.00 chains or 2,046 feet ("the Wiswall Line"), as shown on a plat by Howard Wiswall, C.E. dated 1918 through 1921, and Recorded in the Greenville County RMC office in Plat Book Y, at pages 114 through 118 ("the Wiswall Plat").
2. By deed filed December 20, 1988, in Deed Book 1347, Page 607, Timber-Lands, Inc. conveyed to Gap Creek L.P. the parcel to the west of the Wiswall Line, by specific reference to the Wiswall Plat, being denominated Parcel 25, on page 15 of the deed, recorded in Deed Book 1347, Page 621.
3. Dan E. Collins, RLS, surveyed the same boundary line for Timber-Lands, Inc.

- and issued a drawing dated February 15, 1960, which used the bearing of the Wiswall Line, beginning at the crest of Corbin Mountain, running south, 20 degrees east, 1,896 feet, to an iron pipe, Station 114, and continuing to a rock, 3X.
4. Upon information and belief, Cliffs now owns and/or manages the sale of the Gap Creek L.P land lying to the west of the Wiswall Line.
 5. In or around the year 2000, Cliffs engaged Lindsey & Associates, Inc. to prepare plats of its property.
 6. A plat dated June 14, 2000, and filed in the Register of Deeds office August 21, 2000, designated 42-S-38 shows a line ("the June, 2000 Lindsey Line"), beginning at the crest of Corbin Mountain, running south 25 degrees, 30 minutes, 30 seconds, which line lies east of the Wiswall Line.
 7. Another Lindsey Plat dated August 8, 2000, and filed in the Register of Deeds office August 21, 2000, file no. 00-255, and designated 42-L-49 shows a line ("the August, 2000 Lindsey Line") beginning at the crest of Corbin Mountain running south 25 degrees, 39 minutes, 10 seconds, which line lies east of the Wiswall Line, and east of the June, 2000 Lindsey Line.
 8. Another Lindsey Plat dated October 9, 2001, and filed in the Register of Deeds office December 28, 2001, and designated 45-A-93 shows a line ("the October, 2001 Lindsey Line") beginning at a point on Corbin Mountain running south 24 degrees, 49 minutes, 51 seconds, which line lies east of the Wiswall Line.
 9. Another Lindsey Plat dated November 5, 2004, a portion of which is recorded in the Register of Deeds office at Plat Book 1069, Page 58, **Exhibit D** shows a line ("the November, 2004 Lindsey Line") beginning at a point on or near the top of

Corbin Mountain, running south 22 degrees, 24 minutes, 20 seconds, approximately 1,600 feet, and continuing south 15 degrees, 47 minutes, 40 seconds east 77.46 feet to a point known as Station 115, which line lies east of the Wiswall Line.

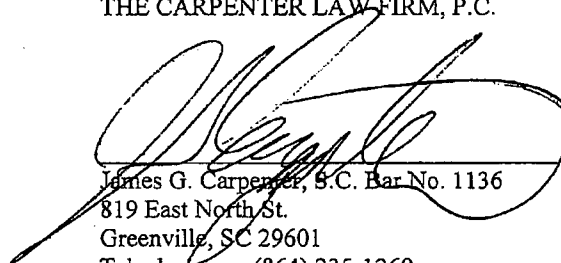
10. Station 115 lies approximately 200 feet northeast of Station 114, referenced in the Collins drawing, which purports to be on the Wiswall Line.
11. Cliffs appropriated City land without permission or excuse when it constructed Mountain Summit Road that encroaches approximately 60 feet in addition to the .29 acres conveyed by **Exhibit A**, on land owned by the City for the use of the residents of its gated development.
12. Plaintiffs filed suit complaining of this purpresture on March 24, 2008.
13. Defendants City and Mayor White filed an Answer on April 23, 2008.
14. On April 28, 2008, the City enacted Ordinance 2008-33, **Exhibit A**, authorizing the City to convey title to .29 acres of the land in question to Cliffs.
15. On June 19, 2008, the City executed a deed of conveyance, **Exhibit B**, which relies on the November 5, 2004 Lindsey Plat, **Exhibit D**.
16. The various Lindsey plats show approximately 3 acres of land as owned by Cliffs that the Wiswall Line and the Collins drawing show to be owned by the City.
17. To the knowledge of the Plaintiffs, the City has not commissioned a survey of this property line.
18. On or about October 6, the Court granted Plaintiffs permission to file their Supplemental Complaint, and after a hearing, indicated its intent to dismiss the Plaintiffs' Complaint and Supplemental Complaint.

19. At the hearing, Plaintiffs showed the Court and the Defendants Lindsey plats 42-S-38 and 42-L-49, which place the property line well west of the .29 acre parcel, an apparent error in the Lindsey surveys, and suggested that the .29 acres conveyed was less than the entire purpresture.
20. The Court ruled that Plaintiffs could have the property surveyed, and if sufficient cause existed, move the Court again to address this issue.
21. Plaintiffs engaged Freeland & Associates, Inc. to survey the property.
22. Freeland's Surveyor's Report dated October 28, 2008, **Exhibit E**, indicates that the line between land owned by the City and Cliffs is the Wiswall Line.
23. Thus, Mountain Summit Road continues to be an encroachment or purpresture, adjacent to and west of the .29 acres conveyed by **Exhibit B**.
24. Cliffs has also paved a spur road off High Vista Way and sold three residential lots (9, 10, and 11) that are partly on land owned by the City.
25. The eastern boundary for the three residential lots is, upon information and belief, the August, 2000 Lindsey Line, which lies east of the Wiswall Line.
26. The names and addresses of the record owners of the three encroaching lots are:
 - a. Craig A. Cunningham and Barbara S. Cunningham, 12115 Meadows Lane, Alpharetta, GA 30005 (lot 9);
 - b. Charles S. Rockel and Ruth A. Rockel, 4303 Smith Road, Cincinnati, OH 45212 (lot 10); and
 - c. MK Stallings, LLC, 241 Lakeview Dr., Sanford, NC 27332 (lot 11).
27. This boundary dispute and purpresture may also affect the interests of any lien holders on these three encroaching lots.

28. In 1993, the City granted a conservation easement over this disputed real estate to The Nature Conservancy, 27 Cleveland St., Greenville, SC 29601.
29. By its construction of Mountain Summit Road and the spur road, by purporting to sell three residential lots that are in part owned by the City, and in other ways, Cliffs has also violated the easement of the Nature Conservancy.

WHEREFORE, Plaintiffs pray the Court for leave to file the Second Supplemental Complaint attached hereto.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	
as a taxpayers of the City of	)	
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	Second Supplemental Complaint for
Plaintiffs,	)	Declaratory and Injunctive Relief
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

Plaintiffs, complaining of the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including but not limited to the protection of land owned by the State and its political subdivisions from purpresture or encroachment, and assuring that State and local governments comply with the law in relation to publicly owned property.
2. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, and a taxpayer of the City of Greenville.
3. Plaintiff Robert M. Lloyd is a citizen, resident, taxpayer, and registered elector of the City of Greenville.
4. Defendant City of Greenville ("City") is a political subdivision of the State of South Carolina, and its principal office is 206 S. Main St., Greenville, SC 29601.

5. Defendant Knox H. White is the City Mayor and is named in his official capacity.
6. Defendant The Cliffs at Glassy, Inc. ("Cliffs") is a corporation organized and existing under the laws of the State of South Carolina, and is named as a Defendant because its interests may be affected by this litigation.
7. This Court has jurisdiction under the common law of South Carolina as set out in *Sloan v. City of Greenville*, 235 S.C. 277, 111 S.E.2d 573 (1959); *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and similar cases.
8. Venue is properly placed in Greenville County.
9. Plaintiffs possess standing to bring this action.
10. Upon information and belief, the City owns real property in Greenville County, the western boundary of which begins at the crest of Corbin Mountain running south 20 degrees east for 31.00 chains or 2,046 feet ("the Wiswall Line"), as shown on a plat by Howard Wiswall, C.E. dated 1918 through 1921, and Recorded in the Greenville County RMC office in Plat Book Y, at pages 114 through 118 ("the Wiswall Plat").
11. By deed filed December 20, 1988, in Deed Book 1347, Page 607, Timber-Lands, Inc. conveyed to Gap Creek L.P. the parcel to the west of the Wiswall Line, by specific reference to the Wiswall Plat, being denominated Parcel 25, on page 15 of the deed, recorded in Deed Book 1347, Page 621.
12. Dan E. Collins, RLS, surveyed the same boundary line for Timber-Lands, Inc. and issued a drawing dated February 15, 1960, which used the bearing of the Wiswall Line, beginning at the crest of Corbin Mountain, running south, 20

degrees east, 1,896 feet, to an iron pipe, Station 114, and continuing to a rock.

13. Upon information and belief, Cliffs now owns and/or manages the sale of the Gap Creek L.P land lying to the west of the Wiswall Line.
14. In or around the year 2000, Cliffs engaged Lindsey & Associates, Inc. to prepare plats of its property.
15. A plat dated June 14, 2000, and filed in the Register of Deeds office August 21, 2000, designated 42-S-38 shows a line ("the June, 2000 Lindsey Line"), beginning at the crest of Corbin Mountain, running south 25 degrees, 30 minutes, 30 seconds, which line lies east of the Wiswall Line.
16. Another Lindsey Plat dated August 8, 2000, and filed in the Register of Deeds office August 21, 2000, file no. 00-255, and designated 42-L-49 shows a line ("the August, 2000 Lindsey Line") beginning at the crest of Corbin Mountain running south 25 degrees, 39 minutes, 10 seconds, which line lies east of the Wiswall Line, and east of the June, 2000 Lindsey Line.
17. Another Lindsey Plat dated October 9, 2001, and filed in the Register of Deeds office December 28, 2001, and designated 45-A-93 shows a line ("the October, 2001 Lindsey Line") beginning at a point on Corbin Mountain running south 24 degrees, 49 minutes, 51 seconds, which line lies east of the Wiswall Line.
18. Another Lindsey Plat dated November 5, 2004, a portion of which is recorded in the Register of Deeds office at Plat Book 1069, Page 58, **Exhibit D**, shows a line ("the November, 2004 Lindsey Line") beginning at a point on or near the top of Corbin Mountain, running south 22 degrees, 24 minutes, 20 seconds, approximately 1,600 feet, and continuing south 15 degrees, 47 minutes, 40

seconds east 77.46 feet to a point known as Station 115, which line lies east of the Wiswall Line.

19. Station 115 lies approximately 200 feet northeast of Station 114, referenced in the Collins drawing, which purports to be on the Wiswall Line.
20. The various Lindsey plats show approximately 3 acres of land as owned by Cliffs that the Wiswall Line and the Collins drawing show to be owned by the City.
21. Cliffs appropriated to its private use land that belonged to the City without permission or excuse when it constructed Mountain Summit Road that encroaches approximately 60 feet in addition to the .29 acres conveyed by **Exhibit A**, on land owned by the City for the use of the residents of its gated development.
22. Upon information and belief, the City had knowledge of this purpresture or encroachment on its lands as early as 2003.
23. To the knowledge of the Plaintiffs, the City has not commissioned a survey of this property line.
24. Plaintiffs filed suit complaining of this purpresture on March 24, 2008.
25. Defendants City and Mayor White filed an Answer on April 23, 2008.
26. On April 28, 2008, the City enacted Ordinance 2008-33, **Exhibit A**, authorizing the City to convey its title to .29 acres of the land in question to Cliffs.
27. The deed conveying the .29 acres to Cliffs relies on **Exhibit D**.

FIRST CAUSE OF ACTION

28. Plaintiffs incorporate by reference all the foregoing paragraphs.
29. For several years, the City took no action to repel this encroachment or

purpresture or to protect the City's land, thereby violating its duty to the citizens and taxpayers of the City.

SECOND CAUSE OF ACTION

30. Plaintiffs incorporate by reference all the foregoing paragraphs.
31. **Exhibit A, Section 7** required that the City receive consideration of \$100,000 cash at or prior to its execution of the conveyance.
32. On June 19, 2008, the City executed a deed of conveyance, **Exhibit B**, which was recorded in Book DE 2329, Pages 817-820, on June 24, 2008
33. On June 24, 2008, the City received \$100,000 from Cliffs as part of the consideration.
34. Upon information and belief, the City did not receive \$100,000 cash from the grantee prior to or contemporaneously with the City's execution of **Exhibit B**, as required by **Exhibit A, Section 7**.

THIRD CAUSE OF ACTION

35. Plaintiffs incorporated by reference all the foregoing paragraphs.
36. South Carolina Constitution, Article III, Section 31, **Exhibit C**, provides, "Lands belonging to or under the control of the State shall never be donated, directly or indirectly to private corporations Nor shall such land be sold to corporations . . . for a less price than that for which it can be sold to individuals."
37. Cliffs, the Grantee of **Exhibit B**, is a corporation.
38. The Constitution, Article III, Section 31 imposes a duty on the City to ascertain whether an individual would have paid more to the City for its title to the land

conveyed by **Exhibit B** than did Cliffs.

39. Upon information and belief, the City failed to ascertain whether an individual would have paid more for the .29 acres conveyed by **Exhibit B** than did Cliffs.

FOURTH CAUSE OF ACTION

40. On or about October 6, the Court allowed the filing of the Plaintiffs' Supplemental Complaint, and after hearing, indicated its intent to dismiss the Plaintiffs' Complaint and Supplemental Complaint.
41. Plaintiffs showed the Court and the Defendants Lindsey plats 42-S-38 and 42-L-49, showing the property line well west of the .29 acre parcel, an apparent error in the Lindsey surveys, and suggested that the .29 acres conveyed was less than the entire purpresture.
42. The Court ruled that Plaintiffs could have the property surveyed, and if sufficient cause existed, move the Court again to address this issue.
43. Plaintiffs engaged Freeland & Associates, Inc. to survey the property.
44. Freeland's Surveyor's Report dated October 28, 2008, **Exhibit D**, indicates that the line between land owned by the City and Cliffs is the Wiswall Line.
45. Thus, Cliffs' construction of Mountain Summit Road is a continuing encroachment, adjacent to and west of the .29 acres conveyed by **Exhibit B**.
46. Cliffs has paved a spur road off High Vista Way and sold three residential lots that are partly on land owned by the City.
47. The eastern boundary for these lots is, upon information and belief, the August, 2000 Lindsey Line, which lies east of the Wiswall Line.

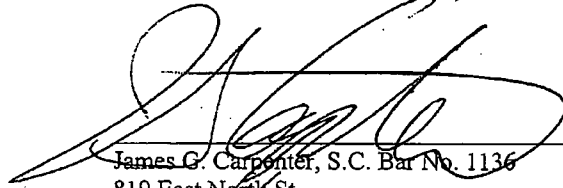
48. The names and addresses of the record owners of the three encroaching lots are:
- a. Craig A. Cunningham and Barbara S. Cunningham, 12115 Meadows Lane, Alpharetta, GA 30005 (lot 9);
 - b. Charles S. Rockel and Ruth A. Rockel, 4303 Smith Road, Cincinnati, OH 45212 (lot 10); and
 - c. MK Stallings, LLC, 241 Lakeview Dr., Sanford, NC 27332 (lot 11).
49. The interests of any lien holders on these three encroaching lots may also be affected by this boundary dispute and purpresture.
50. In 1993, the City granted a conservation easement over this real estate to The Nature Conservancy, 27 Cleveland St., Greenville, SC 29601.
51. By its construction of Mountain Summit Road and the spur road, its sales of three lots owned in part by the City, and in other ways, Cliffs has violated the easement of the Nature Conservancy on the approximately 3 acres.

WHEREFORE, Plaintiffs pray the Court for a judgment and order:

- a) Declaring that the City, by failing to eject the encroachment and purpresture failed to fulfill its duties to the Plaintiffs, the citizens and taxpayers of the City.
- b) Declaring that the City did not receive \$100,000 cash from the grantee prior to or contemporaneously with the City's execution of **Exhibit B**, as required by **Exhibit A, Section 7**.
- c) Declaring that the Constitution, Article III, Section 31 imposed a duty on the City to ascertain whether an individual would have paid more to the City for its title to the land conveyed by **Exhibit B** than did the grantee, and that the City failed to fulfill that duty.

- d) Declaring that **Exhibit B** is invalid.
- e) Enjoining the City immediately, and no later than January 1, 2009, to mark its property line by erecting permanent markers all along the line between the property of City and the property of Cliffs, and where that line crosses Mountain Summit Road, lots 9, 10, and 11 on High Vista Way, and the paved spur, and installing fences of at least one strand of wire between the said permanent markers waist high and maintain them perpetually;
- f) Enjoining the City to protect its property over which this purpresture has been committed;
- g) Enjoining the City to submit a written report to the Court and Plaintiffs of its process to locate the markers and property line, including a drawing showing the markers and property line;
- h) Expelling those committing the purpresture from the City's real estate;
- i) Awarding Plaintiff attorneys' fees and costs of litigation pursuant to S.C. Code Ann. § 15-77-300; and
- j) Granting such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

ORDINANCE

TO TRANSFER TITLE TO 0.29 ACRE OF PROPERTY TO THE CLIFFS AT GLASSY, INC. ON MOUNTAIN SUMMIT ROAD IN CONSIDERATION OF \$100,000 AND TO ACQUIRE CLEAR TITLE TO 0.04 ACRE AT THE TOP OF CORBIN MOUNTAIN AS A SETTLEMENT.

WHEREAS, some time ago The Cliffs at Glassy, Inc., constructed Mountain Summit Road, a private road benefiting The Cliffs at Glassy, Inc., along the boundary of the North Saluda Reservoir Property, which is titled in the name of the City of Greenville and managed by the Greenville Water System; and

WHEREAS, the road as constructed has been determined to constitute an encroachment upon the North Saluda Reservoir Property, and a fire tower acquired by the Water System to use in its management activity has been determined to encroach upon property of The Cliffs at Glassy, Inc., at the top of Corbin Mountain; these locations are referenced on a plat prepared by Lindsey and Associates and dated November 5, 2004; and

WHEREAS, The Cliffs at Glassy, Inc., has previously reached a settlement with the Water System involving the relocation of the fire tower to its present location, and the acceptance from The Cliffs at Glassy, Inc., certain access easements across property for which the Cliffs has a deed of title; and

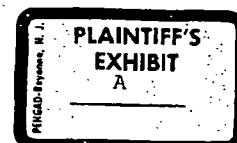
WHEREAS, The Cliffs at Glassy, Inc., has also reached agreement with the Nature Conservancy of South Carolina for an encroachment upon its conservation easement, since amended, which had the same boundaries as the North Saluda Reservoir Property; and

WHEREAS, City Council desires to bring finality to a boundary line separating the North Saluda Reservoir Property from property for which the Cliffs at Glassy, Inc., has deeds of title; and

WHEREAS, Council desires not to disturb substantively any agreement previously reached by the Water System and the Nature Conservancy, and City Council also desires to dedicate all proceeds from the settlement being approved to an account maintained for the sole purpose of protecting municipal reservoir property to which the City of Greenville holds title.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE THAT:

SECTION 1. Title in fee simple to approximately 0.04 acre of real property at the top of Corbin Mountain shall be accepted from the Cliffs at Glassy, Inc. The property so accepted shall be incorporated into the North Saluda Reservoir property managed by the Water System to the



same extent it is otherwise authorized to maintain the remainder of the North Saluda Reservoir property.

SECTION 2. The City shall convey its interest in fee simple to approximately 0.29 acre of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc.

SECTION 3. The title conveyance by The City to The Cliffs at Glassy, Inc., shall be in consideration of a payment from the Cliffs at Glassy, Inc., in the amount of one hundred thousand (\$100,000) dollars payable to the City of Greenville.

SECTION 4. The proceeds of the payment from The Cliffs at Glassy, Inc., shall be used exclusively to enhance and protect the environmental conditions of reservoir property and to establish, maintain and protect the property lines of reservoir property, titled in the name of the City of Greenville. Such actions will be exercised in deference to the Nature Conservancy and the Greenville Water System in the exercise of their rights, duties, and obligations under existing agreements and statutory authority. Council shall be authorized to act by resolution to implement such measures or to direct the City Manager or the City Attorney, or both to achieve the objectives of this Section 4.

SECTION 5. As a condition of the transfers identified in Section 1 and Section 2 of this Ordinance, the City and The Cliffs at Glassy, Inc., shall execute mutual releases of claims against one another and mutual acknowledgment of the boundary separating the properties respectively titled in their names. The parties shall covenant to act in good faith to forego future incursions, encroachments, or trespass upon the property titled in the name of the other and to notify promptly one another, as well as the Water System and the Nature Conservancy, of activity that might be or appear to be an actual or pending encroachment when they have knowledge of such circumstances.

SECTION 6. Nothing contained in this Ordinance shall be deemed to compromise or impede the agreements separately reached by the Water System and the Nature Conservancy in settlement of claims arising from the same set of circumstances giving rise to the City's settlement and release of claims.

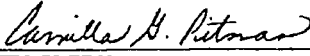
SECTION 7. The City Manager shall be authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for, as well as other documents reasonably appropriate for the transaction, upon receipt of the payment described in Section 3 above, provided such documents assure the implementation of the terms of this Ordinance. The identification of the locations of these property transfers and recognition of the mutual boundary shall be based upon the same plats and legal descriptions as have been accepted and agreed to by the Nature Conservancy and the Water System in their separate agreements with The Cliffs at Glassy, Inc.

DONE, RATIFIED AND PASSED THIS THE 28 DAY OF APRIL, 2008.



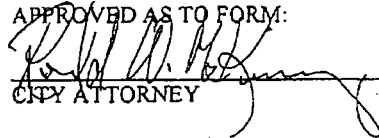
MAYOR

ATTEST:



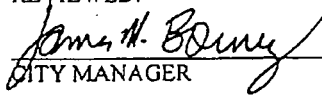
CITY CLERK INTERIM

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED:



CITY MANAGER

PREPARED BY HORTON, DRAWDY, WARD & JENKINS, P.A., 307 PETTIGRU STREET,
GREENVILLE, SC 29601

GRANTEE'S ADDRESS:

3598 Hwy 11
Traveler's Rest, S.C.
29690

STATE OF SOUTH CAROLINA) LIMITED WARRANTY
COUNTY OF GREENVILLE) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that

The City of Greenville, South Carolina,

in consideration of One and no/100 (\$1.00) Dollar and other valuable consideration, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s), the receipt of which is hereby acknowledged has granted, bargained and sold and released and by these presents does grant, bargain, sell and release unto

The Cliffs At Glassy, Inc.:

ALL that certain piece, parcel or lot of land situate, lying and being near the peak of Corbin Mountain in Greenville County, South Carolina, containing 0.29, more or less, and being shown as Tract "B" on a plat entitled Survey for Tract "B" Cliffs At Glassy, Inc., prepared by Lindsay & Associates, Inc. dated November 5, 2004 and recorded in the R/D Office for Greenville County in Plat Book 1069, at page 58, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a point on the common property line of the grantor and the grantee which is located on a tie line N. 22-24-20 W. 730.59 feet from a 5/8 inch rebar; thence along the common property line of the grantee and the grantor N. 22-24-20 W. 39.31 feet to the center of a new road and continuing N. 22-24-20 W. 189.98 feet to again the center of said road; thence continuing N. 22-24-20 W. 39.91 feet to a point in the common line of the property of the grantor and grantee; thence on a new arc along the eastern edge of said new road the following courses and distances: S. 71-06-20 E. 29.37 feet; thence S. 59-51-20 E. 29.89 feet; thence S. 49-49-20 E. 29.28 feet; thence S. 40-10-20 E. 30.84 feet; thence S. 32-20-40 E. 28.89 feet; thence S. 22-05-40 E. 28.14 feet; thence S. 06-13-10 E. 27.75 feet; thence S. 08-16-20 E. 23.64 feet; thence S. 08-35-00 W. 28.82 feet; thence S. 17-34-20 W. 28.28 feet; S. 27-16-50 W. 28.13 feet.

By the acceptance of the within deed, the grantee acknowledges and affirms that no easement by necessity, implication or otherwise is created by the within conveyance encumbering the remaining property of the grantor, in that the grantee is the owner of the adjoining premises and title to the within parcel shall merge into and become a part of the same and access otherwise provided by the grantee.



2008058895 DEED
4 PGS
Book DE 2329 Page 817-820
June 24, 2008 11:10 30 AM Cons \$210,166.44
Rec. \$10.00 Cnty Tax \$231.55 State Tax \$547.30

FILED IN GREENVILLE COUNTY, SC



Further, by the acceptance of the within deed, the grantee acknowledges the reservation and granting of an easement to the grantor herein for access to said road for emergency purposes as depicted on the plat recorded in the R/D Office for Greenville County, South Carolina in Plat Book 49L, page 89.

This is a portion of the property conveyed to the grantor herein by deed of Timber-Lands, Inc. dated May 16, 1956 and recorded on May 16, 1956 in the R/D Office for Greenville County in Deed Book 552, page 469.

The within conveyance is made subject to all easements, rights-of-way or restrictions of public record affecting said property.

Tax Map No. 664.2-1-1

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever.

WITNESS the grantor's(s') hand(s) and seal(s) this 19th day of June, 2008.

SIGNED sealed and delivered in the presence of:

WITNESS:

Cynthia S. [Signature]
[Signature]

City of Greenville

By: [Signature]
City Manager

By:

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within written deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

Cynthia S. [Signature]

SWORN to before me this 19th day of June, 2008.

[Signature] (SEAL)
Notary Public for SOUTH CAROLINA
My Commission Expires: September 14, 2005

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- (1) I have read the information on this affidavit and I understand such information.
- (2) The property being transferred is located at 0.29 acres, Tract B, bearing Part of Greenville County Tax Map Number 0664 02-01-001.00, was transferred by City of Greenville to The Cliffs at Glassy, Inc. on June 24, 2008.

- (3) Check one of the following: The deed is

- a. ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- b. ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- c. ☐ exempt from the deed recording fee because (see Information section of affidavit):

(If exempt, please skip Items 4-7 and go to Item 8 of this affidavit)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

- (4) Check one of the following if either Item 3.a. or 3.b. above has been checked. (See Information section of this affidavit)

- a. ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$210,166.44
- b. ☐ The fee is computed on the fair market value of the realty which is
- c. ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

- (5) Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is

- (6) The deed recording fee is computed as follows:

- a. Place the amount listed in Item 4 above here: _____
- b. Place the amount listed in Item 5 above here _____
(If no amount is listed, place zero here)
- c. Subtract Line 6 b. from Line 6.a. and place result here: _____

- (7) The deed recording fee due is based on the amount listed on line 6 c. above and the deed recording fee due is: \$778.85

- (8) As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as attorney.

- (9) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000.00 or imprisoned not more than one year, or both

SWORN before me this 24 day of
June, 2008.

Notary Public for SC
My Commission Expires

9-29-08

Responsible Person Connected with the Transaction
David B. Ward

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than \$100 00;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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Timothy J. Manning

Code of Laws of South Carolina 1976 Annotated Currentness
The Constitution of the State of South Carolina
Article III. Legislative Department

→ § 31. Public lands.

Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the General Assembly from granting a right of way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across State land, nor to interfere with the discretion of the General Assembly in confirming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim.

CROSS REFERENCES

Legislative provisions covering State Budget and Control Board granting easements and rights of way over vacant lands or marshlands, see §§ 1-11-80 and 1-11-90.

Legislative provisions covering minerals and mineral interests in public lands, see §§ 10-9-10 et seq.

LIBRARY REFERENCES

73 C.J.S., Public Lands §§ 168, 244.

NOTES OF DECISIONS

In general 1

Grants for public use, grants to which provision is inapplicable 4

Grants or sales by counties, grants to which provision is inapplicable 5

Grants resulting in benefits, grants to which provision is inapplicable 3

Grants to which provision is inapplicable 2-5

Grants to which provision is inapplicable - In general 2

Grants to which provision is inapplicable - Grants for public use 4

Grants to which provision is inapplicable - Grants or sales by counties 5

Grants to which provision is inapplicable - Grants resulting in benefits 3

1. In general

This section applies only to lands held by the State in its capacity as sovereign proprietor. *McKinney v. City of Greenville* (S.C. 1974) 262 S.C. 227, 203 S.E.2d 680.

Cited in *Harper v. Schooler* (S.C. 1972) 258 S.C. 486, 189 S.E.2d 284.

Quoted in *Hunt v. McNair* (S.C. 1970) 255 S.C. 71, 177 S.E.2d 362, vacated 91 S.Ct. 2276, 403 U.S. 945, 29 L.Ed.2d 854, on remand 258 S.C. 97, 187 S.E.2d 645.



The Industrial Revenue Bond Act (§§ 14-399.21 et seq., of the Code 1962) does not violate this section and is a valid exercise of the legislative power of the General Assembly of this State. *Elliott v. McNair* (S.C. 1967) 250 S.C. 75, 156 S.E.2d 421.

The reference in this section is to public lands belonging to and controlled by the State in its capacity as sovereign proprietor. *Bobo v. City of Spartanburg* (S.C. 1956) 230 S.C. 396, 96 S.E.2d 67.

2. Grants to which provision is inapplicable--In general

Agreement by city to exchange land for land owned by corporation, and to sell additional land to corporation, evidenced no violation of this section, for no donation was involved and the record did not suggest that the contemplated sale was for a less price than that for which the property could be sold to individuals. *Bobo v. City of Spartanburg* (S.C. 1956) 230 S.C. 396, 96 S.E.2d 67.

Conveyance of land held under original grant from State. Where land was, at time of its conveyance, part of a plantation owned by an individual and held by him, as all privately owned lands are held, under an original grant from the State, neither then nor subsequently was the area in question land "belonging to or under the control of the State" within either the letter or the reasonable intendment of this section. *Bobo v. City of Spartanburg* (S.C. 1956) 230 S.C. 396, 96 S.E.2d 67.

Other land grants to which section does not apply. Real estate, title in fee to which had been conveyed away by the State in 1892, was not at the time of adoption of the Constitution of 1895 "lands belonging to or under the control of the State" within this constitutional provision prohibiting donation of such land to private corporations or individuals. *State v. Broad River Power Co.* (S.C. 1935) 177 S.C. 240, 181 S.E. 41. States ↪ 89

Conferring on chamber of commerce site for erection of building is not "donation of public property." *Chapman v. Greenville Chamber of Commerce* (S.C. 1923) 127 S.C. 173, 120 S.E. 584.

Land granted by the State to the city of Charleston in fee simple and in proprietary right does not come under the provisions of this section, the land not having been granted for governmental purposes. *Haesloop v. City Council of Charleston* (S.C. 1923) 123 S.C. 272, 115 S.E. 596.

3. ---- Grants resulting in benefits, grants to which provision is inapplicable

Expected benefits may prevent grant from being donation. Indirect benefits expected to result from improvement of land granted by the State by way of promotion of public convenience, increase in value of adjacent property, and taxes to be paid on improvements, are sufficient to keep such grant from amounting to donation within constitutional inhibition. *State v. Board River Power Co.*, 177 SC 240, 181 SE 41 (1935). *McKinney v. City of Greenville*, 262 SC 227, 203 SE2d 680 (1974).

The South Carolina Research Center can transfer property to private firms for less than full market value, since the authority may properly consider indirect benefits resulting to the public in determining what is a fair and reasonable return for disposition of property without running afoul of the constitutional prohibition against donations of public land. *Nichols v. South Carolina Research Authority* (S.C. 1986) 290 S.C. 415, 351 S.E.2d 155. States ↪ 123

A public body may properly consider indirect benefits resulting to the public in determining what is a fair and reasonable return for disposition of its properties without running afoul of this section. *McKinney v. City of Greenville* (S.C. 1974) 262 S.C. 227, 203 S.E.2d 680. Counties ↪ 110

Land grant is not prohibited where State receives benefits. A grant of land for construction of canal, and contract incorporated in statute which relieved successor of grantee from performance of covenants of grant, was held not to be a prohibited "donation" of land, where under terms of grant and contract the State had received electric power of the value of \$180,000.00, the benefit of moneys expended by grantee in construction and maintenance of distribution lines, and generating and property taxes, and would continue to receive such benefits in perpetuity. *State v. Broad River Power Co.* (S.C. 1935) 177 S.C. 240, 181 S.E. 41. States 89

4. — Grants for public use, grants to which provision is inapplicable

Grant for public uses. Act leasing land theretofore used as public square for erection of building to contain offices of county and home demonstration agents and other county officers or auditorium for public assemblage, free of rent, is not violative of this section as attempt to devote public property to private corporation, the grant being for public uses. *Antonakas v. Anderson Chamber of Commerce* (S.C. 1924) 130 S.C. 215, 126 S.E. 35.

Conveyance by city council of municipal property to private person for erection of hotel is not invalid as violative of this section, but is one for a public purpose authorized in the city's charter, and supported by a contractual consideration in the form of substantial returns on tax revenues and benefits to the city and its inhabitants. *Haesloop v. City Council of Charleston* (S.C. 1923) 123 S.C. 272, 115 S.E. 596.

5. — Grants or sales by counties, grants to which provision is inapplicable

This section has no application to Code 1962 § 14-2071, authorizing a county to lease, sell or otherwise dispose of its real and personal property, in light of the clear requirements of the statute that the disposition of any county property be based upon "fair and reasonable value." *McKinney v. City of Greenville* (S.C. 1974) 262 S.C. 227, 203 S.E.2d 680.

There is nothing in Code 1962 § 14-2071 permitting county lands to be sold to corporations, or associations, for a less price than that for which they can be sold to individuals. *McKinney v. City of Greenville* (S.C. 1974) 262 S.C. 227, 203 S.E.2d 680.

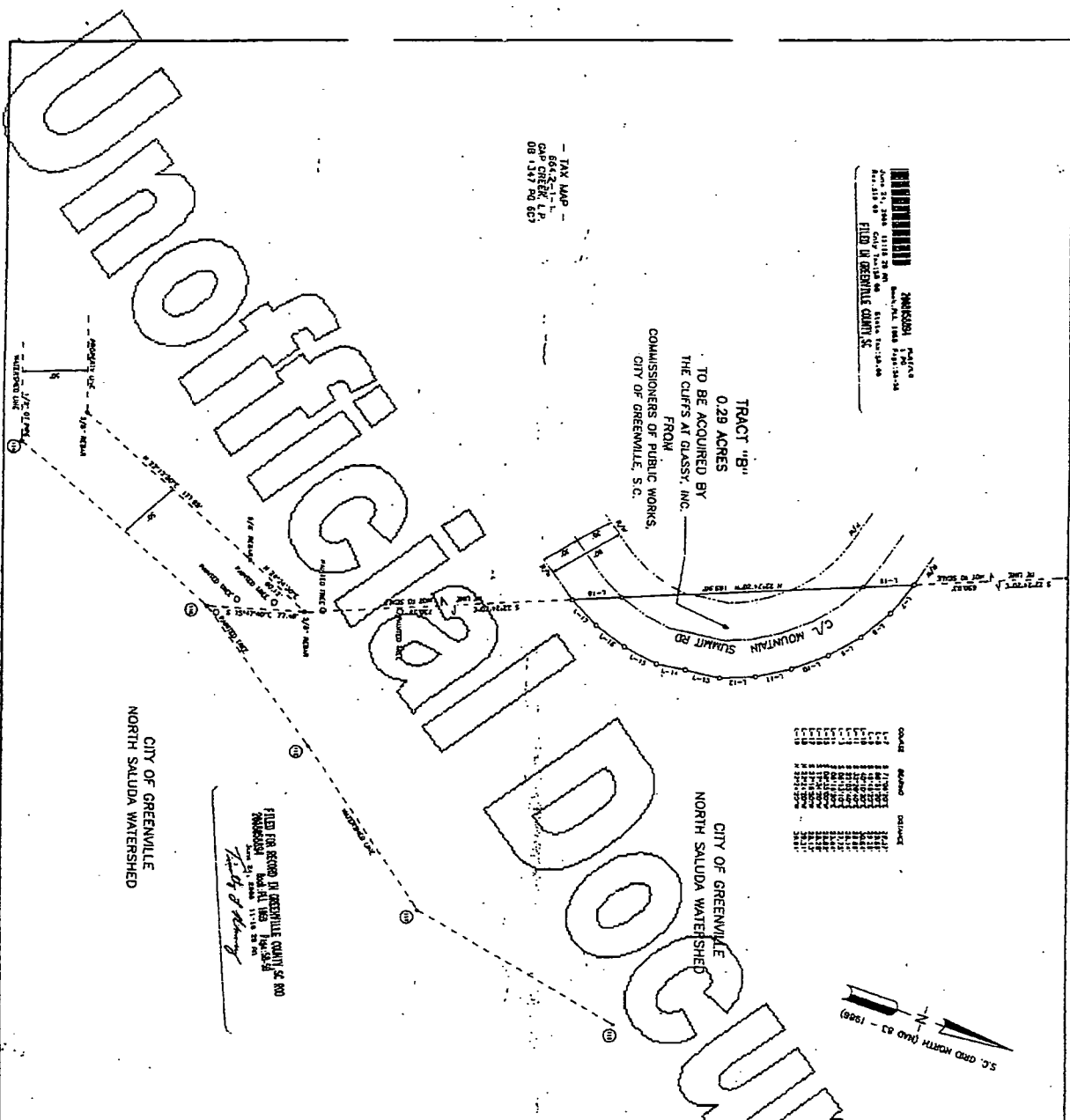
The constitutional prohibition against donations is inapplicable to Code 1962 § 14-2071 since no lands "belonging to or under the control of the State" are involved, but rather, lands originally owned by private citizens and purchased by the City and County of Greenville for leasing to the United States Government. *McKinney v. City of Greenville* (S.C. 1974) 262 S.C. 227, 203 S.E.2d 680.

S.C. CONST Art. III, § 31, SC CONST Art. III, § 31

Current with amendments ratified through the 2007 Reg. Sess.

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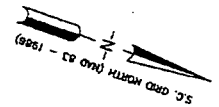
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 TO BE ACQUIRED BY
 THE CLIFFS AT GLASSY, INC.
 FROM
 COMMISSIONERS OF PUBLIC WORKS,
 CITY OF GREENVILLE, S.C.

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PROPERTY OF
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 COMMISSIONERS OF PUBLIC WORKS,
 CITY OF GREENVILLE

SURVEY FOR
TRACT "B"
THE CLIFFS AT GLASSY, INC.
 GREENVILLE COUNTY SOUTH CAROLINA

1" = 50' Scale in feet

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D.A.B. WEL 04/06/06 11940 0/2

LINDSEY AND ASSOCIATES, INC.
 LAND & HYDROGRAPHIC SURVEYORS
 P.O. BOX 9 TIGERVALE, S.C. 29688

PLAINTIFF'S
 EXHIBIT
D

SOUTH CAROLINA GREENVILLE COUNTY

N/F CITY OF GREENVILLE
THIS 08/30/2010/0100
DEED BOOK 1033-558

STATE LINE PER PLAT BOOK
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AND 1049-1 THRU 4

CLYDE VALLEY HIGH
WSTA SUBDIVISION
PER PLAT BOOK 45-1-49

N/F CITY OF GREENVILLE
THIS 08/30/2010/0100
DEED BOOK 1033-558

SOUTHERN TOWNSHIP OF
THE SMALL LANE
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SURVEYOR'S REPORT



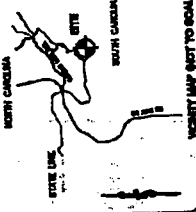
SCALE 1" = 100'



JAMES R. FREELAND
No. 4191

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

DRAWING TO ACCOMPANY
SURVEYOR'S REPORT OCT. 28
2008 BY FREELAND FOR
SOUTH CAROLINA PUBLIC
INTEREST FOUNDATION



NEARBY MAP NOT TO SCALE



Freeland & Associates, Inc.

323 West Stone Avenue
Greenville, SC 29609
Tel: 864-271-4924
Fax: 864-233-0315

Surveyor's Report

October 28, 2008

I, James R. Freeland, SC PLS #4781, NC PLS #10565, was employed by the South Carolina Public Interest Foundation on October 8, 2008 to conduct research and a preliminary field survey of a common property line between Gap Creek LP and the City of Greenville. The primary question is: does this property line as shown on plats recorded in Plat Book 42/S-38 and 42/L-49 represent the true property line separating the property of the City of Greenville and the property of Gap Creek LP or do other possibilities exist?

The following information was used in this endeavor:

The South Carolina Public Interest Foundation, through their attorney Mr. Jim Carpenter and President, Mr. Ed Sloan, furnished the following:

- A plat of Gap Creek LP property recorded in Plat Book 42/S-38
- A plat of Cliffs Valley High Vista recorded in Plat Book 42/L-49
- A plat of Tract "A" – The Cliffs at Glassy, Inc. and of Tract "B" - City of Greenville recorded in Plat Book 1069-58
- The Howard Wiswall plat recorded in Plat Book Y-114 through 118
- A map showing property lines of Timberlands, Inc. by Dan Collins dated 1960, recording information unknown.
- A detail map of vicinity of Corbin Mountain Tower by Dan Collins, date unknown
- The Greenville County tax map of reference property 0664020100100
- The deed of property of Timberlands, Inc. to Gap Creek LP recorded in Deed Book 1347-607 through 635
- The deed of property into the City of Greenville recorded in Deed Book 563-191 through 207



Research by Freeland & Associates, Inc. obtained the following:

- A plat of the North Carolina/South Carolina State Line recorded in Plat Book 1047 Pages 1 through 4
- A deed of Rubin Revis to HD Stone recorded in Deed Book 472, page 453 in Henderson County, NC
- A plat of Greenville City Water Works property purchased from Timberlands, Inc. recorded in Plat Book EE-155A
- An unrecorded preliminary plat of Tract "A" – The Cliffs at Glassy, Inc. and Tract "B" – Commissioners of Public Works, City of Greenville, SC prepared by Lindsey & Associates, Inc. dated November 5, 2004.

Background on Documents:

- Wiswall Plat: The Wiswall plat was prepared by Howard Wiswall, CE for the Saluda Land and Lumber Company during the time period of 1918 through 1921 and recorded in Greenville County Plat Book Y Pages 114-118. This was a plat of a large portion of Northern Greenville County showing all the properties that the Saluda Land and Lumber Company had timber rights to or owned. This plat is highly regarded by many land surveyors conducting retracement surveys in this part of the county. Although this is not the original survey on most of the properties, it is the most comprehensive, recorded, and generally accepted as the original footsteps of the surveyor.
- Dan Collins Maps: Dan Collins did extensive retracement and marking of property lines for timber operations in Greenville and other Counties in the upstate.
- Lindsey Plats: William Lindsey is currently surveying and has an excellent reputation as a land surveyor and extensive experience in boundary surveying.
- Freeland & Associates, Inc.: Freeland & Associates, Inc. has been in business in Greenville, SC since 1975. James Freeland is currently a licensed Professional Land Surveyor in South Carolina and North Carolina and 15 other states.

Findings:

The most notable results of the document review is that the Wiswall survey, Collins maps, and the Lindsey plats report three different internal angles between the North Carolina/South Carolina border and the property line in review. The Wiswall plat shows 100°-22'; the Collins map shows 104°-00'; and the Lindsey plat shows 107°-26'-30". In addition, at the time of the Wiswall survey, the difference between magnetic declination and true north was less than 30', which, in theory, should place the property line in question close to a true bearing of S20°E.

Using the available documentation, our company conducted extensive onsite field work to locate any old monumentation that might indicate "on the ground" evidence of property lines that might match the three different maps.

I have been unable to locate a bearing and distance for the property line in question in the Deed Book 503 pages 191 through 207 in which the City of Greenville acquired ownership of its property adjoining the property line in question.

In Deed Book 1347 pages 607 through 635 (whereby Timber-Lands, Inc. property is conveyed to Gap Creek, LP) paragraph 17 cites a call that runs from a point N20W for 31 chains to the crest of Corbin Mountain. Parcel 25 on page 15 of said Deed Book conveyed the land per the Wiswall line. This is the best recorded evidence as to the location of the property line in question.

Since neither the deed nor the plat identify the southern property corner, the controlling corner becomes the top "crest" of Corbin Mountain. This is also considered a natural monument as it is a natural physical feature and not man made. The vicinity of the top of the mountain appears to have been graded in the recent past. Each of the three plats referenced show a different point for the top of Corbin Mountain; however, all three points identified as the top of Corbin Mountain are within 25 feet of each other which is an indication that the accepted top is more or less in the same location.

The Collins map shows a point as identified by the "at the time" adjoining property owner Rubin Revis. This point was used to recreate the Collins property line.

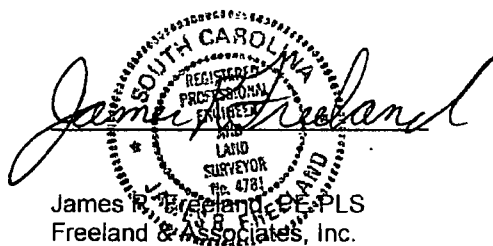
The Lindsey plat shows an iron pin to the east of this point, not the official top of Corbin Mountain which is the line per the newest State Line survey, and it was used to identify the Lindsey property line.

The North Carolina/South Carolina State Line survey identifies an iron pin as the top of Corbin Mountain. This pin was used to show the Wiswall property line.

Conclusion:

It is my professional opinion that there is enough factual difference in plats, maps, and documents of record along with field evidence that a question as to the true and original property line location exists.

The attached drawing shows the relationship of the three different surveys. In addition, old barbed wire fences, hacked trees, painted trees and other features depicted on old plats and maps have been shown.

The seal is circular with a double border. The outer border contains the text "SOUTH CAROLINA" at the top and "FREELAND" at the bottom. The inner border contains the text "REGISTERED PROFESSIONAL ENGINEER AND LAND SURVEYOR" and "No. 4781".
James R. Freeland, P.E., PLS
Freeland & Associates, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2008-CP-23-2255
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.	)	
and Robert M. Lloyd, individually	)	
and as taxpayers of the City of	)	
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	MOTION FOR SUMMARY JUDGMENT
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Knox H. White,	)	
Mayor, and The Cliffs at Glassy, Inc.,	)	
	)	
Defendants.	)	

TO: JAMES G. CARPENTER, ATTORNEY FOR PLAINTIFFS:

PLEASE TAKE NOTICE that the Defendants City of Greenville and Knox White by and through their undersigned attorney herewith move before this Court to be heard at such time and place as the Court shall by its rules prescribed on the following motion:

1. That summary judgment be granted to the Defendants named above and the Complaint dismissed. This motion is based upon the Exhibit A (deed from the City of Greenville to The Cliffs of Glassy, Inc.) which is attached hereto and incorporated herein by reference.

I hereby certify this motion is meritorious and not intended merely for delay. A Motion for Partial Judgment on the Pleadings filed by the Plaintiffs is to be heard on October 2, 2008. It would be an expedient use of the Court's time to hear these motions at the same time.

Date: Sept. 8, 200



KATHLEEN G. KEMPE
ASSISTANT CITY ATTORNEY
CITY OF GREENVILLE
Post Office Box 2207
Greenville, South Carolina 29602
864-467-4422 telephone
864-467-4424 facsimile
kempek@greatergreenville.com

PREPARED BY HORTON, DRAWDY, WARD & JENKINS, P.A., 307 PETTIGRU STREET,
GREENVILLE, SC 29601

GRANTEE'S ADDRESS:

3598 Hwy 11
TRAVELER'S REST, S.C.
29690

STATE OF SOUTH CAROLINA) LIMITED WARRANTY
COUNTY OF GREENVILLE) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that

The City of Greenville, South Carolina,

in consideration of One and no/100 (\$1.00) Dollar and other valuable consideration, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s), the receipt of which is hereby acknowledged has granted, bargained and sold and released and by these presents does grant, bargain, sell and release unto

The Cliffs At Glassy, Inc.:

ALL that certain piece, parcel or lot of land situate, lying and being near the peak of Corbin Mountain in Greenville County, South Carolina, containing 0.29, more or less, and being shown as Tract "B" on a plat entitled Survey for Tract "B" Cliffs At Glassy, Inc., prepared by Lindsay & Associates, Inc. dated November 5, 2004 and recorded in the R/D Office for Greenville County in Plat Book 1049, at page 58, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a point on the common property line of the grantor and the grantee which is located on a tie line N. 22-24-20 W. 730.59 feet from a 5/8 inch rebar; thence along the common property line of the grantee and the grantor N. 22-24-20 W. 39.31 feet to the center of a new road and continuing N. 22-24-20 W. 189.98 feet to again the center of said road; thence continuing N. 22-24-20 W. 39.91 feet to a point in the common line of the property of the grantor and grantee; thence on a new arc along the eastern edge of said new road the following courses and distances: S. 71-06-20 E. 29.37 feet; thence S. 59-51-20 E. 29.89 feet; thence S. 49-49-20 E. 29.28 feet; thence S. 40-10-20 E. 30.84 feet; thence S. 32-20-40 E. 28.89 feet; thence S. 22-05-40 E. 28.14 feet; thence S. 06-13-10 E. 27.75 feet; thence S. 08-16-20 E. 23.64 feet; thence S. 08-35-00 W. 28.82 feet; thence S. 17-34-20 W. 28.28 feet; S. 27-16-50 W. 28.13 feet.

By the acceptance of the within deed, the grantee acknowledges and affirms that no easement by necessity, implication or otherwise is created by the within conveyance encumbering the remaining property of the grantor, in that the grantee is the owner of the adjoining premises and title to the within parcel shall merge into and become a part of the same and access otherwise provided by the grantee.



2008058895 DEED
4 PGS
Book DE 2329 Page 817-820
June 24, 2008 11:10:30 AM Cons: \$210,165.44
Rec: \$10.00 Cnty Tax: \$231.55 State Tax: \$547.30

FILED IN GREENVILLE COUNTY, SC

Further, by the acceptance of the within deed, the grantee acknowledges the reservation and granting of an easement to the grantor herein for access to said road for emergency purposes as depicted on the plat recorded in the R/D Office for Greenville County, South Carolina in Plat Book 49L, page 89.

This is a portion of the property conveyed to the grantor herein by deed of Timberlands, Inc. dated May 16, 1956 and recorded on May 16, 1956 in the R/D Office for Greenville County in Deed Book 552, page 469.

The within conveyance is made subject to all easements, rights-of-way or restrictions of public record affecting said property.

Tax Map No. 664.2-1-1

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever.

WITNESS the grantor's(s') hand(s) and seal(s) this 19th day of June, 2008.

SIGNED sealed and delivered in the presence of:

WITNESS:

Cynthia S. Wilcox
Notary Public

City of Greenville

By: James M. Boney
City Manager

By:

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within written deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

Cynthia S. Wilcox

SWORN to before me this 19th day of June, 2008.

Ronald W. McKinney (SEAL)

Notary Public for SOUTH CAROLINA

My Commission Expires: September 14, 2005

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says.

- (1) I have read the information on this affidavit and I understand such information.
- (2) The property being transferred is located at 0.29 acres, Tract B, bearing Part of Greenville County Tax Map Number 0664 02-01-001.00, was transferred by City of Greenville to The Cliffs at Glassy, Inc. on June 24, 2008.
- (3) Check one of the following: The deed is
- a. ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - c. ☐ exempt from the deed recording fee because (see information section of affidavit):

(If exempt, please skip items 4-7 and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

- (4) Check one of the following if either item 3.a. or 3.b. above has been checked. (See information section of this affidavit.)
- a. ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$210,166.44.
 - b. ☐ The fee is computed on the fair market value of the realty which is _____.
 - c. ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

(5) Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

- (6) The deed recording fee is computed as follows:
- a. Place the amount listed in item 4 above here: _____
 - b. Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - c. Subtract line 6 b. from line 6 a. and place result here: _____

(7) The deed recording fee due is based on the amount listed on line 6 c. above and the deed recording fee due is: \$778.85

(8) As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as attorney.

(9) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000.00 or imprisoned not more than one year, or both.

SWORN before me this 24 day of June, 2008.

Julie M. Shealy
Notary Public for SC
My Commission Expires 9-29-08

David B. Ward
Responsible Person Connected with the Transaction
David B. Ward

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty" Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than \$100 00;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States,
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39,
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities A "family trust" is a trust, in which the beneficiaries are all members of the same family The beneficiaries of a family trust may also include charitable entities "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation,
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership, and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2008058895 Book:DE 2329 Page:817-820
June 24, 2008 11:18:30 AM

Timothy J. Harnsey

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	
as a taxpayers of the City of	)	Motion to Alter or Amend the Judgment
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

SCRCP 59(e)

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
J. B. WICKENSHER

2009 FEB 12 P 5:02

Plaintiffs, by their undersigned attorney, move the Court pursuant to SCRCP 59(e) to alter or amend the judgment and Order filed January 29, 2009, and received February 2, 2009.

In support of the Motion Plaintiffs would show unto the Court the following:

1. On October 2, 2008, the Court orally indicated its intent to grant Defendants' Motions for Summary Judgment. At the conclusion of that hearing Plaintiffs drew the Court's attention to the fact that Defendants' surveyor had plotted the property line between the Cliffs' property and the City's property at several different angles, in several different locations, and with several different geographic bearings, several of which are recorded in the Register of Deeds Office. Some of Defendants' surveyor's drawings indicated that the Cliffs' purpresture was more extensive than the .29 acre, and was over additional land owned by the City.
2. The Court advised Plaintiffs that should they find additional relevant facts, they could bring them to the Court's attention. The Court entered no written Order at that time.
3. Plaintiffs engaged a surveyor and on October 28, submitted the surveyor's report to the

Court and moved for leave to file a Supplemental Complaint.

4. On December 17, Plaintiffs attempted to present to the Court the following:
5. Between 1918 and 1921, a land surveyor named Wiswall drew a large map showing land ownership in northern Greenville County. It is recorded in Plat Book Y, Pages 114-118. (Plaintiffs possess a large unrecorded Wiswall map, with minor differences.)
6. On the recorded map, Wiswall drew the bearings of a straight line ("The Wiswall Line") running from a "Stone XO" 31.00 chains (2,046 feet) North 20 degrees West to the top of Corbin Mountain, which is the same as running from the top of Corbin Mountain South 20 degrees East 31.00 chains to a Stone XO. (Plat Book Y, Page 117) (Exhibit A is a portion of the Wiswall map).
7. Plaintiffs believe the Wiswall Line was established long prior to 1921, when Mr. Wiswall compiled his map. Plaintiffs' surveyors found and reported remnants of a fence made of barbed wire manufactured in 1880s along the southern part of the Wiswall Line.
8. Plaintiffs are informed and believe that in 1956, the City acquired the land east of the Wiswall Line (Deed Book 558, Page 347). The Wiswall Line was the City's *western boundary*.
9. In May 1956, Piedmont Engineering Service surveyed the "Corbin and Pruett Mt. Tract 385.2 ac." denominated as "Property of Timber-Lands, Inc." which is the land directly west of the Wiswall Line. That survey shows its eastern boundary to be a line from the "Top Corbin Mt." running S.20-0E 1844' to a corner, and then continuing 57 feet to the watershed line. (The Stone XO would be another 140 feet further on that same bearing.)
10. In 1956, the City acquired land southeast of the *same Stone XO* (Deed Book 552, page 469). Piedmont Engineering Service surveyed this "Corbin Mtn Tract" in April 1956 as

"Property to be purchased from TimberLands, Inc." (Plat Book EE, Page 155 A). The property description in the deed for Parcel 1 includes the southern 140 feet of the Wiswall Line from the Watershed Line to the Stone XO, before turning northeast. It is stated as: "thence S. 20-00E., 140 feet, more or less, to a point, thence N. 78-38 E. 1029.6 feet, more or less, to a point."

11. Piedmont Engineering Service surveyed the North Saluda Watershed that shows points along the Watershed Line. Iron pipes ("i.p.") 114 and 115 are two of those points. This drawing lists the call from i.p. 114 to i.p. 115 as N21-20E 199.0 (North 21-20 degrees East, for 199 feet). Thus i.p. 115 is 199 feet northeast of i.p. 114, and both points are on the Watershed Line, not the property line.
12. A 1960 survey by Dan Collins, RLS, acknowledges the Wiswall Line running from Corbin Mountain South 20 degrees East, 1,896 feet to i.p. 114 (not 115 as Lindsey does). Collins continues the line 140-150 feet to a "Rock 3X" (*the same point as the Stone XO*).
13. Greenville County Tax Map 664.2 shows a straight line running 2,046 feet (31 chains), dividing the City's tax-exempt property on the east from taxable property on the west, the Wiswall Line.
14. By deed recorded December 20, 1988, Timber-Lands, Inc. conveyed all its real estate holdings in Greenville County to its sole stockholder, Gap Creek, L.P. (Deed Book, 1347, Page 607-635). Item 17, Parcel 25 specifically references *the Wiswall Map*, with the Wiswall Line, as the "plat mentioned above" and specifically refers to the property to the west of the Wiswall Line as tract number "B-II . . . , reference to which plat is hereby craved for a complete and accurate description of the . . . bounds of said property" (pp.

621-622). Tract No. B-II is "Corbin and Pruett Mt. Tract" referenced in Paragraph 9, above, and is one of the tracts which Defendants contend that Timberlands, LP (f/k/a Gap Creek, L.P.) (Deed Book 1353, Page 361) later conveyed to conveyed to Cliffs. Plaintiffs have searched for a conveyance of this entire tract (B-II) to Cliffs, without success.

15. Plaintiffs are informed and believe that in 1988 Timber-Lands, Inc. conveyed all its lands to it sole stockholder, Gap Creek, LP (Deed Book, 1347, Page 607); and in 1989, Gap Creek, LP changed its name to Timberlands, LP (Deed Book 1353, Page 361).
16. In 1993, the City conveyed a conservation easement upon its land to The Nature Conservancy (Deed Book 203, Page 232, Plat Book 1516, Page 510). The Wiswall Line was the western boundary of the easement.
17. Upon information and belief, in 2000, using two of the Lindsey surveys that deviated from the Wiswall Line, Gap Creek, L.P. (or Timberlands, L.P.) purported to convey to The Cliffs more land than it owned west of the southern end of this line (Deed Book 1922, page 313; Plat Book 42S, Page 38) (Deed Book 1978, Page 1900; Plat Book 45A, Page 93).
18. The 2004 Lindsey Line (Plat Book 1069, Page 58) on which the deed and the Order rely differs from the previously recorded Lindsey Lines and again apparently attempts to adjust the location of the Wiswall Line. Unlike the Wiswall Line, the 2004 Lindsey Line is not one straight line, but is two connected lines, at different bearings, neither of which is South 20 degrees East. This Lindsey Line starts at a point on Corbin Mountain (but not point 155, the established historical top of Corbin Mountain). It runs only about 1,650 feet, not 2,046 feet (31.00 chains). The Lindsey Line terminates at i.p. 115, 199 feet northeast of i.p. 114, through which the Wiswall Line runs. Finally, it terminates at the

Watershed Line, not the Stone XO, or the corner adjoining the property to the south.

19. In 2000, the Joint N.C. S.C. Boundary Commission marked the top of Corbin Mountain with a ½ inch diameter rebar with an aluminum cap stamped 155. In October, 2008, Plaintiffs' surveyors found it. They also found *a standing stone* thought to be Stone OX, the southern terminus of the Wiswall Line, about 2,100 feet from the top of Corbin Mountain, on the approximate bearing of South 20 degrees East. Its geographic location is approximately North 35 degrees, 9' 45" East 82 degrees 25' 56." Plaintiffs' discovery of these two monuments, termini of the Wiswall Line—point 155 and *the standing stone*—was the primary basis of their October 28 motion.

SPECIFIC OBJECTIONS TO THE ORDER

20. On page 3, the Order recites: "the Wiswall map does not describe the terminal points of the Corbin Mountain Line with any evidence of or reference to monumentation." Plaintiffs object to this erroneous factual assertion. The Wiswall map (Plat Book Y, page 117) specifically references "Top Corbin Mountain" as the northern terminus of the Wiswall Line and a "Stone XO" as the southern terminus (Exhibit A).
21. On page 3, the Order addresses the southern terminus of the Lindsey Line: "One particular tree bears three markings, which indicates a property corner. This tree is located on a ridgeline approximately 2000 feet southeast of the crest of Corbin Mountain." Plaintiffs object to this factual assertion. The tree and i.p. 115 are located on the Watershed Line, but Lindsey's map, submitted with Cliffs' Memorandum in Opposition to the Plaintiffs' Motion for Leave to Supplement the Complaint, shows this point to be not 2,000 feet from the top of Corbin Mountain, but only 1,648.96 feet ($650.93' + 189.98' + 730.59' + 77.46$). The Wiswall map shows the Wiswall Line to be

31 chains, or 2,046 feet, 400 feet longer.

22. Page 3 of the Order asserts: "Lindsey . . . identified the southern terminus of the Corbin Mountain Line as 'Station 115'." **Plaintiffs object** to this finding. "Station 115" has never been the southern terminus of the Wiswall Line. Rather, the Wiswall Line runs through i.p. 114, on the Watershed Line, and continues to the **Stone XO**.
23. On page 4, the Order asserts, "The precise location of the historical crest [of Corbin Mountain] was not preserved for future reference." **Plaintiffs object** to this factual assertion. In 1815 the surveyors of the North Carolina South Carolina line marked the top of Corbin Mountain as point 155, and labeled it thus on a survey, copies of which are in State Archives and in the office of the Greenville County Tax Assessor. As noted above, in 2000 the Joint N.C. S.C. Boundary Commission marked the top of Corbin Mountain, this time with a ½ inch diameter rebar with an aluminum cap stamped 155, just like the 1815 drawing. This was the historical crest of Corbin Mountain, identified anew in 2000 (Plat Book PL 1048, Page 2-2). Lindsey, in 2004, used a point other than point 155, the top of Corbin Mountain, as his starting point.
24. On page 3, the Order asserts, "In 2000, The Cliffs acquired the tract of land to the west of the Corbin Mountain Line (Cliffs' name for the Wiswall Line). To the knowledge of the Plaintiffs, no evidence of this 2000 conveyance was presented to the Court. **Plaintiffs object** to the Court's factual finding based on evidence not before the Court.
25. The Order, page 4, mentions the City's June 2008 conveyance of .29 acre to the Cliffs. The deed from the City to the Cliffs (Deed Book 2329, Page 817) recites that the City derived its ownership of this land in 1956 from Timber-Lands, Inc., by deed recorded at Deed Book 552, Page 469. This deed's derivation clause is in error. Deed Book 552,

Page 469 conveys the land directly south of the tract at issue, and is cited in paragraph 9 above. **Plaintiffs object** to the Court's reliance on and perpetuation of this error. As stated above, Plaintiffs are informed and believe that in 1956, the City acquired the land east of the Wiswall Line by deed from John Z. Cleveland (Deed Book 558, Page 347).

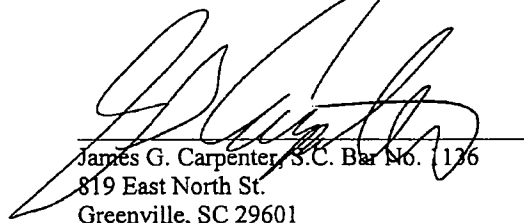
26. The Order, page 4, recites, "[T]he City understood Station 115, the tree with the three marks, to witness the southern terminus." **Plaintiffs** recall no evidence of the City's understanding on this point, and **object** to this factual finding. Furthermore, i.p. 115 is an iron pipe, not a tree. A marked tree might witness i.p. 115.
27. The Order cites the City Ordinance 2008-33, enacted in June, which calls for the City and Cliffs to execute "mutual releases of claims against one another and mutual acknowledgement of the boundary separating the properties respectively titled in their names." Order, pp. 5-6. On December 17, in open court, Counsel for the Cliffs reported that such releases had not been executed, but that they would be executed immediately. On January 22, the City stated that no such releases exist (**Exhibit B**). **Plaintiffs object** to the Court's reliance on any such release or "mutual acknowledgement of the boundary separating the properties," which has not been executed.
28. The Court ruled that the deed conveying the .29 acre and the related plat also recognized the adjusted location of the property line. The land between the Wiswall Line and the Lindsey Line constitutes approximately 3.2 acres, in addition to the .29 acre that the June deed conveys explicitly. **Plaintiffs object** to the lack of any conventional documentation of a conveyance.
29. The City received no consideration for the 3.2 acres, separate from the consideration for the .29 acre. Based upon comparable sales, the value of the subject 3.2 acres exceeds \$1

- million. **Plaintiffs object** to the City's giving away valuable land, in violation of the South Carolina Constitution, Article III, § 31: "Lands belonging to or directly under the control of the State shall never be donated, directly or indirectly, to private corporations."
30. Page 11 of the Order addresses the fair market value of the .29 acre. Plaintiffs suggest that fair market value was not an issue in the case, and no evidence of fair market value was presented to the Court. **Plaintiffs object** to this factual finding.
31. In 1956 when the City acquired the subject 3.2 acres, along with the rest of its property, that land became exempt from property taxes. When the property line changed from the Wiswall Line to the Lindsey Line, the 3.2 acres became taxable property. The Tax Map requires revision to reflect the new property line, the new ownership, and taxability of the 3.2 acres. **Plaintiffs object** to the lack of a documentary basis for such a revision. If a deed related to the subject 3.2 acres were prepared and filed, it would clarify the ownership issue, minimize future controversy, and facilitate the work of the Greenville County Tax Assessor.
32. This Order adjusting the location of the property line raises other issues.
- a. Did recognition of the new property line constitute a conveyance of the 3.2 acres?
 - b. Cliffs contends that the Wiswall Line was adjusted by acquiescence. If so, on what date did this occur? Who was the owner of the land west of the Wiswall Line on that date?
33. Plaintiffs believe The Nature Conservancy and at least five other parties own interests in the 3.2 acres between the Wiswall Line and the Lindsey Line. Plaintiffs attempted to join these parties in this litigation by the Motion for Leave to File a Supplemental Complaint, which was denied. Based upon the foregoing materials, **Plaintiffs request** that the Court

reconsider its decision to deny Plaintiffs' attempt to join these parties.

WHEREFORE, Plaintiffs pray the Court to alter or amend or vacate the judgment, and grant Plaintiffs' Motion for Leave to File the Supplemental Complaint, to address the Plaintiffs' objections and unanswered questions as set out herein, and to grant such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

A large, stylized handwritten signature in black ink, likely belonging to James G. Carpenter, is written over a horizontal line.

James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs



City Manager's Office

January 22, 2009

Mr. Edward D. Sloan, Jr.
Box 25999
Greenville, SC 29616-0999

RE: Freedom of Information Act Request

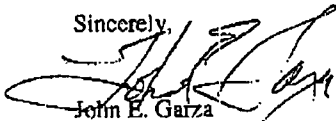
Dear Mr. Sloan:

Please accept this as a response to your Freedom of Information Act Request for:

Releases referred to in Section 5 of Ordinance 2008-33.

Please be advised that we do not have any documents that are responsive to your request.

Sincerely,



John E. Garza
Assistant City Attorney



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as a taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)

**Plaintiffs' Reply Memorandum in Support
of Motion to Alter or Amend the Judgment**

SCRCP 59(e)

v.)

City of Greenville, Mayor Knox H.)
White, and The Cliffs at Glassy, Inc.,)
Defendants.)

FILED CLERK OF COURT
GREENVILLE CO. S.C.
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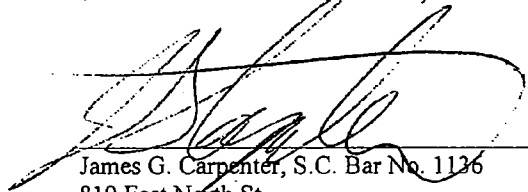
2009 FEB 25 P 4:17

Plaintiffs, by their undersigned attorney, submit this Reply Memorandum in Support of their Motion to Alter or Amend the Judgment filed Feb. 12, 2009. Plaintiffs would show unto the Court the following:

1. On February 19, 2009, Plaintiffs received from the City the attached correspondence and "Boundary Line Agreement, Quit Claim, and Release" ("Agreement") executed February 13, 2009. This document effectively ended the purpresture.
2. In light of the Agreement, Plaintiffs submit this Reply to modify their Motion filed February 12, 2009.
3. Paragraph 25, at the top of page 7, should refer to paragraph 10 (not 9).
4. Paragraph 27 should be supplemented with the attached Agreement, and the final sentence of Paragraph 27 should be deleted.
5. Paragraph 33 should be deleted.
6. The Prayer for Relief should read as follows:

WHEREFORE, Plaintiffs pray the Court to alter or amend the judgment to address the Plaintiffs' objections and unanswered questions as set out herein, and to grant such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as a taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)

v.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)
Defendants.)

Certificate of Service

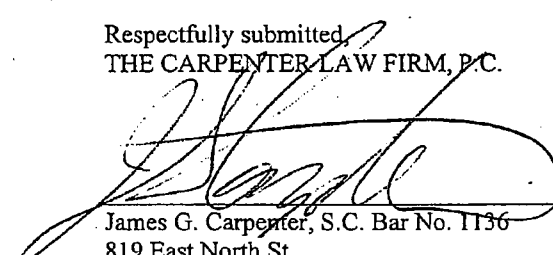
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GREENVILLE CO. S.C.
2009 FEB 25 P 4:17

The undersigned attorney hereby certifies that he served a copy of the foregoing Reply Memorandum in Support of Motion to Alter or Amend the Judgment upon counsel for the defendants by first-class mail postage prepaid, this Wednesday, February 25, 2009, addressed as follows:

Kathleen Kempe
P.O. Box 2207
Greenville, SC 29602

Rivers Stillwell
P.O. Box 10084
Greenville, SC 29603-0084

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Plaintiffs



Office of the City Attorney

February 18, 2009

James Carpenter, Esq.
819 East North Street
Greenville, SC 29601

Re: Boundary line agreement, quit claim, and release agreement

Dear Jim:

Please find enclosed a fully executed copy, dated February 13, 2009, of the above referenced document between the City of Greenville and the Cliffs.

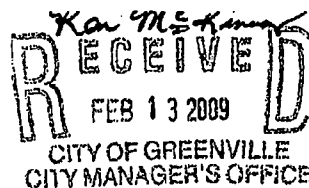
This is the document that was referred to during our hearing on December 17, 2008. Mr. Sloan subsequently served an FOIA request on the City for the document. At the time of his request, the fully executed document did not exist, and we so informed you. However, the document has now been completed and, as a courtesy, I am providing the copy.

If you have any questions, please give me a call.

Sincerely,

Kathleen Kempe
Assistant City Attorney

Ecl.



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

BOUNDARY LINE AGREEMENT,
QUIT CLAIM, AND RELEASE

This Property Boundary Line Agreement, Quit Claim, and Release ("the Agreement") is entered into by and between the City of Greenville, South Carolina ("the City"), and The Cliffs at Glassy, Inc. ("The Cliffs"), as of the 13th day of February, 2009.

WITNESSETH:

WHEREAS the City and The Cliffs are each possessed of certain estates in realty that are located within Greenville County, South Carolina;

WHEREAS the City and The Cliffs share a common boundary along a certain tract of rural real estate in northern Greenville County, on or around a geographical feature known commonly as Corbin Mountain, which is situated on the state line between North Carolina and South Carolina ("the Corbin Mountain Line");

WHEREAS the City and The Cliffs intend to fully, finally, and forever resolve any doubt, ambiguity, or uncertainty regarding the true and proper location of the Corbin Mountain Line;

WHEREAS a survey of the Corbin Mountain Line was conducted by Lindsey & Associates, Inc., on or about November 5, 2004, a portion of the same being recorded with the Office of the Register of Deeds, Greenville County, South Carolina, as "Tract 'B,' Commissioners of Public Works, City of Greenville," in Plat Book 1069, Page 58 ("the Corbin Mountain Survey") as shown on Exhibit A;

WHEREAS the Corbin Mountain Survey identifies a certain parcel of approximately 0.29 acres that The Cliffs intends to acquire from the City;

WHEREAS the City executed a deed on or about June 23, 2008, for 0.29 acres in favor of The Cliffs, which is recorded with the Office of the Register of Deeds, Greenville County, South Carolina, in Book 2329, Page 817 ("the Deed");

WHEREAS the aforementioned conveyance was expressly approved by the City Council of the City of Greenville, S.C., pursuant to Ordinance No. 2008-33 ("the Ordinance");

WHEREAS the Ordinance expressly confirms that the boundary depicted on the Corbin Mountain Survey and described in the Deed is the Corbin Mountain Line;

WHEREAS it is the intention of the City and The Cliffs to memorialize their mutual understanding as to the location of the Corbin Mountain Line;

NOW, THEREFORE, in consideration of the mutual promises exchanged between the City and The Cliffs, it is agreed as follows:

))

The City and The Cliffs agree that the aforementioned Corbin Mountain Survey correctly and accurately establishes the location of the Corbin Mountain Line;

The City and The Cliffs agree that the Corbin Mountain Line, as depicted by the Corbin Mountain Survey, is the true and correct boundary between the tracts owned by the City and The Cliffs, respectively;

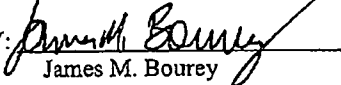
The Cliffs does hereby remise, release, and forever quit-claim unto the City and to its assigns all rights, title, and interest in and to the lands lying to the eastern side of the Corbin Mountain Line; and,

The City does hereby remise, release, and forever quit-claim unto The Cliffs and to its assigns all rights, title, and interest in and to the lands lying to the western side of the Corbin Mountain Line.

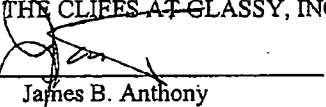
This document is executed by the City and The Cliffs in their respective capacities as title holders of property for themselves and their successors in interest. The City and The Cliffs release each other and their successors in interest from any claims of damage or boundary reconfiguration, other than those specifically approved herein.

IN WITNESS WHEREOF, the City and The Cliffs have hereunto set their hands and seals as of the day and year first above written.

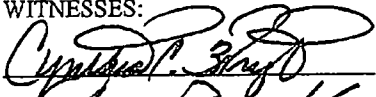
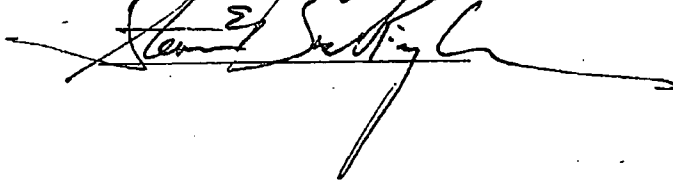
FOR THE CITY OF GREENVILLE:

BY: 
James M. Bourey
ITS: City Manager

FOR THE CLIFFS AT GLASSY, INC.

BY: 
James B. Anthony
ITS: President

WITNESSES:

("THE CORBIN MOUNTAIN LINE")

PROPERTY LINE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	
as a taxpayers of the City of	)	
Greenville, South Carolina, and on	)	Motion for Fees and Costs
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKI NSMIR

2009 MAY -4 P 3:36

Plaintiffs, by their undersigned attorneys, move the Court pursuant to SCRCP 54, S.C. Code Ann. § 15-77-300 and § 15-37-10 through -220 for costs and attorneys fees incurred in this case from the Defendant City. This motion incorporates a memorandum of law and an affidavit of counsel supports it.

In any civil action brought by . . . any party who is contesting state action, . . . the court may allow the *prevailing party* to recover *reasonable attorney's fees to be taxed as court costs* against the appropriate agency if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust."

S.C. Code Ann. § 15-77-300. Thus, the citizen must prove three elements to claim attorney's fees: (1) the citizen must be the prevailing party; (2) the government entity must have acted without substantial justification; and (3) no special circumstances would have made the award of attorney's fees unjust. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002).

The award of attorneys' fees is discretionary with the trial court. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990). Plaintiffs meet the three elements for an award of attorney's fees under this statute.

I. Plaintiffs are Prevailing Parties.

For eight years, The Cliffs at Glassy, Inc. had encroached upon City-owned land, committing a purpresture. Only after Plaintiffs filed suit did Defendant City end the purpresture by divesting its ownership of the land encroached upon. On March 24, 2008, Plaintiffs filed this action for an injunction requiring the City to end the eight-year encroachment (Complaint). On April 23, 2008, the City answered that it intended to take certain action in response to the Complaint (Answer). On April 28, 2008, the City enacted Ordinance 2008-33 enabling the City to dispose of a part of its land encroached upon (Ordinance, Exhibit J to the Complaint). June 19, 2008, by a deed recorded in Book 2329 at Page 817, the Defendant City divested title to about a quarter acre in the eastern part of its land encroached. By this divestiture, the City reduced the extent of, but did not eliminate, the encroachment.

On February 13, 2009, by deed recorded in Book DE2353 at Page 1209-1211, the Defendant City divested itself, by donation, of the remainder of its land encroached upon. Thereby, Plaintiffs' lawsuit accomplished its objective of ending the purpresture and Plaintiffs prevailed. The case remains before the Court until the Court formally concludes it.

A decision of the Montana Supreme Court also addresses a party that accomplished its objective through litigation in a similar manner, thereby substantially prevailing. A newspaper had been denied unredacted public documents from the City of Havre and sued to acquire them. *Havre Daily News, LLC v. City of Havre*, 333 Mont. 331, 351, 142 P.3d 864, 878 (2006). The City eventually produced the documents and moved to dismiss the newspaper's action for

mootness. The Court granted the City's motion, and the newspaper moved for fees. The City opposed the motion because the Court had awarded judgment to the City based on mootness. The Court nevertheless awarded fees.

Although Havre correctly observes that the Newspaper did not technically "prevail" in its action in the District Court, the court granted summary judgment in favor of Havre precisely because Havre mooted the case by providing the Newspaper with unredacted copies of the Reports. Absent Havre's conduct, the case would not have become moot. In mootng the case, *Havre provided the Newspaper with the very relief it sought to procure through litigation; thus, the Newspaper has prevailed in substance, albeit without court intervention.* Given these circumstances, we will consider the Newspaper to be the prevailing party with respect to its request for unredacted copies of the Reports. *Otherwise, a similarly situated party could, after extensive litigation, at the eleventh hour, and facing imminent defeat, simply moot a case in order to dodge this fee-shifting statute.*

Id. (emphasis added). The City of Greenville in the case at bar did exactly the same thing: it mooted the action for declaratory judgment in the eleventh hour in an effort to dodge South Carolina's fee-shifting statute. The purpresture had existed for eight years and was resolved only after several months of litigation with the Plaintiffs. Under these circumstances, the Plaintiffs have substantially prevailed.

II. Defendants Acted Without Substantial Justification.

Second, Defendant City acted without substantial justification in pressing its claims in this lawsuit rather than repelling the encroachment or otherwise ending the purpresture when Plaintiffs first filed this action. In analyzing this element, courts look to whether the governmental defendant had a reasonable basis in law and fact. *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004). Defendant City did not have a reasonable basis in law and fact for many months. Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it. Defendant City inaccurately argued that the land in question had been sold and that no purpresture existed.

Several months later, the Defendant City conveyed the remainder of the land encroached upon. Based upon the failure to even confirm the boundaries of the City's property in this action, Defendants were not "substantially justified" in pressing their claims in this lawsuit.

III. No Special Circumstances Make an Award of Fees Unjust.

Finally, no special circumstances make an award of fees unjust. Plaintiffs funded this litigation with their resources. The State benefits when civic minded citizens bring such actions. "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948), *quoting Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139. The Court continued, "Citizens should be encouraged to bring suits like these." *Id.* Plaintiff's action benefitted the City by prompting \$100,000 in income from the sale.

Under these circumstances, the defense of these matters was not substantially justified. Defendants vigorously contested this action at every turn, yet Plaintiffs established that Defendant City had failed to repel a purpresture for eight years, and had failed to remedy the situation over many months of litigation. Accordingly, Plaintiffs meet the qualifications for an award of attorneys' fees under S.C. Code Ann. § 15-77-300.

IV. Plaintiffs Are Entitled to Recover Costs in This Matter.

Attorneys for Plaintiffs are entitled to recover costs in this matter.

In every civil action commenced or prosecuted in the courts of record in this State, except cases in chancery, the attorneys for the plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party as prescribed in §§ 15-37-20, 15-37-60, 15-37-70, and 15-37-120 to 15-37-160, and Chapter 21 of Title 8, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, *such costs to be allowed as of course* to the attorneys for the plaintiff or defendant and all officers of the court thereto entitled accordingly as the action may

terminate and to be inserted in the judgment against the losing party. *In cases in chancery the same rule as to costs shall prevail* unless otherwise ordered by the court.

S.C. Code Ann. § 15-37-10 (emphasis added). Accordingly, Plaintiffs should be awarded costs.

V. Plaintiffs' Actual Attorneys Fees and Costs are Reasonable.

As to the amount, this case presented a substantial financial risk for Plaintiffs. The City and the public benefited from this litigation. Plaintiffs' counsel attaches an affidavit and statements documenting attorneys' fees and costs (Affidavit and Exhibits to Affidavit). Plaintiffs incurred \$39,816.60 in attorneys' fees and \$8,970.00 in surveyor costs pursuing this matter. In this matter, the Defendant City allowed a purpresture for eight years. Thus, Defendant City's actions ending the purpresture brought \$100,000 into the City coffer, thus benefitting the City citizens and taxpayers. Accordingly, Plaintiffs' actual attorneys' fees and costs were reasonable, and Plaintiffs are entitled to an award of attorneys' fees and costs.

"There are six factors for the trial court to consider when determining an award of attorneys fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) *citing Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). "Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors." *Id. citing Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427.

First, as to the nature, extent and difficulty of the case, Defendant City's failure to remedy the purpresture had existed for eight years until Plaintiffs brought this action. Plaintiffs spent significant time, effort and money to engage a land surveyor because Defendant City failed

to have its own survey performed and failed to properly defend the real property owned by the City.

Second, as to the time necessarily devoted to the case, Plaintiffs spent significant time in gathering evidence and engaged land surveyors, and researched deeds to prove the extent of the purpresture.

Third, Plaintiffs' counsel are experienced attorneys of high professional standing and well known to the courts of this State. *See, inter alia, South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).

Fourth, counsel did not work on a contingency fee, but rather Plaintiffs paid these fees as they accrued. They should be reimbursed for their fees and expenses.

Fifth, Plaintiffs obtained beneficial results. Defendants divested the property only after litigation had begun. Defendant City did not fully end the purpresture until after many months of litigation and after Plaintiffs had incurred several thousand dollars in surveying costs. Ending the purpresture was the Plaintiffs' objective. Furthermore, Plaintiffs' litigation benefits every citizen of the City by requiring that City not tolerate encroachments.

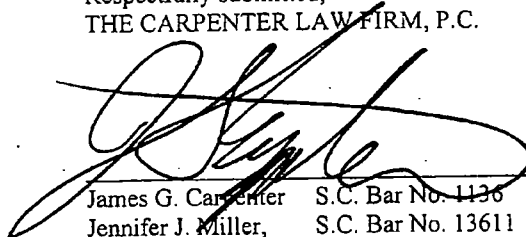
Sixth, as to the customary legal fees for similar services, Plaintiffs have presented Counsel's affidavit supported by detailed time records showing that Plaintiff incurred attorneys' fees and costs. Plaintiffs respectfully suggest that based upon Counsel's affidavit and the court's

familiarity with attorney fees customarily charged in this legal community, the time spent and the hourly rates requested by Counsel are reasonable and modest. In fact, Counsel have discounted their normal rates due to the public interest nature of this litigation. The Court should find that Plaintiffs' actual attorneys' fees and costs were reasonable, and that Plaintiffs are entitled to a full award of attorney's fees and costs, with interest, because the City did not accept Plaintiffs' Offer of Judgment filed March 4, 2009.

CONCLUSION

In the case at bar, Plaintiffs have substantially prevailed. The Defendants were not substantially justified in pressing their claims. No other factors make an award of attorneys' fees unjust. Wherefore, Plaintiffs pray the Court for an award of actual attorneys' fees and costs from the City.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
819 East North Street, Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.,)
and Robert M. Lloyd, individually and)
as a taxpayers of the City of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)

**Affidavit in Support of
Motion for Fees and Costs**

v.)

City of Greenville, Mayor Knox H.)
White, and The Cliffs at Glassy, Inc.,)
Defendants.)

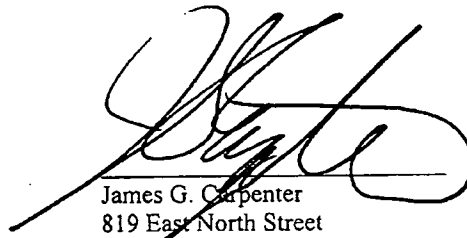
I, James G. Carpenter, being first duly sworn, state as follows:

1. I am lead counsel for the Plaintiffs. I graduated from the University of South Carolina School of Law in 1984. I was admitted to the Bar in South Carolina in 1985 and in North Carolina in 1986. I am also admitted to practice before the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit.
2. Since 1994, I have been practicing civil litigation in my own firm. My normal billing rate is \$275 per hour, but because of the public interest nature of this litigation, I agreed with Plaintiffs for rates of \$200 per hour.
3. As far as I know, our firm is the only one in this state focusing on this kind of taxpayer and public interest litigation. We have been working on such cases for more than ten years, primarily with Mr. Sloan.
4. My associate Jennifer Miller worked on this case. She graduated from the University of South Carolina School of Law and was admitted to the bar in 1997. She has been with my firm for more than ten years. Her billing rate is \$150 per hour.
5. My associate L. Warren Clayton worked on this case. He graduated from the University of South Carolina School of Law and was admitted to the bar in 2004. His billing rate is \$150 per hour.
6. We maintain daily detailed time records of our professional services. I attach to this Affidavit monthly invoices with daily work records detailing the hours my

associates and our firm expended litigating this case. Our records show attorneys fees and our costs through April 30, 2009 totaled \$39,816.60, as shown by the attached monthly invoices. In addition, the Plaintiffs incurred \$8,970 in surveyor's fees, as shown by the attached bill.

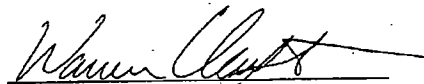
7. The record and time descriptions in this case demonstrate that defendants vigorously contested this action at every turn, yet Plaintiff prevailed first by prompting a sale of .29 acres of the purpresture and second by the City's filing a deed in February 2009, to transfer the remainder of the purpresture to The Cliffs at Glassy, Inc. This concession came after several months of vigorous litigation disputing the issue. Plaintiff should be awarded attorneys fees under S.C. Code Ann. § 15-77-300.
8. Plaintiffs funded this case with private resources, and this case presented a significant and extended financial risk for them, but the City and its citizens and taxpayers benefited as a result of this litigation.
9. I believe that our actual attorneys' fees and costs were reasonable and that Plaintiff is entitled to a full award of attorney's fees.

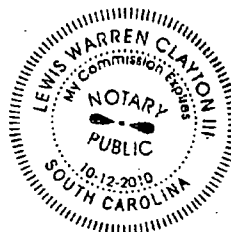
Further the affiant saith naught.



James G. Carpenter
819 East North Street
Greenville, SC 29601
(864) 235-1269
SC Bar No. 1136

Subscribed and sworn to before me
this 4th day of May, 2009


Notary Public, State of South Carolina
My commission expires: 10-12-2010



THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
4/30/2009	3725

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel. conf. with Mr. Sloan, re: motion for atty. fees and Motion to Alter or Amend;	4/6/2009	0.25	200.00	50.00
J.C. Carpenter	Revisions to Motion for fees and costs; fax to Mr. Sloan;	4/21/2009	0.75	200.00	150.00
J.C. Carpenter	Revisions to Motion for Attorneys fees;	4/22/2009	1	200.00	200.00
J.C. Carpenter	Calls from Mr. Sloan; research on Rule 54 costs against the State; Research on 15-77-300, re: costs;	4/23/2009	1.25	200.00	250.00
Jennifer Miller	editing Motion for Fees	4/23/2009	0.5	150.00	75.00
J.C. Carpenter	Review of Motion for Attorneys fees and Memo in Support; fax to Mr. Sloan; Tel. conf. with Mr. Sloan;	4/24/2009	0.5	200.00	100.00
Jennifer Miller	revising motion for fees; research; conf. w/JGC	4/24/2009	2.75	150.00	412.50
Jennifer Miller	reviewing and incorporating suggested revisions from Mr. Sloan after finding factual and legal citations; conf. w/JGC	4/27/2009	1.5	150.00	225.00
Jennifer Miller	reviewing Motion	4/28/2009	0.5	150.00	75.00
J.C. Carpenter	Revisions to Motion for fees; drafting affidavit for fees; fax from Mr. Sloan;	4/29/2009	1	200.00	200.00
Jennifer Miller	preparing to file and serve Motion (cert. of service; conf. w/JGC	4/29/2009	1.25	150.00	187.50
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

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DATE	INVOICE #
4/30/2009	3725

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South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel.conf. with Mr. Sloan, conf. with JJ Miller, re: alternative theories of recovery of fees and costs; Review of caselaw;	4/30/2009	0.75	200.00	150.00
Jennifer Miller	conf. w/JGC re. additional theories to add to Motion; research	4/30/2009	2	150.00	300.00
Thank You for using The Carpenter Law Firm			Total \$2,375.00		

THE CARPENTER LAW FIRM, P.C.

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819 E. North Street, Suite 230
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(864) 235-1269

Invoice

DATE	INVOICE #
3/31/2008	3308

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Confs. and tel. confs. with D. Chamberlain, Mr. Sloan; fax from Mr. Sloan; Review of draft complaint;	3/11/2008	1	200.00	200.00
J.C. Carpenter	Review and revision of complaint, re: Cliffs Trespass;	3/12/2008	0.5	200.00	100.00
J.C. Carpenter	Calls and faxes from Mr. Sloan, re: possible suit vs. City and Cliffs; and other possible lawsuits;	3/17/2008	0.5	200.00	100.00
J.C. Carpenter	Faxes from Mr. Sloan; Tel. conf. with Mr. Sloan; conf. with supplier of documents;	3/18/2008	0.75	200.00	150.00
Jennifer Miller	Cliffs-confs. w/JGC; reviewing file; ; calls to Mr. Sloan; research; drafting complaint	3/18/2008	1	150.00	150.00
J.C. Carpenter	Tel. confs. with Mr. Sloan, Bob Lloyd, re: potential lawsuit vs. City, Cliffs; Conf. with JJ Miller;	3/20/2008	0.25	200.00	50.00
Jennifer Miller	Cliffs-confs. w/JGC; reviewing file; ; calls to Mr. Sloan; research; drafting complaint	3/20/2008	1	150.00	150.00
J.C. Carpenter	Tel.confs. with Mr. Sloan; review and revision of draft complaint vs. Cliffs; fax to Mr. Sloan; review of exhibit; Conf. with JJ Miller;	3/21/2008	1.75	200.00	350.00
Jennifer Miller	Cliffs-confs. w/JGC; reviewing file; ; calls to Mr. Sloan; research; drafting complaint	3/21/2008	1.5	150.00	225.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

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819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
3/31/2008	3308

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel. confs. with and fax from Mr. Sloan; Revisions to draft complaint; Research on legal issues; faxes to Mr. Sloan;	3/22/2008	2.5	200.00	500.00
J.C. Carpenter	Tel. confs. with Mr. Sloan, re: cliffs complaint; receipt & review of map of area; faxes from Mr. Sloan, re: SCPIF; filing and service of case against Cliffs;	3/24/2008	2.75	200.00	550.00
Warren Clayton	Prepare exhibits for Complaint.	3/24/2008	0.75	150.00	112.50
J.C. Carpenter	Tel. conf. with Mr. Sloan; preparation for service and service of pleadings;	3/25/2008	0.75	200.00	150.00
J.C. Carpenter	Receipt & review of maps and arial views of subject property, with property lines; Tel. conf. with and meeting with Mr. Sloan;	3/26/2008	1	200.00	200.00
Warren Clayton	Research & procurement of plats and aerial photos of property at issue.	3/26/2008	1.5	150.00	225.00
J.C. Carpenter	Tel. conf. with Ben Szbody; fax to Mr. Sloan;	3/27/2008	0.5	200.00	100.00
J.C. Carpenter	Tel. conf. with and faxes from Mr. Sloan;	3/28/2008	0.5	200.00	100.00
J.C. Carpenter	Tel. conf. with Mr. Sloan;	3/29/2008	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total		\$3,462.50

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
4/30/2008	3341

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes and memos from Mr. Sloan;	4/2/2008	0.75	200.00	150.00
J.C. Carpenter	Conf. and tel. conf with Mr. Sloan; E-mails to and from R/E Paralegal; calls to and from Cliffs' Counsel;	4/3/2008	1.25	200.00	250.00
J.C. Carpenter	Faxes to from Mr. Sloan; tel. conf. with Mr. Sloan; research on Lowcountry case; report from paralegal; review of City Council minutes 9/10/07.	4/4/2008	1	200.00	200.00
J.C. Carpenter	Receipt & Review of faxes from Mr. Sloan; Letter from Rivers Stillwell; fax to Mr. Sloan;	4/7/2008	0.5	200.00	100.00
J.C. Carpenter	Faxes to and from Mr. Sloan; letter to opposing counsel;	4/8/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Atty. for Cliffs Homeowners Ass'n.	4/9/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. w/ Bob Lloyd;	4/14/2008	0.25	200.00	50.00
J.C. Carpenter	Conf. with Mr. Sloan, re: strategy; fax to Mr. Sloan; Conf. with D. Chamberlain;	4/15/2008	1	200.00	200.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; fax from Mr. Sloan;	4/16/2008	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of faxes from Mr. Sloan;	4/17/2008	0.5	200.00	100.00
J.C. Carpenter	Fax from and Tel. conf. with Mr. Sloan;	4/19/2008	0.25	200.00	50.00
J.C. Carpenter	Conf. with Mr. Sloan, review of pictures of Corbin Mtn.	4/21/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
4/30/2008	3341

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Receipt & review of faxes from Mr. Sloan;	4/22/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with and fax from Mr. Sloan;	4/23/2008	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of Answer of City; faxes to Mr. Sloan; Tel. confs. with Mr. Sloan; Drafting Reply; Certificate of service;	4/24/2008	0.75	200.00	150.00
J.C. Carpenter	Receipt & Review of fax memos from Mr. Sloan; Tel. conf. with Mr. Sloan; filing and service of Reply, Certificate of service;	4/25/2008	1	200.00	200.00
J.C. Carpenter	faxes from and to Mr. Sloan; and tel. confs. with Mr. Sloan; call, fax, and e-mail to Rivers Stillwell;	4/26/2008	1.5	200.00	300.00
J.C. Carpenter	Tel. confs. with Rivers Stillwell, Mr. Sloan; faxes from Mr. Sloan; Conf. with Mr. Sloan; Faxes to Mr. Sloan; e-mail to R/E Paralegal;	4/28/2008	1.5	200.00	300.00
J.C. Carpenter	Faxes to and from Mr. Sloan; calls from Mr. Sloan; drafting and revising Interrogatories and Requests for Production, certificate of service; 2:33	4/29/2008	1.25	200.00	250.00
J.C. Carpenter	Faxes from Mr. Sloan;	4/30/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total \$2,750.00		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
5/31/2008	3367

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	E-mails from and to Rivers Stillwell; fax to Mr. Sloan; tel. conf. with Mr. Sloan;	5/2/2008	0.25	200.00	50.00
J.C. Carpenter	E-mail from Rivers Stillwell; fax to Mr. Sloan; fax from Mr. Sloan;	5/5/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. Conf. with and fax from Mr. Sloan;	5/6/2008	0.25	200.00	50.00
J.C. Carpenter	Calls to and from Rivers Stillwell;	5/8/2008	0.25	200.00	50.00
J.C. Carpenter	fax from Mr. Sloan; Tel.confs. with Mr. Sloan; calls to Rivers Stillwell; obtaining and reviewing copy of Cliffs' Answer; Drafting, filing and serving Motion for Partial Judgment on the Pleadings;	5/12/2008	3	200.00	600.00
J.C. Carpenter	Tel. confs. with Mr. Sloan, re: judgment on the pleadings, status and strategy;	5/13/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; review and revision of interrogatories and requests for production;	5/20/2008	0.25	200.00	50.00
J.C. Carpenter	Fax from Mr. Sloan; service of discovery requests;	5/21/2008	0.25	200.00	50.00
	Filing fee	5/12/2008		25.00	25.00
Thank You for using The Carpenter Law Firm			Total		\$975.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
6/30/2008	3399

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel. conf. with Mr. Sloan; e-mail to Judge Few, opposing counsel requesting hearing;	6/4/2008	0.25	200.00	50.00
J.C. Carpenter	E-mail from Few; fax to and tel. conf. with Mr. Sloan;	6/16/2008	0.25	200.00	50.00
J.C. Carpenter	E-mail from Rivers Stillwell; Receipt & Review of City's discovery responses; faxes to Mr. Sloan;	6/25/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total		\$200.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
7/31/2008	3437

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel confs. with Mr. Sloan; paralegal; Rivers Stillwell; fax from Mr. Sloan; fax from Stillwell; fax to Mr. Sloan;	7/11/2008	0.5	200.00	100.00
J.C. Carpenter	Calls from Mr. Sloan; fax from Mr. Sloan; review of discovery responses; review of pleadings, and draft amended pleadings;	7/12/2008	1	200.00	200.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; receipt & review of discovery responses; organization of file for litigation;	7/14/2008	0.5	200.00	100.00
J.C. Carpenter	Conf. with paralegal; tel. conf. with Mr. Sloan; review of file; call to Kathleen Kempe;	7/23/2008	0.5	200.00	100.00
J.C. Carpenter	Tel. confs. with Mr. Sloan; call to Kathleen Kempe; E-mail to Kathleen;	7/24/2008	1	200.00	200.00
Thank You for using The Carpenter Law Firm			Total		\$700.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
8/31/2008	3475

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Conf. with Kathleen Kempe; serving interrogatories and requests for production;	8/1/2008	0.5	200.00	100.00
J.C. Carpenter	Drafting Motion for Leave to File Supplemental Complaint; research on constitutional section; fax to Mr. Sloan;	8/12/2008	0.75	200.00	150.00
J.C. Carpenter	Calls from Mr. Sloan; review of file; e-mail to paralegal, re: deed; conf. with paralegal;	8/13/2008	0.5	200.00	100.00
J.C. Carpenter	Revisions to Motion for leave to file supplemental complaint; drafting supplemental complaint; faxes to and from Mr. Sloan;	8/15/2008	0.75	200.00	150.00
J.C. Carpenter	Receipt & Review of discovery responses from City; faxes to and from Mr. Sloan; call to Kathleen Kempe;	8/27/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total \$600.00		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
9/30/2008	3511

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Receipt & review of supplemental discovery responses; fax to Mr. Sloan;	9/3/2008	0.25	200.00	50.00
J.C. Carpenter	Tel.conf. with Mr. Sloan; review of fax from Mr. Sloan; Drafting Motion to Supplement Complaint and Supplemental Complaint; fax to Mr. Sloan;	9/5/2008	1.25	200.00	250.00
J.C. Carpenter	Receipt & Review of fax from Mr. Sloan; revisions to Motion and Supplemental Complaint; fax to Mr. Sloan; Tel. conf. with Mr. Sloan;	9/6/2008	0.5	200.00	100.00
J.C. Carpenter	Fax from Mr. Sloan; revision, filing and serving Motion to file supplemental complaint; exhibits, certificate of service;	9/8/2008	2.75	200.00	550.00
J.C. Carpenter	Call and faxes from and to Mr. Sloan; proposed revisions to complaint and motion; e-mail from Kathleen Kempe;	9/9/2008	1	200.00	200.00
J.C. Carpenter	Receipt & Review of City's motion for Summary Judgment; fax to and tel. conf. with Mr. Sloan;	9/10/2008	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of motion from Cliffs; fax to Mr. Sloan; tel. conf. with Mr. Sloan;	9/23/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; fax from Mr. Sloan;	9/29/2008	0.25	200.00	50.00
		9/4/2008		25.00	25.00
Thank You for using The Carpenter Law Firm			Total		\$1,325.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
10/31/2008	3547

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT
			Upon Receipt		Cliffs
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Call to Kathleen Kempe; Receipt & review of Memo in Support of Motion for Summary Judgment from Cliffs; receipt & review of discovery responses from Cliffs; faxes to Mr. Sloan; Review of SC Caselaw; preparation for hearing;	10/1/2008	5	200.00	1,000.00
J.C. Carpenter	Faxes from and to Mr. Sloan; Tel. conf. with Mr. Sloan; review of caselaw; preparation for and representation in hearing;	10/2/2008	2.5	200.00	500.00
J.C. Carpenter	Calls and faxes from and to Mr. Sloan;	10/3/2008	1	200.00	200.00
J.C. Carpenter	fax to Mr. Sloan, re: state ownership of lands;	10/6/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; Meeting with Freeland; Meeting with attorney, re: conservation easement;	10/14/2008	2.5	200.00	500.00
J.C. Carpenter	Faxes from and to Mr. Sloan;	10/15/2008	0.25	200.00	50.00
J.C. Carpenter	Faxes from and to Mr. Sloan, re: factual developments of the case; Tel. conf. with surveyor; tel. conf. with Mr. Sloan;	10/16/2008	1.25	200.00	250.00
J.C. Carpenter	Fax from Mr. Sloan; Drafting Second Motion to Supplement the Complaint, Second Supplemental Complaint;	10/16/2008	0.75	200.00	150.00
J.C. Carpenter	Calls to and from Mr. Sloan; Jim Freeland; meeting with surveyors; trip to property;	10/17/2008	6	200.00	1,200.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
10/31/2008	3547

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Calls and faxes from Mr. Sloan; meeting with Mr. Sloan; research on County plats;	10/19/2008	1.5	200.00	300.00
J.C. Carpenter	Calls and Fax to and from Mr. Sloan; fax from Mr. Sloan; Research online at RMC office; E-mail to Jim Freeland;	10/20/2008	3.25	200.00	650.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; meeting with Jim Freeland, Mr. Sloan;	10/21/2008	1.5	200.00	300.00
J.C. Carpenter	Calls and faxes from and to Mr. Sloan; revisions to Motion to file Second Supplemental Complaint; drafting Second Supplemental Complaint; Trip to and Conf. with Land Surveyor's office	10/22/2008	5.25	200.00	1,050.00
J.C. Carpenter	Faxes from and to Mr. Sloan; revisions to Second Supplemental Complaint; revision of memo re: case activities; draft letter to other interested parties;	10/23/2008	1	200.00	200.00
J.C. Carpenter	Faxes from and to Mr. Sloan, re: status of case, and case summary memo;	10/24/2008	0.5	200.00	100.00
J.C. Carpenter	Tel. conf. and conf. with Mr. Sloan; faxes from and to Mr. Sloan; revisions to proposed Supplemental Complaint;	10/25/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total		

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819 E. North Street, Suite 230
Greenville, SC 29601
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South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Calls and faxes to and from Mr. Sloan; Review of newly discovered plats; Review of Motion for Leave to File Second Supplemental Complaint, and Second Supplemental Complaint;	10/27/2008	1.5	200.00	300.00
J.C. Carpenter	Tel. confs. with and faxes from and to Mr. Sloan; revisions to Motion and Supplemental Complaint; call to Clerk of Court; research on filed plat; Meeting with Freeman; Filing and service of Motion and Complaint; e-mail to Judge Few, counsel;	10/28/2008	7	200.00	1,400.00
J.C. Carpenter	Call and fax from Mr. Sloan;	10/29/2008	0.25	200.00	50.00
J.C. Carpenter	Review of large plat; tel. conf. with Mr. Sloan;	10/30/2008	0.25	200.00	50.00
J.C. Carpenter Reimb Group	Tel. confs. with Mr. Sloan;	10/31/2008	0.25	200.00	50.00
	Trip to Cliffs' property.	10/17/2008		29.10	29.10
	Motion Filing Fee	10/28/2008		25.00	25.00
	Total Reimbursable Expenses				54.10
Thank You for using The Carpenter Law Firm			Total		\$8,504.10

THE CARPENTER LAW FIRM, P.C.

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819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
11/30/2008	3580

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes from and to Mr. Sloan; tel. conf. with Mr. Sloan;	11/3/2008	0.25	200.00	50.00
J.C. Carpenter	Conf. with Mr. Sloan; fax from Mr. Sloan;	11/10/2008	0.5	200.00	100.00
Jennifer Miller	conf. w/JGC re. hearing; correspondence with opposing counsel re. hearing; research for Mr. Sloan re. lot sales and prices	11/10/2008	0.75	150.00	112.50
J.C. Carpenter	Fax from and Tel. conf. with Mr. Sloan;	11/11/2008	0.25	200.00	50.00
J.C. Carpenter	Fax from Mr. Sloan, re: lots sold trespassing on City property; Tel.conf. with Mr. Sloan;	11/12/2008	0.25	200.00	50.00
Jennifer Miller	conf. w/JGC regarding scheduling hearing; faxing correspondence to Mr. Sloan	11/12/2008	0.5	150.00	75.00
J.C. Carpenter	Faxes from and to Mr. Sloan; Tel. conf. with Mr. Sloan; E-mails from and to opposing counsel;	11/13/2008	0.75	200.00	150.00
J.C. Carpenter	E-mail from Rivers Stillwell; tel. conf. with Mr. Sloan;	11/14/2008	0.25	200.00	50.00
J.C. Carpenter	Letter and proposed order from opposing counsel; fax to Mr. Sloan; tel. conf. with Mr. Sloan;	11/17/2008	0.25	200.00	50.00
Jennifer Miller	conf. w/JGC; reviewing and forwarding correspondence from opposing counsel regarding motion response and scheduling	11/17/2008	0.5	150.00	75.00
J.C. Carpenter	Fax from and Tel. Confs. with Mr. Sloan;	11/18/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
11/30/2008	3580

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	faxes from and to Mr. Sloan; Drafting Third Supplemental Complaint; Research on purchasers and lienholders; tel. confs. with Mr. Sloan; E-mail to opposing counsel;	11/19/2008	2.5	200.00	500.00
J.C. Carpenter	Tel. conf. with and fax to Mr. Sloan;	11/20/2008	0.25	200.00	50.00
J.C. Carpenter	E-mail from Judge Few, call to Kathleen Kempe, Call to Rivers Stillwell; faxes to and tel conf. with Mr. Sloan; e-mail to Judge Few;	11/21/2008	1.75	200.00	350.00
J.C. Carpenter	E-mails from and to Judge Few, opposing counsel;	11/22/2008	0.25	200.00	50.00
J.C. Carpenter	Conf. with Judge Few; e-mail to opposing counsel; fax to Mr. Sloan;	11/24/2008	0.25	200.00	50.00
J.C. Carpenter	fax from Mr. Sloan; call from Bob Lloyd;	11/25/2008	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total \$1,912.50		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
12/31/2008	3618

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	E-mail from opposing counsel; e-mail to Judge; Tel. conf. with opposing counsel; fax to Mr. Sloan;	12/1/2008	0.25	200.00	50.00
J.C. Carpenter	E-mails from and to Judge Few, opposing counsel;	12/2/2008	0.25	200.00	50.00
J.C. Carpenter	Fax from and tel. conf. with Mr. Sloan;	12/9/2008	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of Memo and affidavit from Cliffs; fax to Mr. Sloan; Tel. conf. with Mr. Sloan; Preparation for hearing;	12/16/2008	1	200.00	200.00
J.C. Carpenter	Preparation for and representation in hearing on Motion to file Supplemental Complaint; Faxes from and to Mr. Sloan; tel. conf. with Mr. Sloan;	12/17/2008	3.25	200.00	650.00
J.C. Carpenter	Faxes from and to Mr. Sloan; conf. with Mr. Sloan;	12/18/2008	0.5	200.00	100.00
J.C. Carpenter	fax from and Tel. conf. with Mr. Sloan;	12/19/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. w/ Mr. Sloan; receipt & review of faxes from Mr. Sloan;	12/22/2008	0.5	200.00	100.00
J.C. Carpenter	Fax from and Tel. confs. with Mr. Sloan; research on limits of sale of real property by municipalities; faxes to Mr. Sloan;	12/23/2008	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
12/31/2008	3618

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Review and revision of proposed press release; letters to County Assessor, Willis Meadows; Mayor White; Faxes to and from Mr. Sloan re: plat;	12/29/2008	2	200.00	400.00
Thank You for using The Carpenter Law Firm			Total		\$1,750.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
1/31/2009	3651

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	faxes to and from Mr. Sloan; tel. conf. with Mr. Sloan;	1/10/2009	0.25	200.00	50.00
J.C. Carpenter	Review and revision of fax memo from Mr. Sloan; conf. with Mr. Sloan;	1/21/2009	0.25	200.00	50.00
J.C. Carpenter	Receipt & Review of proposed order; fax to Mr. Sloan;	1/22/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; Preparation of response to proposed order;	1/27/2009	3.25	200.00	650.00
J.C. Carpenter	Fax from Mr. Sloan; conf. with Mr. Sloan; revisions to letter to Judge Few; copy to counsel; fax to Mr. Sloan;	1/28/2009	1.75	200.00	350.00
Thank You for using The Carpenter Law Firm			Total		\$1,150.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
2/28/2009	3678

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes to and from Mr. Sloan; Tel. conf. with Mr. Sloan; Receipt & review of signed order from Court; fax to Mr. Sloan;	2/2/2009	0.75	200.00	150.00
J.C. Carpenter	Tel. conf. with and receipt & review and revision of faxes from Mr. Sloan; Drafting Motion to Alter or Amend the Judgment; faxes to Mr. Sloan;	2/3/2009	2.5	200.00	500.00
J.C. Carpenter	Faxes from and to Mr. Sloan; Conf. and tel. conf. with Mr. Sloan; Revisions to Motion to Alter or Amend;	2/4/2009	3	200.00	600.00
J.C. Carpenter	Faxes and calls from Mr. Sloan; revisions to Motion to Alter or Amend; fax to Mr. Sloan;	2/5/2009	3.75	200.00	750.00
J.C. Carpenter	Tel. conf. with and faxes from and to Mr. Sloan; revisions to Motion to Alter or Amend; E-mail to Judge Few and opposing Counsel;	2/6/2009	1.25	200.00	250.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; research on derivation of city's property; Confs. with Mr. Sloan;	2/7/2009	4	200.00	800.00
J.C. Carpenter	Calls and fax from Mr. Sloan; revisions to Motion to Alter or Amend; Faxes to Mr. Sloan; Research and analysis of tracts and history of ownership of property;	2/9/2009	6	200.00	1,200.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
2/28/2009	3678

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT
			Upon Receipt		Cliffs
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Fax from and Tel. conf. with Mr. Sloan;	2/10/2009	6.5	200.00	1,300.00
J.C. Carpenter	revisions to Motion to Alter or Amend;				
J.C. Carpenter	Research on land ownership; revisions to	2/11/2009	8.75	200.00	1,750.00
J.C. Carpenter	Motion to Alter or Amend; Research of				
J.C. Carpenter	archives at the tax office; faxes to Mr. Sloan;	2/12/2009	3.5	200.00	700.00
J.C. Carpenter	Fax from Mr. Sloan; revisions to Motion to				
J.C. Carpenter	Alter or Amend; research on property				
J.C. Carpenter	records; Tel. confs. with and faxes to Mr.				
J.C. Carpenter	Sloan; filing and service of Motion; e-mail to				
J.C. Carpenter	Judge and counsel;	2/13/2009	0.25	200.00	50.00
J.C. Carpenter	Faxes from and to Mr. Sloan;	2/14/2009	0.25	200.00	50.00
J.C. Carpenter	Faxes from Mr. Sloan;	2/16/2009	0.5	200.00	100.00
J.C. Carpenter	Faxes from and Tel. conf. with Mr. Sloan;				
J.C. Carpenter	conf. with Mr. Sloan;	2/18/2009	0.5	200.00	100.00
J.C. Carpenter	Tel. confs. with Mr. Sloan; Receipt & review				
J.C. Carpenter	of response to Motion from Cliffs; fax to Mr.	2/19/2009	0.75	200.00	150.00
J.C. Carpenter	Sloan;				
J.C. Carpenter	Receipt & Review of letter and attachments				
J.C. Carpenter	from Kathleen Kempe; Faxes from and to				
J.C. Carpenter	Mr. Sloan; Tel. confs. with Mr. Sloan, Bob				
J.C. Carpenter	Lloyd;	2/20/2009	2.75	200.00	550.00
J.C. Carpenter	Organization of file, deeds and plats; Tel.				
J.C. Carpenter	conf. with Mr. Sloan;				
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
2/28/2009	3678

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Memos from Mr. Sloan; research on adverse possession; faxes to Mr. Sloan;	2/22/2009	1	200.00	200.00
J.C. Carpenter	Faxes from Mr. Sloan; tel. confs. with Mr. Sloan;	2/23/2009	1	200.00	200.00
J.C. Carpenter	Tel. conf. and conf. with and fax from Mr. Sloan; research on County Register of Deeds office;	2/24/2009	0.5	200.00	100.00
J.C. Carpenter	faxes to and from Mr. Sloan; tel. confs. with Mr. Sloan; review of Motion to Alter or Amend; drafting, filing and service of Reply;	2/25/2009	2.5	200.00	500.00
J.C. Carpenter	Receipt & review of letter from Kathleen Kempe, with filed agreement; fax to Mr. Sloan; Tel. confs. with Mr. Sloan, Kathleen Kempe; Review and revision of press release; faxes from and to Mr. Sloan;	2/26/2009	1.25	200.00	250.00
J.C. Carpenter	Faxes from and to Mr. Sloan; revisions to proposed announcement; Tel. conf with Mr. Sloan;	2/27/2009	0.5	200.00	100.00
	Motion Filing Fee	2/12/2009		25.00	25.00
Thank You for using The Carpenter Law Firm			Total \$10,375.00		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
3/31/2009	3702

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT
			Upon Receipt		Cliffs
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes from and to Mr. Sloan;	3/2/2009	0.25	200.00	50.00
J.C. Carpenter	faxes from Mr. Sloan; Calls from and to Mr. Sloan; Research on Offers of Judgment;	3/3/2009	2.25	200.00	450.00
J.C. Carpenter	Drafting offer of judgment; fax to Mr. Sloan; fax from and tel. conf. with Mr. Sloan; Revisions to proposed Offer of Judgment; e-mail to Kathleen Kempe; fax to Mr. Sloan; filing and service of offer of judgment;	3/4/2009	1.25	200.00	250.00
J.C. Carpenter	Fax from Mr. Sloan;	3/5/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; e-mail to Kathleen Kempe, Rivers Stillwell;	3/9/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; conf. with JJ Miller;	3/11/2009	0.25	200.00	50.00
J.C. Carpenter	Tel.conf. with Mr. Sloan; conf. with JJ Miller, re: drafting Motion for fees;	3/12/2009	0.25	200.00	50.00
Jennifer Miller	confs. w/JGC; drafting motion for fees	3/12/2009	3.5	150.00	525.00
J.C. Carpenter	Faxes from and to Mr. Sloan; Revisions to motion for fees;	3/13/2009	0.5	200.00	100.00
Jennifer Miller	confs. w/JGC; drafting motion for fees	3/13/2009	3.5	150.00	525.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; call to Kathleen Kempe;	3/16/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. confs. with and fax from Mr. Sloan; revisions to Motion for Fees and Costs; fax to Mr. Sloan;	3/18/2009	0.75	200.00	150.00
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
3/31/2009	3702

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT	
			Upon Receipt		Cliffs	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT	
Jennifer Miller	research for Supplemental Memo in Support of Motion to Alter or Amend; conf. w/JGC	3/18/2009	3.75	150.00	562.50	
J.C. Carpenter	Westlaw Research on voluntary Compliance and mootness;	3/19/2009	1	200.00	200.00	
Jennifer Miller	supplement to motion	3/23/2009	1	150.00	150.00	
Jennifer Miller	supplement to motion	3/25/2009	1	150.00	150.00	
Jennifer Miller	supplement to motion	3/26/2009	1	150.00	150.00	
Jennifer Miller	supplement to motion	3/27/2009	1.5	150.00	225.00	

Invoice

FREELAND & ASSOCIATES, INC.
Engineers and Land Surveyors
323 West Stone Avenue
Greenville, SC 29609
864-271-4524 Fax: 864-233-0316

DATE	INVOICE #
10/30/2008	61387

BILL TO:

SOUTH CAROLINA PUBLIC INTEREST
FOUNDATION
PO BOX 25999
GREENVILLE, SC 29616

		P.O. NUMBER	TERMS	PROJECT
			Net 30	
QUANTITY	DESCRIPTION	RATE		AMOUNT
INVESTIGATIVE SURVEY AT CORBIN MT. , WISWALL LINE.				
10/06/08	FIELD SCOUTING- 8.0 HRS @ \$135.00/HR	1,080.00		1,080.00
10/07/08	OFFICE COMPUTATION AND RESEARCH- 8.0 HRS @ \$75.00/HR	600.00		600.00
10/08/08	FIELD WORK-6.0 HRS @ \$135.00/HR	810.00		810.00
10/13/08	FIELD WORK-6.0 HRS @ \$135.00/HR	810.00		810.00
10/14/08	FIELD WORK-6.0 HRS @ \$135.00/HR	810.00		810.00
10/17/08	ON-SITE MEETING-4.0 HRS @ \$65.00	260.00		260.00
10/20/08	FIELD WORK- 8.0 @ \$135.00/HR	1,080.00		1,080.00
10/21/08	OFFICE COMPUTATION-4.0 HRS @ \$75.00/HR	300.00		300.00
10/21/08	FIELD WORK- 4.0 HRS @ \$135.00/HR	540.00		540.00
10/22/08	OFFICE COMPUTATION-8.0/HR @ \$75.00/HR	600.00		600.00
10/22/08	FIELD WORK- 8.0/HR @ \$135.00/HR	1,080.00		1,080.00
PRINCIPAL IN CHARGE				
	VARIOUS MEETINGS ON-SITE AND @ FREELAND AND ASSOCIATES AND SURVEYORS REPORT-8HRS @ \$125.00/HR	1,000.00		1,000.00
TOTAL				\$8,970.00

08 (1007)

APR-29-2009 03:55PM From: 8644517290

ID:

Page:001 R=96%

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL ACTION NO.: 08-CP-23-2255

The South Carolina Public Interest)
Foundation, and Edward D. Sloan, Jr.)
And robber M. Lloyd, individually)
and as taxpayers of the city of)
Greenville, South Carolina, and on)
behalf of all others similarly situated,)

Plaintiffs,)

v.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

**MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
ATTORNEYS FEES**

Defendants, City of Greenville and Knox H. White, Mayor, by their undersigned attorney, through this Memorandum and affidavit ask this Court to dismiss the Defendant's Motion for attorney's fees.

In any civil action brought by....any party who is contesting state action...the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

1. The court finds that the agency acted without substantial justification in pressing its claim against the party; and
2. The Court finds that there are no special circumstances that would make the award of attorney's fees unjust.

Under South Carolina case law, the citizen must prove three elements to claim attorney's fees;

1. The citizen must be the prevailing party
2. The government entity must have acted without substantial justification
3. No special circumstances would have made the award of attorney's fees unjust. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002).

The Plaintiff is not the prevailing party. See attached orders from this Court (Exhibits A and B).

In the plaintiff's complaint dated March 2008, the Plaintiffs prayed for an order (as to the City):

1. requiring the City immediately, and no later than May 1, 2008, to mark the property line by erecting two permanent markers on the property line between the property of the City and the property of the Cliffs, at the ends of the purported encroachment and installing a straight fence of at least one strand of wire between the said markers waist high and maintain it until July 1, 2008
2. requiring the City, by May 1, to submit a written report to the Court and the Plaintiff of its process to locate the markers and property line, including a drawing showing the markers and property line.

None of this happened. What did happen was, in April 2008, City Council passed an ordinance (Exhibit C) transferring property by boundary line agreement and quit claim to the Cliffs at Glassy for \$100,000 in consideration. This amount was the result of intense and prolonged negotiations between the Cliffs and the City that started long before the filing of the lawsuit. See affidavit of city attorney Ron McKinney. (Exhibit D) Plaintiff did not prevail and is not entitled to attorney's fees.

The Plaintiff submitted for this Court's consideration the ruling in Sloan v. Friends of the Hunley, Opinion No. 26986, 2011 WL 2321787 (2011). In that case, the Friends of the Hunley maintained until oral arguments that the Friends of the Hunley were not a public body under the FOIA. Plaintiff goes on to cite Havre Daily News, LLC v. City of Havre, 142 P.3d 864, 878

(Mont. 2006), a case in which a party prevailed when a public entity mooted out a case by turning over the requested documents, and so provided the relief sought without a court order.

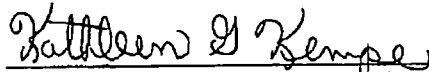
This is not what happened in the matter before the Court. At no time did Plaintiff indicate he wanted a monetary settlement and the transfer of land. Independently from his lawsuit, the City was involved in a complex negotiation involving four entities which was focused on a monetary settlement and transfer of property. See Affidavit and ordinance.

The City was justified in pursuing its own remedy for the encroachment. It is the responsibility of Council to determine what is in the best interest of the citizens of Greenville. The settlement of substantial money which is to be used to establish, maintain and protect the property lines of reservoir property goes to address the issue that Sloan purports to be interested in.

Furthermore, it would be unjust to use the money obtained for the purpose stated above for attorney fees instead of the protecting the very issue for which this suit was brought.

And lastly, if this court determines that some attorney fees are owed, the City asks that this court only award a portion as is reasonable.

Respectfully submitted,



Kathleen G. Kempe (S.C. Bar No. 001382)
CITY OF GREENVILLE
Post Office Box 2207
Greenville, South Carolina 29602
Telephone: (864) 467-4422
Fax: (864) 467-4424
Email: kkempe@greenvillesc.gov

Greenville, South Carolina

Dated: Oct 21, 2011

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, Individually and as Taxpayers of the City of Greenville, South Carolina, and on behalf of Others Similarly Situated,) Civil Action No. 2008-CP-23-2255

OPINION & ORDER

City of Greenville, Knox H. White,
Mayor, and The Cliffs at Glassy, Inc.,

Defendants.

This matter came before the Court with a brief, but complicated, procedural history. This action was commenced on March 24, 2008. In May, the Plaintiffs filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. That September, the City of Greenville and Mayor White (collectively referred to as "the City") and The Cliffs at Glassy, Inc. ("The Cliffs"), moved respectively for summary judgment pursuant to Rule 56. On October 2, 2008; a hearing upon these motions was held, at which time the Court granted the Defendants' motions for summary judgment and denied the Plaintiffs' motion for judgment on the pleadings.¹

¹ Prior to the October 2 hearing, but after the Defendants moved for summary judgment, the Plaintiffs filed a motion to supplement the Complaint pursuant to Rule 15(d). With the Defendants' consent, the Complaint was amended. Therefore, the Court's order of judgment against the Plaintiffs was based upon the First Amended Complaint.



On October 28, the Plaintiffs filed motions to alter or amend the judgment and to again, supplement the Complaint.² The Defendants opposed these motions. A hearing on this matter was held December 17, 2008.³ After due consideration, the Court declined to alter its previous order granting summary judgment.

This opinion has been issued in order to explain the disposition of this case.

I. FACTUAL & PROCEDURAL BACKGROUND

This lawsuit involves the location of a common boundary between the City and The Cliffs, and a resulting property transfer that was intended to bring certainty to the location of that boundary. The line in dispute is a portion of the western boundary of the City's North Saluda Reservoir. The northern terminus of the boundary is located at a point on top of Corbin Mountain, which sits along the border between North and South Carolina. From the northern terminus, the boundary runs a southeasterly course to a point approximately two thousand feet away. Throughout this opinion, this southeasterly running line is referred to as "the Corbin Mountain Line."

The earliest known depiction of the Corbin Mountain Line is shown on map of northern Greenville County dating from 1918–1921. (Register of Deeds, Greenville County, S.C., Plat Book Y, Pages 114–18.) The map was drawn by Howard Wiswall, a civil engineer who had been retained by the Saluda Land & Lumber Company to identify

² Procedurally, the Plaintiffs filed only one motion, which was for leave to supplement the Complaint. However, summary judgment cannot be set aside with a simple Rule 15 motion. Instead, the Plaintiffs must proceed under the more exacting Rule 59(e), which authorizes the filing of motions to alter or amend judgments that have not been reduced to a written order.

³ The Plaintiffs attached a revised complaint to their motion for leave to supplement. This pleading was captioned as the Second Amended Complaint. However, immediately prior to the hearing on December 17, the Plaintiffs submitted a Third Amended Complaint for the Court's consideration. The Third Amended Complaint formed the basis of the Court's decision of December 17, 2008.



relative timber rights in mountainous portions of Greenville and Pickens Counties. Wiswall shows the Corbin Mountain Line running southeasterly from the top of Corbin Mountain at 20 degrees; however, the Wiswall map does not describe the terminal points of the Corbin Mountain Line with any evidence of or reference to monumentation.

In the 1950s, the City acquired the tract of land to the east of the Corbin Mountain Line. This tract was incorporated into and became a part of the North Saluda Reservoir. At that time, a crew working on behalf of the City attempted to mark the Reservoir's western boundary, which in this case, was the Corbin Mountain Line. The City's crew did this by leaving hacks and blazes on trees. In surveying, a tree with two marks (either hacks or blazes) indicates the course of a property line; a tree with three marks indicates a property corner. A number of trees along the Corbin Mountain Line were marked with two hacks or blazes, witnessing the location of the property boundary. One particular tree bears three markings, which indicates a property corner. This tree is located on a ridgeline approximately 2000 feet southeast of the crest of Corbin Mountain.

In 2000, The Cliffs acquired the tract of land to the west of the Corbin Mountain Line. A local surveying company, Lindsey & Associates, Inc. ("Lindsey"), was commissioned to survey properties acquired by The Cliffs. Lindsey conducted a survey of the Corbin Mountain Line, and identified the tree with three hack marks as its southern terminus. Lindsey created a plat of his survey, and identified the southern terminus of the Corbin Mountain Line as "Station 115."

Lindsey also tried to locate the northern terminus of the Corbin Mountain Line, which was believed to be the crest of Corbin Mountain. However, at some point in time, the mountain's historical crest had been graded and leveled for construction. This

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affected the location of the Line in two ways. *First*, grading the crest of Corbin Mountain changed the mountain's geography and created a new crest on the mountain that differed in location from the historical crest. *Second*, the precise location of the historical crest was not preserved for future reference. Using historical evidence, Lindsey identified a location where he believed the historical crest to have been. This point was chosen as the northern terminus of the Corbin Mountain Line.

Lindsey's survey of the Corbin Mountain Line was consistent with the City's understanding of the location of its own property boundary. Lindsey and the City understood Station 115, the tree with three marks, to witness the southern terminus. Lindsey and the City also found that the northern terminus was the crest of Corbin Mountain. Finally, Lindsey's survey of the Corbin Mountain Line resulted in a line that followed the hacks and blazes left by the City's crew. Therefore, in reliance upon the undisputed location of the Corbin Mountain Line, The Cliffs began to develop its properties for residential estates.

In 2004, there was some concern that a roadway constructed by The Cliffs for the use of its residents crossed over the Corbin Mountain Line and encroached upon City property. Lindsey surveyed the alleged encroachment and found: (1) that the roadway did, in fact, encroach onto approximately 0.29 acres of City property, (Register of Deeds, Greenville County, S.C., Plat Book 1069, Page 58); and (2) that a fire tower constructed by the City appeared to encroach onto 0.04 acres of property owned by The Cliffs. At that time, neither the City nor The Cliffs took any action to exclude the other from their encroachments.



Four years later, the Plaintiffs commenced this civil action. The central cause of action alleged is for purpresture, a claim that is more broadly preserved today in the doctrine of public nuisance. Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 573, 614 S.E.2d 619, 620-21 (2005). Simply stated, a purpresture is an encroachment by private use upon public rights and easements. Lowcountry Open Land Trust v. South Carolina, 347 S.C. 96, 109, 552 S.E.2d 778, 785 n.8 (2001). Actions for purpresture are comparable to corporate derivative suits, in that citizens may bring actions on behalf of their government to enjoin unlawful, unrestrained encroachments onto public property. See, e.g., Sloan v. City of Greenville, 235 S.C. 277, 111 S.E.2d 573 (1959).

However, at about the same time that this action was commenced, the City and The Cliffs came to the following agreement: (1) that the Corbin Mountain Line would be established at the location depicted by Lindsey's 2004 survey; (2) that the 0.29 acres which encroached upon City property would be quitclaimed to The Cliffs; (3) that the 0.04 acres which encroached upon The Cliffs' property would be quitclaimed to the City; (4) that The Cliffs would reconstruct a fire tower on City property; and (5) that The Cliffs would pay the City (and parties related to the City) a certain amount in cash. The value of the consideration paid by The Cliffs to the City and related parties totaled \$210,166.44.

On April 28, 2008, the Greenville City Council issued an ordinance that authorized the foregoing agreement. (City of Greenville, S.C., Ord. No. 2008-33.) Through this ordinance, the City was to "convey its interest in fee simple to approximately 0.29 acre[s] of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc." (Id., § 2.) "The title conveyance by The City to The Cliffs at



Glassy, Inc., [was to] be in consideration of a payment from [T]he Cliffs at Glassy, Inc. . . . " (Id., § 3.) The City and The Cliffs were to "execute mutual releases of claims against one another and mutual acknowledgement of the boundary separating the properties respectively titled in their names." (Id., § 5.) "The identification of the locations of these property transfers and recognition of the mutual boundary [were to] be based upon the same plats and legal descriptions as have been agreed to" (Id., § 7.) Finally, "[t]he City Manager [was] authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for . . . upon receipt of the payment described in Section 3." (Id., § 7.)

On June 19, 2008, the City Attorney signed a deed for 0.29 acres in favor of The Cliffs, and provided the deed to the closing attorney to hold in trust. Closing occurred on June 23, 2008. On June 24, the deed was duly recorded.

II. DISPOSITION OF THE FIRST HEARING

The hearing on October 2 was held as to determine: (1) whether the City had allowed an unlawful encroachment onto public property; (2) whether the City had acted without authority in transferring property to The Cliffs; and (3) whether the City's transfer of property had been unconstitutional pursuant to Article III, § 31 of the South Carolina Constitution. Summary judgment was entered against the Plaintiffs as to each of these claims.

A. Standard of Review

Summary judgment is to "be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is



entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c). To rebut a motion for summary judgment, the non-moving party must come forward with specific facts showing the existence of genuine, triable issues, and may not rest merely upon the allegations or denials set forth in his pleading. S.C. R. Civ. P. 56(e). If the non-moving party cannot set forth specific facts showing the existence of genuine, triable issues, summary judgment is proper. Id.

B. Summary judgment was properly granted with respect to purpresture pursuant to the doctrine of mootness.

The Plaintiffs contend that The Cliffs has unlawfully encroached onto municipal property, and that the City has failed to enjoin The Cliffs from continuing in the encroachment. However, the Defendants correctly argue that the issue of purpresture is moot. On June 23, 2008, The Cliffs received a deed for 0.29 acres from the City, thereby terminating any unlawful encroachment upon municipal property. (Register of Deeds, Greenville County, S.C., Book 2329, P. 817-20).

The Court will generally refrain from deciding issues that have become moot. Sloan v. Greenville County, ___ S.C. ___, ___ S.E.2d ___, 2008 WL 4693071, *3 (Ct. App. Oct. 22, 2008); Sloan v. South Carolina Dep't of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). A case becomes moot when judgment, if rendered, will have no practical legal effect. Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

In this case, the Court was requested to declare that a purpresture existed with respect to the 0.29 acres that were the subject of the June 2008 conveyance. However, whether or not a purpresture may have existed at some point along the Corbin Mountain Line is irrelevant. The Court is concerned only with whether a purpresture continues to exist. The deed by which the City transferred property to The Cliffs removed any



condition of encroachment that may have been occurring. Once The Cliffs came into ownership of the property, it could no longer have been committing an encroachment.

In an action for purpresture, the only relief that can be obtained is an order enjoining further encroachment. However, The Cliffs now owns the very property that was the subject of encroachment. Under these circumstances, the Court will not order the rightful owner of property to quit his possession or surrender his title. Accordingly, summary judgment was properly granted with respect to the Plaintiffs' action for purpresture.

C. The June 2008 conveyance was not ultra vires and will not be rescinded.

The Plaintiffs also claimed that the June 2008 conveyance was not properly authorized and should be set aside. However, the Defendants persuasively argued that the transaction was not ultra vires and should be sustained.

In relevant part, the enabling ordinance provides that "[t]he City Manager shall be authorized to approve and execute such deeds . . . upon receipt of the payment." (City of Greenville, S.C., Ord. No. 2008-33 ¶ 7.) On June 19, 2008, the City signed the deed regarding the property to be transferred to The Cliffs, and transferred the deed to the closing attorney to hold in escrow. On June 23, The Cliffs transferred the full amount of cash due and owing under the conveyance agreement to the escrow account of the closing attorney, whereupon the attorney made appropriate disbursements of real property and cash incident to closing. All deeds were recorded on June 24, 2008.

It is the Plaintiffs' contention that under the enabling ordinance, the City could not sign any deed until The Cliffs had rendered full performance of its obligations under the agreement. But this interpretation is inconsistent with the language of the ordinance.



The analysis begins with reference to familiar rules of statutory construction. "The cardinal rule of statutory construction is . . . to ascertain and effectuate the actual intent of the legislature," Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989), which in this case is the City Council. It is presumed that the legislature did not insert idle verbiage or superfluous language, but that each word of a legislative enactment is necessary, and that it has its own, independent meaning. Lee v. Thermal Eng'g Corp., 352 S.C. 81, 94, 572 S.E.2d 298, 305 (Ct. App. 2002).

The Plaintiffs contend that the phrase "approve and execute," as it is used in the ordinance, requires the City to withhold any act of approval or execution (such as signing a deed and tendering the deed to a closing attorney) until The Cliffs has rendered full performance. However, to accept the Plaintiffs' interpretation would require the closing between the Cliffs and The City to have occurred in a way that deviated from modern real estate practice. The process of most closings involves an escrow agent receiving consideration from the parties and making an appropriate, simultaneous distribution of cash and property. In fact, this is the way that the closing occurred between the City and The Cliffs on June 23, 2008.

The more credible interpretation is the one provided by the City and The Cliffs. The Defendants distinguish between approval and execution and argue that approval is a condition precedent to execution. For the City to approve the property conveyance, it must lend its assent, which is evidenced by all necessary signatures. Approval was complete upon acquiring all necessary signatures; however, approval and execution were complete only upon the closing agent's simultaneous distribution of cash and property on June 23, 2008.



The Court is persuaded by the Defendants' interpretation. But even if that interpretation were not correct, the violation of the ordinance cited by the Plaintiffs is technical only, and would have no practical effect upon the outcome of an otherwise legitimate transfer of property.

D. The June 2008 conveyance did not violate the South Carolina Constitution.

The Plaintiffs further contend that the property transfer violated the South Carolina Constitution, specifically Article III, § 31, and should be set aside. However, Section 31 does not prohibit municipalities from making transfers of property to private corporations.

In relevant part, Section 31 provides that "[l]ands belonging to or directly under the control of the State shall never be donated, directly or indirectly, to private corporations Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals." S.C. Const. art. III, § 31. A clear line of precedents establish that Section 31 applies only to the State of South Carolina in its capacity as sovereign proprietor. It does not touch or concern lands owned by other governmental subdivisions, such as cities and counties. E.g., McKinney v. City of Greenville, 262 S.C. 227, 244, 203 S.E.2d 680, 689 (1974) (observing that Section 31 is "inapplicable" where "no lands belonging to or under the control of the State [in its capacity as sovereign proprietor] are involved"); Bobo v. City of Spartanburg, 230 S.C. 396, ___, 96 S.E.2d 67, 70 (1956); Haesloop v. City Council, 123 S.C. 272, 278, 115 S.E. 596, 598 (1923) ("[W]e think[] the reference in this constitutional provision is to public lands belonging to and controlled by the state in its capacity as sovereign proprietor.").



In addition, the Plaintiffs have provided no evidence to suggest that The Cliffs paid anything less than fair market value for the land that was conveyed. The evidence shows that the City was paid a very reasonable amount, over two hundred thousand dollars for less than one-third of an acre in northern Greenville County.

The Court is satisfied that the transaction between the City and The Cliffs was conducted at arms' length in a manner that was both fair and reasonable. The Court is further convinced that Section 31 does not restrict the sale of municipal property to private corporations. Summary judgment was therefore properly granted with respect to the constitutional claim.

III. DISPOSITION OF THE SECOND HEARING

After the Court entered summary judgment against the Plaintiffs on October 2, the Plaintiffs filed motions to alter or amend the judgment and to amend the Complaint. This time, the Plaintiffs took the position that the City and The Cliffs had come to an incorrect agreement about the location of the entire Corbin Mountain Line. According to the Plaintiffs, the Corbin Mountain Line should have been placed at a location further west. The Plaintiffs therefore claimed that a continuing encroachment existed along the entire length of the Corbin Mountain Line and should be enjoined.

Motions to alter or amend are made through Rule 59(e). The purpose of this Rule is to provide a means through which the Court may reconsider matters that were encompassed in a decision on the merits. Arnold v. South Carolina, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) (citations omitted). However, this rule cannot be used to inject an issue into the case that was not previously before the Court, id., which the Plaintiffs appear to have attempted. To be specific, the first time that the Plaintiffs took



the position that the City and The Cliffs had come to an incorrect agreement about the location of the Corbin Mountain Line was after summary judgment had already been granted on October 2. This fact alone was more than enough reason to merit summary dismissal on December 17.

However, the Plaintiffs' motion to file an amended Complaint was denied on December 17 pursuant to an alternative procedural basis: claim preclusion. The doctrine of claim preclusion exists to bring a measure of finality to repetitive litigation. See, e.g., Garris v. Governing Bd., 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). It is generally applicable when: (1) the parties in subsequent litigation are the same as those in prior litigation; (2) the subject matter in subsequent litigation is the same as that in prior litigation; and (3) the prior litigation was resolved through a prior adjudication by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250, 452 S.E.2d 832, 833 (1994).

On October 2, the Defendants were awarded summary judgment with respect to purpresture on the procedural grounds of mootness. As previously addressed, the issue before the Court on October 2 was moot because the City had made a proper conveyance of land to The Cliffs which resolved any unlawful encroachment. The conveyance was based on the location of "the common property line," (Register of Deeds, Greenville County, S.C., Deed Book 2329, Page 817-20), which was itself a reference to Lindsey's survey of the location of the Corbin Mountain Line, (id., Plat Book 1069, Page 58). This deed, as well as the ordinance that enabled the City's conveyance, (City of Greenville, S.C., Ord. No. 2008-33), establish a mutual intent to regard Lindsey's survey of the Corbin Mountain Line as the recognized boundary between the City and The Cliffs. This

12/17

fact was necessarily decided by the Court on October 2 in determining that any claim of unlawful encroachment had been mooted.

As of the December 17 hearing, the claim remained moot. There were no new or additional facts that occurred which could have changed the legal relationship among the parties to this action. Instead, the Plaintiffs had requested that the Court review the prudence of the City's decision to establish the location of the Corbin Mountain Line according to Lindsey's survey. But to exercise such review would far exceed the scope of the Court's proper judicial function. As a matter of sound judicial policy, the Court steadfastly refrains from supplanting its judgment for that of a governing political body which has exercised lawful, discretionary authority in a manner that is both reasonable and legitimate.

The City and The Cliffs have mutually agreed upon the location of their common boundary. Therefore, the Court will not pass upon the wisdom of the City and The Cliffs in giving preference to Lindsey's survey to establish that line. Instead, the scope of the Court's review is limited to whether an unlawful encroachment exists with regard to the line that was actually agreed to.

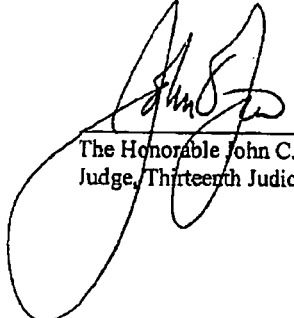
In this case, there is no unlawful encroachment. Any purpresture that may have existed was resolved by the transfer of property in June 2008. That transfer mooted the purpresture issue pending before the Court on October 2, and it remained moot on December 17. A claim that has been deemed moot remains moot, and due to the doctrine of preclusion, cannot support a subsequent action without some change in material fact.



IV. CONCLUSION

For the foregoing reasons, summary judgment was entered in favor of the Defendants on October 2, 2008. The Plaintiffs' motion for judgment on the pleadings was denied. Additionally, the Court declines the invitation to reconsider its previous decision, and shall not grant the Plaintiffs leave to amend the Complaint.

It is SO ORDERED.



The Honorable John C. Few
Judge, Thirteenth Judicial Circuit

Entered this 22 day of January 2009

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
CIVIL ACTION NO. 08-CP-23-2255

2011 AUG 18 A 11:44
The South Carolina Public Interest
Foundation, and Edward D. Sloan, Jr.,
and Robert M. Lloyd, individually and
as taxpayers of the City of
Greenville, South Carolina, and on
behalf of all others similarly situated,
Plaintiffs,

Consent Order

v.

City of Greenville, Mayor Knox H.
White, and The Cliffs at Glassy, Inc.,
Defendants.

1. On March 24, 2008, Plaintiffs filed a Complaint alleging that for many years the Defendant Cliffs at Glassy, Inc. ("Cliffs") had trespassed by on land owned by the Defendant City of Greenville ("City").
2. On June 19, 2008, the City by its deed conveyed its title to .29 acres of land described therein to the Defendant Cliffs. This deed was recorded June 24, 2008, Greenville County Deed Book 2329 on pages 817-20.
3. On January 30, 2009, this Court entered an Order and Judgment.
4. On February 12, 2009, Plaintiffs moved to Alter or Amend the Order and Judgment.
5. On February 13, 2009, the City by its deed quitclaimed its title to additional land described therein to the Defendant Cliffs. The Quitclaim deed was recorded February 16, 2009 at the Greenville County Deed Book 2353, on pages 1209-11.
6. The deed referenced in paragraph 5 supplemented the deed referenced in

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paragraph 2, ended the City's ownership of the subject land, and thereby ended the trespass on the subject land by the Defendant Cliffs

7. On February 17, 2009, Cliffs filed a Memorandum in Response to the Plaintiffs' Motion to Alter or Amend.
8. On February 25, 2009, Plaintiffs filed a Reply Memorandum.
9. When the City disposed of its ownership of the land being trespassed upon, the trespass ended, and this case became moot.
10. The Court hereby revokes its January 30, 2009 Order, and dismisses this action on the grounds of mootness.

It is SO ORDERED.

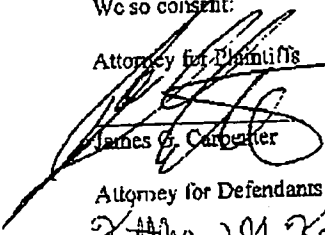
June _____, 2011



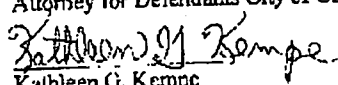
D. Garrison Hill
Circuit Judge Presiding

We so consent:

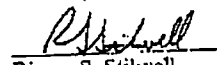
Attorney for Plaintiffs


James G. Carpenter

Attorney for Defendants City of Greenville and Mayor Knox H. White


Kathleen G. Kempe

Attorney for Defendant The Cliffs at Glassy, Inc.


Rivers S. Stilwell

ORDINANCE

TO TRANSFER TITLE TO 0.29 ACRE OF PROPERTY TO THE CLIFFS AT GLASSY, INC. ON MOUNTAIN SUMMIT ROAD IN CONSIDERATION OF \$100,000 AND TO ACQUIRE CLEAR TITLE TO 0.04 ACRE AT THE TOP OF CORBIN MOUNTAIN AS A SETTLEMENT.

WHEREAS, some time ago The Cliffs at Glassy, Inc., constructed Mountain Summit Road, a private road benefiting The Cliffs at Glassy, Inc., along the boundary of the North Saluda Reservoir Property, which is titled in the name of the City of Greenville and managed by the Greenville Water System; and

WHEREAS, the road as constructed has been determined to constitute an encroachment upon the North Saluda Reservoir Property, and a fire tower acquired by the Water System to use in its management activity has been determined to encroach upon property of The Cliffs at Glassy, Inc., at the top of Corbin Mountain; these locations are referenced on a plat prepared by Lindsey and Associates and dated November 5, 2004; and

WHEREAS, The Cliffs at Glassy, Inc., has previously reached a settlement with the Water System involving the relocation of the fire tower to its present location, and the acceptance from The Cliffs at Glassy, Inc., certain access easements across property for which the Cliffs has a deed of title; and

WHEREAS, The Cliffs at Glassy, Inc., has also reached agreement with the Nature Conservancy of South Carolina for an encroachment upon its conservation easement, since amended, which had the same boundaries as the North Saluda Reservoir Property; and

WHEREAS, City Council desires to bring finality to a boundary line separating the North Saluda Reservoir Property from property for which the Cliffs at Glassy, Inc., has deeds of title; and

WHEREAS, Council desires not to disturb substantively any agreement previously reached by the Water System and the Nature Conservancy, and City Council also desires to dedicate all proceeds from the settlement being approved to an account maintained for the sole purpose of protecting municipal reservoir property to which the City of Greenville holds title.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE THAT:

SECTION 1. Title in fee simple to approximately 0.04 acre of real property at the top of Corbin Mountain shall be accepted from the Cliffs at Glassy, Inc. The property so accepted shall be incorporated into the North Saluda Reservoir property managed by the Water System to the

same extent it is otherwise authorized to maintain the remainder of the North Saluda Reservoir property.

SECTION 2. The City shall convey its interest in fee simple to approximately 0.29 acre of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc.

SECTION 3. The title conveyance by The City to The Cliffs at Glassy, Inc., shall be in consideration of a payment from the Cliffs at Glassy, Inc., in the amount of one hundred thousand (\$100,000) dollars payable to the City of Greenville.

SECTION 4. The proceeds of the payment from The Cliffs at Glassy, Inc., shall be used exclusively to enhance and protect the environmental conditions of reservoir property and to establish, maintain and protect the property lines of reservoir property, titled in the name of the City of Greenville. Such actions will be exercised in deference to the Nature Conservancy and the Greenville Water System in the exercise of their rights, duties, and obligations under existing agreements and statutory authority. Council shall be authorized to act by resolution to implement such measures or to direct the City Manager or the City Attorney, or both to achieve the objectives of this Section 4.

SECTION 5. As a condition of the transfers identified in Section 1 and Section 2 of this Ordinance, the City and The Cliffs at Glassy, Inc., shall execute mutual releases of claims against one another and mutual acknowledgment of the boundary separating the properties respectively titled in their names. The parties shall covenant to act in good faith to forego future incursions, encroachments, or trespass upon the property titled in the name of the other and to notify promptly one another, as well as the Water System and the Nature Conservancy, of activity that might be or appear to be an actual or pending encroachment when they have knowledge of such circumstances.

SECTION 6. Nothing contained in this Ordinance shall be deemed to compromise or impede the agreements separately reached by the Water System and the Nature Conservancy in settlement of claims arising from the same set of circumstances giving rise to the City's settlement and release of claims.

SECTION 7. The City Manager shall be authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for, as well as other documents reasonably appropriate for the transaction, upon receipt of the payment described in Section 3 above, provided such documents assure the implementation of the terms of this Ordinance. The identification of the locations of these property transfers and recognition of the mutual boundary shall be based upon the same plats and legal descriptions as have been accepted and agreed to by the Nature Conservancy and the Water System in their separate agreements with The Cliffs at Glassy, Inc.

Revised 4-14-08

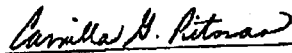
Ordinance No. 2008 - 33
Page 3

DONE, RATIFIED AND PASSED THIS THE 28 DAY OF APRIL, 2008.



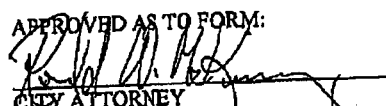
MAYOR

ATTEST:



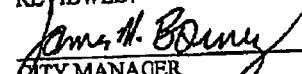
CITY CLERK INTERIM

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED:



CITY MANAGER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

AFFIDAVIT

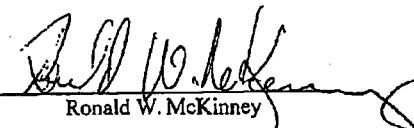
PERSONALLY appeared before me the undersigned who, being first duly sworn,
 Deposes and says that:

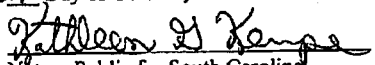
1. He is Ronald W. McKinney, City Attorney for the City of Greenville. He has held the position of City Attorney at all relevant times during the dispute and negotiations relevant to an encroachment upon property on Corbin Mountain near the North Saluda reservoir. The property is titled in the name of City of Greenville and managed by the Greenville Water System. This affidavit is not intended to waive any attorney-client confidentiality but offered for the limited purpose of establishing a time line and the circumstances associated with the resolution of an encroachment.
2. In his capacity as city attorney, the affiant learned that some type of encroachment occurred on the periphery of the North Saluda Reservoir property sometime in 2005, when a proposed settlement agreement was forwarded to the City for signature. The Water System board had settled for \$5,000 and a Fire tower. The Nature Conservancy had agreed to accept \$50,000 for the encroachment upon its conservation easement. There was no provision at all for the City receiving a settlement in the document forwarded to the City for signature. The City government had not been officially notified by the other parties of the encroachment or of the negotiations for settlement.
3. The affiant began inquiry into the facts, and learned the boundary line was not clearly identifiable, and that there was a genuine issue of fact as to whether there had been any encroachment at all. The terrain is very steep, the deed descriptions were those generally used in Northern Greenville County in the 1950's, and the description markers were not clearly decipherable. The affiant met with Water System personnel, studied documents relating to the acquisition of the property with Water system revenue under the terms of a revenue bond issued in the name of the City of Greenville but supported solely by Water System revenue. The affiant studied the underlying boundary descriptions and such plats as were maintained in Water System offices.
4. Over the next several months, he interviewed on more than one occasion Water System personnel who were familiar with the circumstances of the encroachment. He also met at the site key Water System personnel, Mr. Jim Anthony, Mr. Anthony's surveyor, two members of Council, at least one representative of the Nature Conservancy, and concerned environmentalists in order to make judgments about the disputed measurements of the confusing boundary line. He also reported periodically to Council in executive session on the details and the strengths and weaknesses of the parties' respective legal positions. There were divergent views as to the merits on the part of all key participants.
5. The City Attorney's Office retained the professional services of Mark Ratchford, a certified MAI appraiser, to advise on the value impact of the encroachment, which was a small geographical area. After holding discussions with Mr. Ratchford following his study and reaching a conclusion, the affiant realized that the City Attorney's Office was not likely to be able to present any expert evidence that there was any measureable impact on the value of the reservoir property.
6. Information received from the Nature Conservancy, which has a conservation easement on the

land in question, indicated to the affiant that "taking up" the road as constructed would have a far more adverse environmental impact than allowing it to remain.

7. The affiant nonetheless undertook negotiations with Mr. Jim Anthony by telephone and in person on a settlement amount. The negotiations were protracted in part because various financial figures taken to the City Council did not result in a readiness by the affiant to put the settlement document on the agenda for Council action. Eventually the affiant and Mr. Anthony negotiated a settlement of \$100,000 payment to the City for the road encroachment. The City Council dedicated the sum to a resolution of future boundary issues on reservoir related property. The affiant's study of the relevant law and detailed facts as well as his negotiations and conversations with Council started long prior to the filing of the lawsuit by Mr. Sloan. Those negotiations and conversations made substantial progress long before Mr. Sloan filed his law suit in March 2008. City Council passed an ordinance settling the matter in April 2008.
8. Mr. Sloan never came to Council with a request to settle or with a suggested settlement. There is no reflection in the pleadings of Mr. Sloan of an understanding of the respective legal interests of the Greenville Water System, the Nature Conservancy, or the City of Greenville.

DATE: Oct. 21, 2011


Ronald W. McKinney

SWORN to before me this
21 Day of October, 2011

Notary Public for South Carolina
My Commission Expires: March 11, 2021

Jim Carpenter

From: Tonya Gramann [tgramann@greenvillesc.gov]
Sent: Friday, October 21, 2011 3:49 PM
To: ghillj@sccourts.org
Cc: james.carpenter@carpenterlawfirm.net; Kathleen Kempe; Ron McKinney; njcoord@greenvillecounty.org
Subject: 2008-CP-23-2255 SC Public Interest Foundation/Sloan v. City of Greenville, et al
Attachments: Memorandum In Opposition to Motion for Attorneys Fees
DOC102111.pdf; DOC102111.pdf

Judge Hill,

Kathleen Kempe asked that I email the attached Memorandum to you and Plaintiffs' Counsel. The original Memo and Certificate of Service are presently being hand delivered to the Clerk's Office. Hard copies of the Memo and Certificate of Service have been placed in the mail to Mr. Carpenter.

Thank you.

Email messages sent to and from the City of Greenville may be subject to discovery under the S.C. Freedom of Information Act.

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
104 South Main Street / Ninth Floor / Greenville, SC 29601
Tel: 864.250.2300 Fax: 864.232.2925
www.nelsonmullins.com

Steven E. Buckingham
Tel: 864.250.2385
steven.buckingham@nelsonmullins.com

January 21, 2009

Via Hand Delivery

The Honorable John C. Few
Greenville County Courthouse
305 E. North Street, Room 318
Greenville, SC 29601

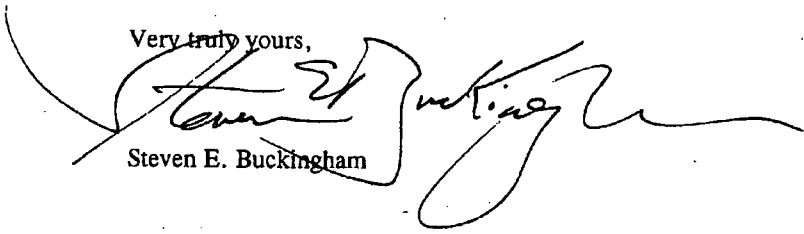
RE: The South Carolina Public Interest Foundation, et al. v.
The Cliffs of Glassy, Inc., et al.
C.A. No. 2008-CP-23-2255
NMRS File No. 05427/01501

Dear Judge Few:

Enclosed is an Opinion & Order for your consideration in the above-referenced matter.

With kind regards, I remain

Very truly yours,


Steven E. Buckingham

SEB:ap
Enclosure

cc: James G. Carpenter, Esq. (w/enclosure)
Ron McKinney, Esq. (w/enclosure)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
The South Carolina Public Interest	)	Civil Action No. 2008-CP-23-2255
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, Individually and	)	
as Taxpayers of the City of Greenville,	)	
South Carolina, and on behalf of Others	)	
Similarly Situated,	)	
	)	
	)	
Plaintiffs,	)	<u>OPINION & ORDER</u>
	)	
vs.	)	
	)	
City of Greenville, Knox H. White,	)	
Mayor, and The Cliffs at Glassy, Inc.,	)	
	)	
Defendants.	)	

This matter came before the Court with a brief, but complicated, procedural history. This action was commenced on March 24, 2008. In May, the Plaintiffs filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. That September, the City of Greenville and Mayor White (collectively referred to as "the City") and The Cliffs at Glassy, Inc. ("The Cliffs"), moved respectively for summary judgment pursuant to Rule 56. On October 2, 2008, a hearing upon these motions was held, at which time the Court granted the Defendants' motions for summary judgment and denied the Plaintiffs' motion for judgment on the pleadings.¹

¹ Prior to the October 2 hearing, but after the Defendants moved for summary judgment, the Plaintiffs filed a motion to supplement the Complaint pursuant to Rule 15(d). With the Defendants' consent, the Complaint was amended. Therefore, the Court's order of judgment against the Plaintiffs was based upon the First Amended Complaint.

On October 28, the Plaintiffs filed motions to alter or amend the judgment and to again, supplement the Complaint.² The Defendants opposed these motions. A hearing on this matter was held December 17, 2008.³ After due consideration, the Court declined to alter its previous order granting summary judgment.

This opinion has been issued in order to explain the disposition of this case.

I. FACTUAL & PROCEDURAL BACKGROUND

This lawsuit involves the location of a common boundary between the City and The Cliffs, and a resulting property transfer that was intended to bring certainty to the location of that boundary. The line in dispute is a portion of the western boundary of the City's North Saluda Reservoir. The northern terminus of the boundary is located at a point on top of Corbin Mountain, which sits along the border between North and South Carolina. From the northern terminus, the boundary runs a southeasterly course to a point approximately two thousand feet away. Throughout this opinion, this southeasterly running line is referred to as "the Corbin Mountain Line."

The earliest known depiction of the Corbin Mountain Line is shown on map of northern Greenville County dating from 1918–1921. (Register of Deeds, Greenville County, S.C., Plat Book Y, Pages 114–18.) The map was drawn by Howard Wiswall, a civil engineer who had been retained by the Saluda Land & Lumber Company to identify

² Procedurally, the Plaintiffs filed only one motion, which was for leave to supplement the Complaint. However, summary judgment cannot be set aside with a simple Rule 15 motion. Instead, the Plaintiffs must proceed under the more exacting Rule 59(e), which authorizes the filing of motions to alter or amend judgments that have not been reduced to a written order.

³ The Plaintiffs attached a revised complaint to their motion for leave to supplement. This pleading was captioned as the Second Amended Complaint. However, immediately prior to the hearing on December 17, the Plaintiffs submitted a Third Amended Complaint for the Court's consideration. The Third Amended Complaint formed the basis of the Court's decision of December 17, 2008.

relative timber rights in mountainous portions of Greenville and Pickens Counties. Wiswall shows the Corbin Mountain Line running southeasterly from the top of Corbin Mountain at 20 degrees; however, the Wiswall map does not describe the terminal points of the Corbin Mountain Line with any evidence of or reference to monumentation,

In the 1950s, the City acquired the tract of land to the east of the Corbin Mountain Line. This tract was incorporated into and became a part of the North Saluda Reservoir. At that time, a crew working on behalf of the City attempted to mark the Reservoir's western boundary, which in this case, was the Corbin Mountain Line. The City's crew did this by leaving hacks and blazes on trees. In surveying, a tree with two marks (either hacks or blazes) indicates the course of a property line; a tree with three marks indicates a property corner. A number of trees along the Corbin Mountain Line were marked with two hacks or blazes, witnessing the location of the property boundary. One particular tree bears three markings, which indicates a property corner. This tree is located on a ridgeline approximately 2000 feet southeast of the crest of Corbin Mountain.

Where's the post?

In 2000, The Cliffs acquired the tract of land to the west of the Corbin Mountain Line. A local surveying company, Lindsey & Associates, Inc. ("Lindsey"), was commissioned to survey properties acquired by The Cliffs. Lindsey conducted a survey of the Corbin Mountain Line, and identified the tree with three hack marks as its southern terminus. Lindsey created a plat of his survey, and identified the southern terminus of the Corbin Mountain Line as "Station 115."

Lindsey Affidavit

Lindsey also tried to locate the northern terminus of the Corbin Mountain Line, which was believed to be the crest of Corbin Mountain. However, at some point in time, the mountain's historical crest had been graded and leveled for construction. This

affected the location of the Line in two ways. *First*, grading the crest of Corbin Mountain changed the mountain's geography and created a new crest on the mountain that differed in location from the historical crest. *Second*, the precise location of the historical crest was not preserved for future reference. Using historical evidence, Lindsey identified a location where he believed the historical crest to have been. This point was chosen as the northern terminus of the Corbin Mountain Line.

4 different bearings
Lindsey's survey of the Corbin Mountain Line was consistent with the City's understanding of the location of its own property boundary. Lindsey and the City understood Station 115, the tree with three marks, to witness the southern terminus. Lindsey and the City also found that the northern terminus was the crest of Corbin Mountain. Finally, Lindsey's survey of the Corbin Mountain Line resulted in a line that followed the hacks and blazes left by the City's crew. Therefore, in reliance upon the undisputed location of the Corbin Mountain Line, The Cliffs began to develop its properties for residential estates.

In 2004, there was some concern that a roadway constructed by The Cliffs for the use of its residents crossed over the Corbin Mountain Line and encroached upon City property. Lindsey surveyed the alleged encroachment and found: (1) that the roadway did, in fact, encroach onto approximately 0.29 acres of City property, (Register of Deeds, Greenville County, S.C., Plat Book 1069, Page 58); and (2) that a fire tower constructed by the City appeared to encroach onto 0.04 acres of property owned by The Cliffs. At that time, neither the City nor The Cliffs took any action to exclude the other from their encroachments.

Four years later, the Plaintiffs commenced this civil action. The central cause of action alleged is for purpresture, a claim that is more broadly preserved today in the doctrine of public nuisance. Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 573, 614 S.E.2d 619, 620-21 (2005). Simply stated, a purpresture is an encroachment by private use upon public rights and easements. Lowcountry Open Land Trust v. South Carolina, 347 S.C. 96, 109, 552 S.E.2d 778, 785 n.8 (2001). Actions for purpresture are comparable to corporate derivative suits, in that citizens may bring actions on behalf of their government to enjoin unlawful, unrestrained encroachments onto public property. See, e.g., Sloan v. City of Greenville, 235 S.C. 277, 111 S.E.2d 573 (1959).

However, at about the same time that this action was commenced, the City and The Cliffs came to the following agreement: (1) that the Corbin Mountain Line would be established at the location depicted by Lindsey's 2004 survey; (2) that the 0.29 acres which encroached upon City property would be quitclaimed to The Cliffs; (3) that the 0.04 acres which encroached upon The Cliffs' property would be quitclaimed to the City; (4) that The Cliffs would reconstruct a fire tower on City property; and (5) that The Cliffs would pay the City (and parties related to the City) a certain amount in cash. The value of the consideration paid by The Cliffs to the City and related parties totaled \$210,166.44.

On April 28, 2008, the Greenville City Council issued an ordinance that authorized the foregoing agreement. (City of Greenville, S.C., Ord. No. 2008-33.) Through this ordinance, the City was to "convey its interest in fee simple to approximately 0.29 acre[s] of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc." (Id., § 2.) "The title conveyance by The City to The Cliffs at

Glassy, Inc., [was to] be in consideration of a payment from [T]he Cliffs at Glassy, Inc. . . . " (*Id.*, § 3.) The City and The Cliffs were to "execute mutual releases of claims against one another and mutual acknowledgement of the boundary separating the properties respectively titled in their names." (*Id.* § 5.) "The identification of the locations of these property transfers and recognition of the mutual boundary [were to] be based upon the same plats and legal descriptions as have been agreed to" (*Id.* § 7.) Finally, "[t]he City Manager [was] authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for . . . upon receipt of the payment described in Section 3." (*Id.*, § 7.)

On June 19, 2008, the City Attorney signed a deed for 0.29 acres in favor of The Cliffs, and provided the deed to the closing attorney to hold in trust. Closing occurred on June 23, 2008. On June 24, the deed was duly recorded.

II. DISPOSITION OF THE FIRST HEARING

The hearing on October 2 was held as to determine: (1) whether the City had allowed an unlawful encroachment onto public property; (2) whether the City had acted without authority in transferring property to The Cliffs; and (3) whether the City's transfer of property had been unconstitutional pursuant to Article III, § 31 of the South Carolina Constitution. Summary judgment was entered against the Plaintiffs as to each of these claims.

A. Standard of Review

Summary judgment is to "be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c). To rebut a motion for summary judgment, the non-moving party must come forward with specific facts showing the existence of genuine, triable issues, and may not rest merely upon the allegations or denials set forth in his pleading. S.C. R. Civ. P. 56(e). If the non-moving party cannot set forth specific facts showing the existence of genuine, triable issues, summary judgment is proper. Id.

B. Summary judgment was properly granted with respect to purpresture pursuant to the doctrine of mootness.

The Plaintiffs contend that The Cliffs has unlawfully encroached onto municipal property, and that the City has failed to enjoin The Cliffs from continuing in the encroachment. However, the Defendants correctly argue that the issue of purpresture is moot. On June 23, 2008, The Cliffs received a deed for 0.29 acres from the City, thereby terminating any unlawful encroachment upon municipal property. (Register of Deeds, Greenville County, S.C., Book 2329, P. 817-20)

The Court will generally refrain from deciding issues that have become moot. Sloan v. Greenville County, ___ S.C. ___, ___ S.E.2d ___, 2008 WL 4693071, *3 (Ct. App. Oct. 22, 2008); Sloan v. South Carolina Dep't of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). A case becomes moot when judgment, if rendered, will have no practical legal effect. Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

In this case, the Court was requested to declare that a purpresture existed with respect to the 0.29 acres that were the subject of the June 2008 conveyance. However, whether or not a purpresture may have existed at some point along the Corbin Mountain Line is irrelevant. The Court is concerned only with whether a purpresture continues to exist. The deed by which the City transferred property to The Cliffs removed any

condition of encroachment that may have been occurring. Once The Cliffs came into ownership of the property, it could no longer have been committing an encroachment.

critical { In an action for purpresture, the only relief that can be obtained is an order enjoining further encroachment. However, The Cliffs now owns the very property that was the subject of encroachment. Under these circumstances, the Court will not order the rightful owner of property to quit his possession or surrender his title. Accordingly, summary judgment was properly granted with respect to the Plaintiff's action for purpresture.

C. **The June 2008 conveyance was not ultra vires and will not be rescinded.**

The Plaintiffs also claimed that the June 2008 conveyance was not properly authorized and should be set aside. However, the Defendants persuasively argued that the transaction was not ultra vires and should be sustained.

In relevant part, the enabling ordinance provides that "[t]he City Manager shall be authorized to approve and execute such deeds . . . upon receipt of the payment." (City of Greenville, S.C., Ord. No. 2008-33 ¶ 7.) On June 19, 2008, the City signed the deed regarding the property to be transferred to The Cliffs, and transferred the deed to the closing attorney to hold in escrow. On June 23, The Cliffs transferred the full amount of cash due and owing under the conveyance agreement to the escrow account of the closing attorney, whereupon the attorney made appropriate disbursements of real property and cash incident to closing. All deeds were recorded on June 24, 2008.

It is the Plaintiffs' contention that under the enabling ordinance, the City could not sign any deed until The Cliffs had rendered full performance of its obligations under the agreement. But this interpretation is inconsistent with the language of the ordinance.

The analysis begins with reference to familiar rules of statutory construction. "The cardinal rule of statutory construction is . . . to ascertain and effectuate the actual intent of the legislature," Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989), which in this case is the City Council. It is presumed that the legislature did not insert idle verbiage or superfluous language, but that each word of a legislative enactment is necessary, and that it has its own, independent meaning. Lee v. Thermal Eng'g Corp., 352 S.C. 81, 94, 572 S.E.2d 298, 305 (Ct. App. 2002).

The Plaintiffs contend that the phrase "approve and execute," as it is used in the ordinance, requires the City to withhold any act of approval or execution (such as signing a deed and tendering the deed to a closing attorney) until The Cliffs has rendered full performance. However, to accept the Plaintiffs' interpretation would require the closing between the Cliffs and The City to have occurred in a way that deviated from modern real estate practice. The process of most closings involves an escrow agent receiving consideration from the parties and making an appropriate, simultaneous distribution of cash and property. In fact, this is the way that the closing occurred between the City and The Cliffs on June 23, 2008.

The more credible interpretation is the one provided by the City and The Cliffs. The Defendants distinguish between approval and execution and argue that approval is a condition precedent to execution. For the City to approve the property conveyance, it must lend its assent, which is evidenced by all necessary signatures. Approval was complete upon acquiring all necessary signatures; however, approval and execution were complete only upon the closing agent's simultaneous distribution of cash and property on June 23, 2008.

The Court is persuaded by the Defendants' interpretation. But even if that interpretation were not correct, the violation of the ordinance cited by the Plaintiffs is technical only, and would have no practical effect upon the outcome of an otherwise legitimate transfer of property.

D. The June 2008 conveyance did not violate the South Carolina Constitution.

The Plaintiffs further contend that the property transfer violated the South Carolina Constitution, specifically Article III, § 31, and should be set aside. However, Section 31 does not prohibit municipalities from making transfers of property to private corporations.

In relevant part, Section 31 provides that "[l]ands belonging to or directly under the control of the State shall never be donated, directly or indirectly, to private corporations Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals." S.C. Const. art. III, § 31. A clear line of precedents establish that Section 31 applies only to the State of South Carolina in its capacity as sovereign proprietor. It does not touch or concern lands owned by other governmental subdivisions, such as cities and counties. E.g., McKinney v. City of Greenville, 262 S.C. 227, 244, 203 S.E.2d 680, 689 (1974) (observing that Section 31 is "inapplicable" where "no lands belonging to or under the control of the State [in its capacity as sovereign proprietor] are involved"); Bobo v. City of Spartanburg, 230 S.C. 396, ___, 96 S.E.2d 67, 70 (1956); Haesloop v. City Council, 123 S.C. 272, 278, 115 S.E. 596, 598 (1923) ("[W]e think[] the reference in this constitutional provision is to public lands belonging to and controlled by the state in its capacity as sovereign proprietor.").

In addition, the Plaintiffs have provided no evidence to suggest that The Cliffs paid anything less than fair market value for the land that was conveyed. The evidence shows that the City was paid a very reasonable amount, over two hundred thousand dollars for less than one-third of an acre in northern Greenville County.

The Court is satisfied that the transaction between the City and The Cliffs was conducted at arms' length in a manner that was both fair and reasonable. The Court is further convinced that Section 31 does not restrict the sale of municipal property to private corporations. Summary judgment was therefore properly granted with respect to the constitutional claim.

III. DISPOSITION OF THE SECOND HEARING

After the Court entered summary judgment against the Plaintiffs on October 2, the Plaintiffs filed motions to alter or amend the judgment and to amend the Complaint. This time, the Plaintiffs took the position that the City and The Cliffs had come to an incorrect agreement about the location of the entire Corbin Mountain Line. According to the Plaintiffs, the Corbin Mountain Line should have been placed at a location further west. The Plaintiffs therefore claimed that a continuing encroachment existed along the entire length of the Corbin Mountain Line and should be enjoined.

Motions to alter or amend are made through Rule 59(e). The purpose of this Rule is to provide a means through which the Court may reconsider matters that were encompassed in a decision on the merits. Arnold v. South Carolina, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) (citations omitted). However, this rule cannot be used to inject an issue into the case that was not previously before the Court, id., which the Plaintiffs appear to have attempted. To be specific, the first time that the Plaintiffs took

the position that the City and The Cliffs had come to an incorrect agreement about the location of the Corbin Mountain Line was after summary judgment had already been granted on October 2. This fact alone was more than enough reason to merit summary dismissal on December 17.

However, the Plaintiffs' motion to file an amended Complaint was denied on December 17 pursuant to an alternative procedural basis: claim preclusion. The doctrine of claim preclusion exists to bring a measure of finality to repetitive litigation. See, e.g., Garris v. Governing Bd., 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). It is generally applicable when: (1) the parties in subsequent litigation are the same as those in prior litigation; (2) the subject matter in subsequent litigation is the same as that in prior litigation; and (3) the prior litigation was resolved through a prior adjudication by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250, 452 S.E.2d 832, 833 (1994).

On October 2, the Defendants were awarded summary judgment with respect to purpresture on the procedural grounds of mootness. As previously addressed, the issue before the Court on October 2 was moot because the City had made a proper conveyance of land to The Cliffs which resolved any unlawful encroachment. The conveyance was based on the location of "the common property line," (Register of Deeds, Greenville County, S.C., Deed Book 2329, Page 817-20), which was itself a reference to Lindsey's survey of the location of the Corbin Mountain Line, (id., Plat Book 1069, Page 58). This deed, as well as the ordinance that enabled the City's conveyance, (City of Greenville, S.C., Ord. No. 2008-33), establish a mutual intent to regard Lindsey's survey of the Corbin Mountain Line as the recognized boundary between the City and The Cliffs. This

fact was necessarily decided by the Court on October 2 in determining that any claim of unlawful encroachment had been mooted.

As of the December 17 hearing, the claim remained moot. There were no new or additional facts that occurred which could have changed the legal relationship among the parties to this action. Instead, the Plaintiffs had requested that the Court review the prudence of the City's decision to establish the location of the Corbin Mountain Line according to Lindsey's survey. But to exercise such review would far exceed the scope of the Court's proper judicial function. As a matter of sound judicial policy, the Court steadfastly refrains from supplanting its judgment for that of a governing political body which has exercised lawful, discretionary authority in a manner that is both reasonable and legitimate.

The City and The Cliffs have mutually agreed upon the location of their common boundary. Therefore, the Court will not pass upon the wisdom of the City and The Cliffs in giving preference to Lindsey's survey to establish that line. Instead, the scope of the Court's review is limited to whether an unlawful encroachment exists with regard to the line that was actually agreed to.

In this case, there is no unlawful encroachment. Any purpresture that may have existed was resolved by the transfer of property in June 2008. That transfer mooted the purpresture issue pending before the Court on October 2, and it remained moot on December 17. A claim that has been deemed moot remains moot, and due to the doctrine of preclusion, cannot support a subsequent action without some change in material fact.

IV. CONCLUSION

For the foregoing reasons, summary judgment was entered in favor of the Defendants on October 2, 2008. The Plaintiffs' motion for judgment on the pleadings was denied. Additionally, the Court declines the invitation to reconsider its previous decision, and shall not grant the Plaintiffs leave to amend the Complaint.

•
It is SO ORDERED.

The Honorable John C. Few
Judge, Thirteenth Judicial Circuit

Entered this ____ day of January 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	Plaintiffs' Reply Memorandum in Support
as a taxpayers of the City of	)	of Motion to Alter or Amend the Judgment
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

SCRCF 59(e)

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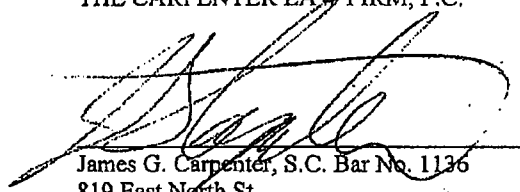
2009 FEB 25 P 4:17

Plaintiffs, by their undersigned attorney, submit this Reply Memorandum in Support of their Motion to Alter or Amend the Judgment filed Feb. 12, 2009. Plaintiffs would show unto the Court the following:

1. On February 19, 2009, Plaintiffs received from the City the attached correspondence and "Boundary Line Agreement, Quit Claim, and Release" ("Agreement") executed February 13, 2009. This document effectively ended the purpresture.
2. In light of the Agreement, Plaintiffs submit this Reply to modify their Motion filed February 12, 2009.
3. Paragraph 25, at the top of page 7, should refer to paragraph 10 (not 9).
4. Paragraph 27 should be supplemented with the attached Agreement, and the final sentence of Paragraph 27 should be deleted.
5. Paragraph 33 should be deleted.
6. The Prayer for Relief should read as follows:

WHEREFORE, Plaintiffs pray the Court to alter or amend the judgment to address the Plaintiffs' objections and unanswered questions as set out herein, and to grant such other and further relief as the court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

James G. Carpenter, S.C. Bar No. 1136
819 East North St.
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest
Foundation, and Edward D. Sloan, Jr.,
and Robert M. Lloyd, individually and
as a taxpayers of the City of
Greenville, South Carolina, and on
behalf of all others similarly situated,
Plaintiffs,

v.

City of Greenville, Knox H. White,
Mayor, and The Cliffs at Glassy, Inc.,
Defendants.

Certificate of Service

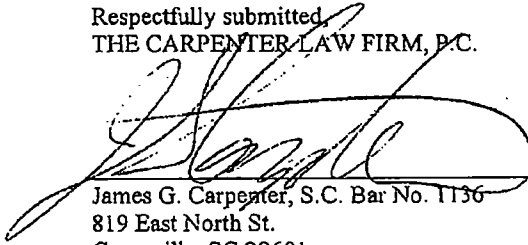
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GREENVILLE, S.C.
2009 FEB 25 P 4:17

The undersigned attorney hereby certifies that he served a copy of the foregoing Reply Memorandum in Support of Motion to Alter or Amend the Judgment upon counsel for the defendants by first-class mail postage prepaid, this Wednesday, February 25, 2009, addressed as follows:

Kathleen Kempe
P.O. Box 2207
Greenville, SC 29602

Rivers Stillwell
P.O. Box 10084
Greenville, SC 29603-0084

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Plaintiffs

THE CARPENTER LAW FIRM, P.C.
ATTORNEYS AND COUNSELORS AT LAW

January 28, 2009

The Hon. John C. Few
Circuit Court Judge
305 E. North St. # 318
Greenville, SC 29601

Re: *SCPIF v. City of Greenville*,
Civil Action No. 2008-CP-23-2255

Dear Judge Few:

I write to comment on the proposed order Mr. Buckingham submitted to you January 21.

On October 2, the Court indicated its intention to grant Defendants' Motion for Summary Judgment. No order has been entered. The Court advised that should Plaintiffs find additional relevant facts, they could bring them to the Court's attention. On October 28, Plaintiffs brought such facts to the Court's attention and moved for leave to file a supplemental complaint. On December 17, the Court denied the motion to supplement.

Plaintiffs suggest that the purpose of the order is to grant Summary Judgment to the Defendants, but it does not do so. The draft order assumes that the Court granted Summary Judgment on October 2, a minor discrepancy perhaps, but the inaccuracy persists throughout the draft order. As written, the Order is simply a recounting of events that occurred months ago, not a current action of the Court. Such a construct might impair Plaintiffs' appellate options.

Page 5 of the draft order mentions an agreement between the City and the Cliffs establishing a boundary line between their properties. To the knowledge of the plaintiffs, no such agreement is in the record.

Ordinance 2008-33, enacted in June, calls for the City and Cliffs to execute mutual releases. On December 17, in open court, Counsel for the Cliffs reported that such releases had not been executed, but that they would be executed immediately. Mr. Sloan requested copies of these releases under the FOIA. On January 22, the City responded that no such releases exist (enclosed).

Page 11 of the proposed order addresses the fair market value of the property. To the knowledge of the plaintiff, fair market value was not an issue in the case.

In 1956, the City acquired the land. The Wiswall Line was its western boundary. The Wiswall Line is a straight line from the top of Corbin Mountain running South, 20 degrees East, 2046 feet. In 2000, the Joint N.C. S.C. Boundary Commission marked the top of Corbin Mountain by a ½ inch diameter rebar with an aluminum cap stamped 155. Plaintiffs' surveyors found a standing stone, thought to be the southern terminus of the Wiswall Line, a little over 2000 from the top of Corbin Mountain, on the approximate bearing of South, 20 degrees East. Its geographic location is approximately North 35 degrees, 9' 45" East 82 degrees 25' 56." Plaintiffs' discovery of these two monuments—point 155 and the standing stone—was the basis of their October 28 motion.

Plaintiffs believe the Wiswall Line was established long before 1922. Plaintiffs found remnants of an old fence made of barbed wire manufactured in the mid- to late- 1800s along the Wiswall Line.

The southern terminus of the Wiswall Line (presumably the standing stone) provided a corner point for the land on the south, which the City also acquired in 1956 (Plat Book EE, Page 155 A). The Wiswall Line also served as a border for land that Gap Creek LP acquired. The Wiswall Line served as a border for land over which the City conveyed a conservation easement to the Nature Conservancy. Finally, the Wiswall Line served as a border for the Cliffs' acquisition of its interest from Gap Creek, LP in 2000.

Unlike the Wiswall Line, the Lindsey Line in the 2004 deed (Plat Book 1069, Page 58) is not one straight line, but is three connected lines, at varying bearings, none of which is South, 20 degrees East. The Lindsey Line does not run 2046 feet, and it does not terminate at a standing stone. The land between the Wiswall Line and the Lindsey Line constitutes approximately 3.2 acres in addition to the .29 acres that the June deed conveys explicitly. The Court ruled that the deed conveying the .29 acres also recognized the adjusted location of the Wiswall Line.

This proposed order and the Court's judgment regarding the new property line raise other issues. Did recognition of the new property line constitute a conveyance of the 3.2 acres? If so, when did the conveyance occur, and to whom? Was the conveyance in June along with the .29 acres to the Cliffs, or was it earlier by acquiescence to Gap Creek? Does Gap Creek own the 3.2 acres? Citing no evidence, the draft order asserts that in 2000, Gap Creek, LP conveyed to Cliffs its property west of an undefined City property line. Was the City's conveyance of the 3.2 acres before or after the 2000 conveyance?

In 1956 when the City acquired the subject 3.2 acres, that land became exempt from property taxes. (Tax Map 664.2 shows the Wiswall Line running from a point on the NC/SC border South, 20 degrees East.) After the change in the property line, the 3.2

January 28, 2009

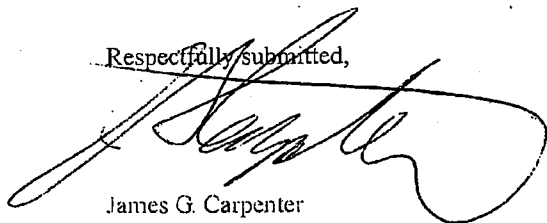
acres is taxable property. The Tax Map requires revision to reflect the new ownership and taxable status of the 3.2 acres. What will be the basis for such a revision?

Apparently the City received no consideration for the 3.2 acres. Based upon comparable sales, the value of the subject 3.2 acres exceeds \$1 million.

Plaintiffs believe that at least five parties own property interests in the subject 3.2 acres, and their interests are affected by this conveyance. Plaintiffs attempted unsuccessfully to join these parties in this litigation.

If a deed related to the subject 3.2 acres were prepared and filed, it would clarify the ownership issue, minimize future controversy, and facilitate the work of the Greenville County Tax Assessor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James G. Carpenter", written over the typed name.

James G. Carpenter

Enclosure

CC w/ enclosure: Stephen E. Buckingham

819 E. NORTH ST., SUITE 230 • GREENVILLE, SC • 29601
PHONE: 864-235-1269 • FAX: 864-331-3083
E-MAIL: james.carpenter@carpenterlawfirm.net • URL: lawyers.com/carpenter

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

The South Carolina Public Interest Foundation, et al
☒ Plaintiff

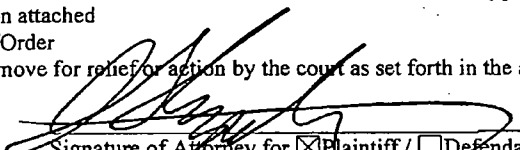
v.

City Of Greenville, Et Al
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-23-2255

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: James G. Carpenter, Bar No. 1136 Address: 819 E. North St. Greenville, SC 29601 phone: 235-1269 fax: 331-3083 e-mail: james.carpenter@carpenterlawfirm.net other:		Defendant's Attorney: Kathleen Kempe, Bar No. 003382 Address: PO Box 2207, Greenville, SC 29602 phone: 467-4420 fax: 467-4424 e-mail: kempek@greatergreenville.com other: -	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Rule 59(e) re: Atty. Fees and Costs Estimated Time Needed: half hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		March 7, 2012 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
The South Carolina Public Interest Foundation,	)	
and Edward D. Sloan, Jr., and Robert M.	)	
Lloyd, individually and as a taxpayers of the	)	
City of Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H. White, and	)	
The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

**Motion to Alter or Amend
Rule 59(e)**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 9 WICKENSHER
2012 MAR -7 P 11:07

On March 24, 2008, Plaintiffs filed this action for an injunction requiring the Defendant City to end the eight-year encroachment or purpresture of its lands. June 19, 2008, by a deed recorded in Book 2329 at Page 817, the City divested title to about a quarter acre in the eastern part of its encroached land. On June 24, 2008, the City received \$100,000 from Cliffs as part of the consideration for the land conveyed. By this divestiture, the City reduced the extent of, but did not eliminate, the encroachment. Several months later, on February 13, 2009, by deed recorded in Book DE2353 at Page 1209-1211, the City divested itself of the remainder of its land encroached upon.

The City had failed to repel a purpresture for eight years, and had failed to remedy the situation over many months of litigation. The City had inaccurately argued that the land in question had been sold (after the June conveyance), and that no purpresture existed.

Several months later, after Plaintiffs proved their case with convincing documentary evidence, the City fully ended the purpresture by divesting its ownership of the remainder of the land encroached upon.

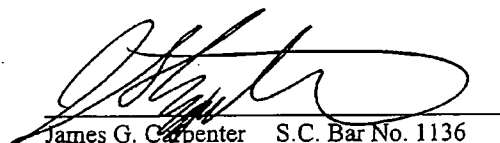
The City did not know the location of its property line, and failed to exercise reasonable care to discover it. Plaintiffs' lawsuit obtained the relief sought, "a unilateral change in position by the [City]" ending the purpresture, and Plaintiffs prevailed. *Sloan v. Friends of the Hunley*, 369 S.C. 20, 29, 630 S.E.2d 474, 479 (2005).

On May 4, 2009, Plaintiffs moved the Court for costs and attorneys fees incurred in this case from the City. Plaintiffs incurred \$39,816.60 in attorneys' fees and \$8,970.00 in surveyor costs pursuing this matter, most of them *after* the City conveyed a quarter acre, and *before* they conveyed the remainder. The City's actions ending the purpresture brought \$100,000 into the City coffers. The Court awarded Plaintiffs their attorneys' fees and costs only through June 24, 2008, the day of the payment for the *partial* ending of the purpresture.

Plaintiffs' actual attorneys' fees and costs were reasonable, including those after June 24, 2008, and Plaintiffs respectfully suggest that the award of attorneys' fees should also include an award after June 24, 2008, and up through the ending of the purpresture on February 13, 2009.

WHEREFORE, Plaintiffs pray the Court for an award of actual attorneys' fees and costs from the City.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter S.C. Bar No. 1136
Jennifer J. Miller S.C. Bar No. 13611
819 East North Street, Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CIVIL ACTION NO. 08-CP-23-2255

The South Carolina Public Interest Foundation,)
and Edward D. Sloan, Jr., and Robert M.)
Lloyd, individually and as a taxpayers of the)
City of Greenville, South Carolina, and on)
behalf of all others similarly situated,)
Plaintiffs,)

**Plaintiff's Response to
Motion to Alter or Amend**

Rule 59(e)

v.)

City of Greenville, Mayor Knox H. White, and)
The Cliffs at Glassy, Inc.,)
Defendants.)

Defendant City of Greenville ("City") filed a Motion to Alter or Amend this Court's award of attorneys' fees and costs, filed November 23, 2011¹, by which this Court awarded attorneys' fees and costs to Plaintiff pursuant to S.C. Code Ann. § 15-77-300. However, the November 23, 2011 Order, was correct in ruling that the Plaintiffs prevailed because the case in chief was mooted by the February 16, 2009 recording of a quitclaim deed filed by Defendant City.

The Court noted that Plaintiffs filed the action March 24, 2008, alleging that for many years, Defendant Cliffs at Glassy, Inc. ("Cliffs") had trespassed on land owned by the City. Three months later, June 19, 2008, the City by deed conveyed its title to .29 acres of the land trespassed upon to Cliffs. The deed was recorded June 24, 2008, and the City received \$100,000 from Cliffs June 24, 2008 as partial consideration.

On February 13, 2009, the City quitclaimed its title to the remaining trespassed land by deed recorded February 16, 2009. This transaction mooted the case. Defendant City resurrects

¹ Pursuant to the November 7, 2011 request of the Court, Plaintiffs submitted to it a proposed Order. Subsequently, the Plaintiffs

its argument that the filing of this action did not motivate the City to transfer this land and end the trespass. This Court has already rejected that identical argument in considering Defendant's Response to Motion for Attorneys Fees because the evidence and common sense demonstrate its error.

S.C. Code Ann. § 15-77-300 gives this Court complete discretion to award fees to a "prevailing party" from the State or a political subdivision if "the agency acted without substantial justification in pressing its claim against the party." In this case, the City knew the fallacy of its defense and also knew of its duty to rectify the trespasses. (In its Motion to Alter or Amend, Defendant City stated it was attempting to "come to an agreement with Cliffs 30 days after the action was filed.) Nevertheless, the City litigated this action for almost one year without attempting to settle the action.

Defendant's Motion to Alter or Amend presents no new facts, argument, or evidence to the Court not already in the record, although it does allege facts that are not in the record or had been amended and removed from a replaced Order.² Inappropriately relying on alleged facts not in the record or removed from the record, Defendant argues that Plaintiffs did not prevail because the filing of the action did not cause the transactions that ended the trespasses. This Court has rejected that set of facts. However, the City contends that an alleged agreement with Cliffs to identify a boundary line (an erroneous one) which occurred a month after this action was filed, was formalized only one month after the action was filed. Defendant City claims that this formalizing of an agreement on identification of a boundary line one month after this action was filed, proves that this action was inconsequential in achieving the remedy sought.

² The City relies extensively on findings in the Order entered January 30, 2009. However, on February 12, 2009, the Plaintiffs moved to alter or amend that January 30, 2009 Order, asserting that several of the findings of fact were erroneous. This Court entered a replacement Order on August 18, 2009 that revoked the January 30, 2009 Order. Accordingly, the findings of fact from the January 30, 2009 Order were revoked. It is therefore inappropriate for Defendants to cite the incorrect statement of facts from the prior revoked Order in their Motion to Alter or Amend.

The truth is, as recognized by the Court in its Orders of February 12, 2009 and November 23, 2011, Plaintiffs filing of the action prompted Defendants to remedy the trespasses, although completion of this remedial action took Defendants almost an entire year³ of litigation in which they did not settle the matter but fought in litigation. This Court followed the S.C. Supreme Court's recent ruling in *SCPIF v. Friends of the Hunley*, in ruling that a citizen challenging a government body may be deemed a prevailing party for purposes of an attorney fees provision if the government body has unjustifiably litigated the matter and then later acquiesced and moved for dismissal for mootness to avoid attorneys fees.

Defendant suggests that *SCPIF v. Friends of the Hunley*, interpretation the word "prevail" in the South Carolina FOIA attorneys' fees provision does not provide accurate guidance to this Court in interpreting the word "prevail" in S.C. Code Ann. § 15-77-300. However, the circumstances are plainly parallel, and City offers no contravening case law to support its position.

WHEREFORE, Plaintiffs pray the Court to deny the City's Motion.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

James G. Carpenter S.C. Bar No. 1136
Jennifer J. Miller S.C. Bar No. 13611
819 East North Street
Greenville, SC 29601

³ In its November 23, 2011, Order the Court awarded attorneys fees through the first transfer of property to remediate the trespass on June 24, 2008, but not through the second transfer remediating the second trespass in February, 24, 2009. Plaintiffs have filed a Motion to Alter or Amend to award fees for the entire action on this basis. The November 23, 2011 Order correctly recognized that the February 16, 2009 transfer was the date Plaintiffs finally prevailed on all claims. The Plaintiffs ask the Court for all fees spent prevailing on these claims including the fees spent obtaining those fees, including but not limited to those fees addressing Defendant's March 12, 2012 Motion to Alter or Amend. (See amended Fee Affidavit, attached.)

Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) 2009 FEB 11) IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

The South Carolina Public Interest) Civil Action No. 2008-CP-23-2255
Foundation, and Edward D. Sloan,)
and Robert M. Lloyd, Individually and)
as Taxpayers of the City of Greenville,)
South Carolina, and on behalf of Others)
Similarly Situated,)

Plaintiffs,)

vs.)

City of Greenville, Knox H. White,)
Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

**THE CLIFFS' MEMORANDUM IN
RESPONSE TO THE PLAINTIFFS' MOTION
TO ALTER OR AMEND THE JUDGMENT**

Defendant The Cliffs at Glassy, Inc. ("The Cliffs"), by and through its undersigned counsel, respectfully submits this memorandum in response to the Plaintiffs' Motion to Alter or Amend the Judgment. For the reasons set forth briefly herein, the Plaintiffs' motion must be denied.

The Plaintiffs' motion is brought under Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59 is the exclusive means through which a party requests the court to reconsider any issue that was previously raised in the context of litigation, and which is encompassed in a judgment. See, e.g., Arnold v. South Carolina, 309 S.C. 157, 420 S.E.2d 834 (1991). An issue may not be raised for the first time in a motion to reconsider. Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999). Similarly, the motion to amend cannot be used to inject an issue, or evidence of an issue, into a judgment that was not previously before the court. Arnold, 309 S.C. 157, 420 S.E.2d 834. By and large, the Plaintiffs' motion does both, and is therefore procedurally improper.

In addition, the Plaintiffs continue to argue historical facts that are simply moot. Such facts became moot when the City of Greenville enacted Ordinance 2008-33, which fixed the Corbin Mountain Line in the location that had been previously agreed to by the City and The Cliffs as the place of their common boundary. The Plaintiffs may disagree with the wisdom of the City's action, or its municipal benefit, but the fact remains that the location of the Corbin Mountain Line, as it now conclusively exists, is the product of political discourse and decision-making that cannot be easily disturbed.

For these reasons, and for those set forth in the Opinion & Order which disposed of the above-captioned civil action, The Cliffs respectfully requests that the Plaintiffs' motion be denied.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: RS Stilwell
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SC Bar No. 002108
E-Mail: rivers.stilwell@nelsonmullins.com
Steven E. Buckingham
SC Bar No. 75089
E-Mail: steven.buckingham@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Defendant The Cliffs at Glassy, Inc.

Greenville, South Carolina

Feb 16, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 08-CP-23-2255
	)	
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan, Jr.,	)	
and Robert M. Lloyd, individually and	)	
as a taxpayers of the City of	)	
Greenville, South Carolina, and on	)	
behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
City of Greenville, Mayor Knox H.	)	
White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

Supplemental Motion
for Fees and Costs

2011 JUL 15 P 4:53
RECEIVED CLERK OF COURT
JUL 15 2011

On May 4, 2009, Plaintiffs moved the Court pursuant to SCRCP 54, S.C. Code Ann. § 15-77-300 and § 15-37-10 through -220 for costs and attorneys fees incurred in this case from the Defendant City, and incorporated a memorandum of law and an affidavit of counsel. A citizen must prove three elements to claim attorney's fees: (1) *the citizen was the prevailing party*; (2) the government entity must have acted without substantial justification; and (3) no special circumstances would have made the award of attorney's fees unjust. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002). Plaintiffs submit this Supplemental Motion for Fees and Costs to bring to the Court's attention a recent ruling from the South Carolina Supreme Court on the definition of a prevailing party. *Sloan v. Friends of the Hunley*, Opinion No. 26986, 2011 WL 2321787 (2011) (copy attached). The case developed this way:

Sloan requested documents from the Defendants under FOIA. Defendants responded that Friends of the Hunley ("FOTH") was not a "public body," was not subject to FOIA, and would not produce the documents. Sloan filed suit requesting injunctive relief for the production of the

documents, and declaratory judgment that FOTH was a “public body” under FOIA. Defendants then produced the documents, but continued to maintain that they were not a “public body” subject to FOIA. Other persons requested other documents, but FOTH maintained that it was not a “public body” and refused their requests. The Defendants vigorously contested this action all the way to the South Carolina Supreme Court.

Shortly before oral argument, Defendants’ wrote to the Court and announced that they would no longer contest whether FOTH was a “public body.” The Supreme Court pressed defense counsel in oral argument asking whether FOTH was indeed a “public body” under FOIA. Defense counsel then conceded that FOTH was indeed a “public body.” After the concession, the Court found the FOIA claim moot. *Sloan v. Friends of the Hunley*, 369 S.C. 20, 29, 630 S.E.2d 474, 479 (2005).

Sloan filed a motion for attorneys’ fees under FOIA and supported this motion with billing records and an affidavit. On February 24, 2009, the Circuit Court ruled that Sloan was entitled to attorneys’ fees. Defendants appealed to the Supreme Court arguing that Sloan was not a “prevailing party” under § 30-4-100(b) and disputing the time period for which attorneys’ fees should be awarded.

Historically, the Supreme Court has held that a prevailing party is “one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.” *Id.*, citing *Heath v. County of Aiken*, 302 S.C. 178, 182–83, 394 S.E. 2d 709, 711 (1990) (alteration in original) (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (Alaska 1964)).

In contrast, the Supreme Court ruled:

Under the facts of this case, we find that *Sloan is the prevailing party* under section 30-4-100(b). When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed.

Id. (emphasis added), citing *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions.").

The Court explained its ruling:

Here, Sloan's complaint prompted Friends to do what a series of FOIA letter-requests could not accomplish—produce the requested documents. Accordingly, *Sloan prevailed and is entitled to an award of attorney's fees.*

* * *

We affirm the trial court's finding that Sloan is a prevailing party under FOIA and is thus entitled to an award of his attorney's fees. We reverse the award of fees beyond the time Friends produced the requested documents and modify Sloan's attorney's fees award to \$6,467.50.

Id. (emphasis added)

In this ruling, the Supreme Court held for the *first time* that a litigant can be a prevailing party and that fees can be awarded in the absence of an actual court ruling for the plaintiff. The Court was persuaded by the Montana Supreme Court's ruling (cited in the plaintiffs' earlier motion) that a party prevailed when a public entity mooted a case by turning over the requested documents, but in doing so provided the relief sought through litigation without court intervention. *Id.* citing *Havre Daily News, LLC v. City of Havre*, 142 P.3d 864, 878 (Mont. 2006).

Similarly, the Court was persuaded by the District Court of Montana's ruling that when a party seeks an injunction under FOIA, if the relief sought is obtained "via . . . unilateral change

in position by the agency,' he is entitled to fees under the federal FOIA statute." *Id. citing Wildlands CPR v. U.S. Forest Serv.*, 558 F. Supp. 2d 1096, 1098 (D. Mont. 2008).

Furthermore, the Court agreed with the courts of the State of Washington: "[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act." *Id. citing Spokane Research & Def. Fund v. City of Spokane*, 117 P.3d 1117, 1125 (Wash. 2005) (en banc) (alteration in original) *quoting Coal. on Gov't Spying v. King County Dep't of Pub. Safety*, 801 P.2d 1009, 1013 (Wash. Ct. App. 1990). The Supreme Court reasoned that FOTH would not have produced the requested documents if Mr. Sloan had not filed suit and therefore FOTH could not avoid attorneys' fees simply because no court had adjudicated its status as a "public body." Such a result would "undercut the policy behind the act." *Id.*

Likewise, in the case at bar, Mr. Sloan and SCPIF are prevailing parties. [For eight years, The Cliffs at Glassy, Inc. had encroached upon City-owned land, committing a purpresture. Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it.]

On March 24, 2008, Plaintiffs filed this action for an injunction requiring the City to end the eight-year encroachment (Complaint). On April 23, 2008, the City answered that it intended to take certain action in response to the Complaint (Answer). On April 28, 2008, the City enacted Ordinance 2008-33 enabling the City to dispose of a part of its land encroached upon (Ordinance, Exhibit J to the Complaint). On June 24, 2008, the City received \$100,000 from Cliffs as part of the consideration for some of the land at issue. June 19, 2008, by a deed recorded in Book 2329 at Page 817, the Defendant City divested title to about a quarter acre in the eastern part of its land encroached. By this divestiture, the City reduced the extent of, but did

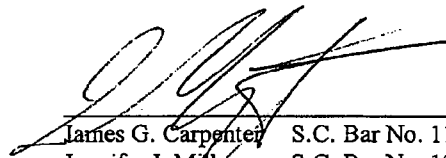
not eliminate, the encroachment. Like *Friends of the Hunley*, Defendants in the case at bar vigorously contested this action at every turn, yet Plaintiffs established that Defendant City had failed to repel a purpresture for eight years, and had failed to remedy the situation over many months of litigation.

On February 13, 2009, by deed recorded in Book DE2353 at Page 1209-1211, the Defendant City divested itself, by donation, of the remainder of its land encroached upon. Thus, the City had inaccurately argued that the land in question had been sold and that no purpresture existed. Several months later, and only after Plaintiffs proved their case with convincing documentary evidence, the Defendant City ended the purpresture by divesting its ownership of the land encroached upon. Plaintiffs' lawsuit obtained the relief sought, "a unilateral change in position by the agency" ending the purpresture, and Plaintiffs prevailed. *Sloan v. Friends of the Hunley*, 369 S.C. 20, 29, 630 S.E.2d 474, 479 (2005).

As demonstrated earlier, Defendants were not substantially justified in pressing their claims, and no other factors make an award of attorneys' fees unjust.

WHEREFORE, Plaintiffs pray the Court for an award of actual attorneys' fees and costs from the City.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
819 East North Street, Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GREENVILLE) CIVIL ACTION NO. 08-CP-23-2255
 2011 JUL 15 P 4: 53
 The South Carolina Public Interest)
 Foundation, and Edward D. Sloan, Jr.,)
 and Robert M. Lloyd, individually and)
 as a taxpayers of the City of)
 Greenville, South Carolina, and on)
 behalf of all others similarly situated,)
 Plaintiffs,)
)
 v.)
)
 City of Greenville, Mayor Knox H.)
 White, and The Cliffs at Glassy, Inc.,)
 Defendants.)

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 AFFIDAVIT in Support of Supplemental
 Motion for Fees and Costs

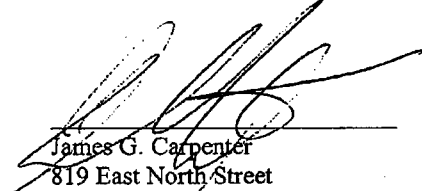
I, James G. Carpenter, being first duly sworn, state as follows:

1. I am lead counsel for the Plaintiffs. I graduated from the University of South Carolina School of Law in 1984. I was admitted to the Bar in South Carolina in 1985 and in North Carolina in 1986. I am also admitted to practice before the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit.
2. Since 1994, I have been practicing civil litigation in my own firm. My normal billing rate is \$275 per hour, but because of the public interest nature of this litigation, I agreed with Plaintiffs for rates of \$200 per hour.
3. As far as I know, our firm is the only one in this state focusing on this kind of taxpayer and public interest litigation. We have been working on such cases for more than ten years, primarily with Mr. Sloan.
4. My associate Jennifer Miller worked on this case. She graduated from the University of South Carolina School of Law and was admitted to the bar in 1997. She has been with my firm for more than ten years. Her billing rate is \$150 per hour.
5. My associate L. Warren Clayton worked on this case. He graduated from the University of South Carolina School of Law and was admitted to the bar in 2004. His billing rate is \$150 per hour.
6. We maintain daily detailed time records of our professional services. I attach to this Affidavit monthly invoices with daily work records detailing the hours my

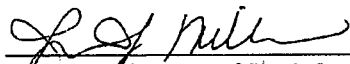
associates and our firm expended litigating this case. Our records show attorneys fees and our costs since April 30, 2009 totaled \$1,837.50, as shown by the attached monthly invoices. This amount is in addition to the fees covered by the prior affidavit that Plaintiffs submitted in support of their Motion for Attorneys Fees, filed May 4, 2009, for a total fees and costs of \$50,624.10

7. Plaintiff prevailed first by prompting a sale of .29 acres of the purpresture, and second, by the City's filing a deed in February 2009, to transfer the remainder of the purpresture to The Cliffs at Glassy, Inc. On June 24, 2008, the City received \$100,000 from Cliffs as part of the consideration. Plaintiff's attorneys fees should be reimbursed, not only under § 15-77-300, but also because his litigation resulted in the City receiving \$100,000, and his fees should be paid from that amount.
8. Plaintiffs funded this case with private resources, and this case presented a significant and extended financial risk for them, but the City and its citizens and taxpayers benefited as a result of this litigation.
9. I believe that our actual attorneys' fees and costs were reasonable and that Plaintiff is entitled to a full award of attorney's fees.

Further the affiant saith naught.


James G. Carpenter
819 East North Street
Greenville, SC 29601
(864) 235-1269
SC Bar No. 1136

Subscribed and sworn to before me
this 15th day of July, 2011


Notary Public, State of South Carolina
My commission expires: 3-30-14

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

The South Carolina Public Interest) Civil Action No. 2008-CP-23-2255
 Foundation, and Edward D. Sloan, Jr.,)
 and Robert M. Lloyd, Individually and)
 as Taxpayers of the City of Greenville,)
 South Carolina, and on behalf of Others)
 Similarly Situated,)

Plaintiffs,)

vs.)

City of Greenville, Knox H. White,)
 Mayor, and The Cliffs at Glassy, Inc.,)

Defendants.)

**RESPONSE OF THE CLIFFS AT
 GLASSY, INC. TO FIRST SET OF
 INTERROGATORIES AND
 REQUESTS FOR PRODUCTION OF
 PLAINTIFFS**

Pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure,
 Defendant The Cliffs at Glassy, Inc. ("The Cliffs") hereby responds to Plaintiffs'
 Interrogatories and Request for Production.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be
 witnesses concerning the facts of the case and indicate whether written or recorded
 statements have been taken from the witnesses and indicate who has possession of such
 statements.

ANSWER:

James B. Anthony
 The Cliffs Communities, Inc.
 3598 Hwy 11
 Travelers Rest, SC 29690

Mr. Anthony has knowledge regarding discussions with the City once the alleged encroachment was discovered and of another occasion on which the City's encroachment upon property of the Cliffs was similarly resolved by mutual cooperation.

Bill Lindsey
Lindsey & Associates Inc.
7020 Mountain View Rd.
Taylors, SC 29687

Mr. Lindsey performed the November, 2004 survey upon which the alleged encroachment is based.

Ronald W. McKinney, Esq.
City of Greenville
P.O. Box 2207
Greenville, SC 29602

Mr. McKinney worked with Mr. Anthony to address the alleged encroachment.

Lynn Stovall
Greenville Water System
P.O. Box 687
Greenville, SC 29602

Mr. Stovall upon information and belief has knowledge of the alleged encroachment and its resolution.

Frank Estridge
Greenville Water System
P.O. Box 687
Greenville, SC 29602

Mr. Estridge upon information and belief has knowledge of the alleged encroachment and its resolution.

No written statements have been taken from these witnesses.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendants that relate to the claim or defense in the case.

ANSWER: Deed of the property and survey by Bill Lindsey.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved in the amount or amounts of liability coverage provided in each policy.

ANSWER: Not applicable.

4. List the names and addresses of any expert witnesses whom Defendants propose to use as a witness in the trial of the case.

ANSWER: No expert witness at this time.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiffs of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory No. 1.

6. On what date did in the City first learn of the alleged encroachment?

ANSWER: The Cliffs has no information responsive to this Interrogatory.

7. How did the City learn of the encroachment?

ANSWER: The Cliffs has no information responsive to this Interrogatory.

8. On what date did in the Cliffs first learn of the alleged encroachment?

ANSWER: The Cliffs does not know when this first became known but believes it was on or about the time it first became aware of Mr. Lindsey's survey.

9. How did the Cliffs learn of the encroachment?

ANSWER: The Cliffs discovered the alleged encroachment in the course of purchasing another piece of property.

10. On what date did the City receive a copy of the drawing by Lindsey & Associates dated November 5, 2004?

ANSWER: The Cliffs has no information responsive to this Interrogatory.

11. How did the City learn that this drawing had been made?

ANSWER: The Cliffs has no information responsive to this Interrogatory.

12. Does either Defendant have knowledge of any property line survey relating to these two parcels of property made subsequent to November 5, 2004?

ANSWER: The Cliffs is not aware of any surveys prior to the 2004 Lindsey survey.

13. Please give the names, addresses, and telephone numbers of the person or persons who performed the research into deeds, surveys, and land values, and legal analysis related to the transaction at issue.

ANSWER: See Answer to Interrogatory No. 1.

14. Who negotiated the amount of consideration that the City received from the Cliffs?

ANSWER: See Answer to Interrogatory No. 1.

15. Describe in detail the nature of any express or implied authorization that the City granted to the Cliffs to use the land which is the subject of this lawsuit.

ANSWER: When the encroachment was discovered, both the City and The Cliffs were trying to determine whether the survey or the line that had been drawn by the Greenville Water System for 50 years was more accurate. Neither party questioned whether the line drawn by the City Water System was correct until the survey was done. Therefore, both The Cliffs and the City discussed what should

be done to correct the situation. The Cliffs and the City handled a similar matter about the same time where the City owned a fire tower on the Cliffs property. The Cliffs moved the fire tower, at its own expense, over to the City's side. Acting in good faith, the City and The Cliffs came to the amount the City would settle in the transfer of the .04 acres.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All communications from the City to Cliffs about the subject of this litigation.

RESPONSE: None

2. All communications from the Cliffs to the City about the subject of this litigation.

RESPONSE: None

3. All agreements between the City and the Cliffs about the subject of this litigation.

RESPONSE: See documents attached.

4. All documents upon which Defendants relied to respond to the foregoing interrogatories.

RESPONSE: See documents attached.

5. All documents related to land values resulting from the Defendants' research related to this transaction.

RESPONSE: None.

6. All documents referring to related to any express or implied authorization from the City to the Cliffs to use the land at issue in this lawsuit.

the City to the Cliffs to use the land at issue in this lawsuit.

RESPONSE: None.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *Giles M. Schanen, Jr.*

Rivers S. Stilwell, SC Bar No. 002108
E-Mail: rivers.stilwell@nelsonmullins.com
Giles M. Schanen, Jr., SC Bar No. 70391
E-Mail: giles.schanen@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Defendant The Cliffs at Glassy, Inc.

Greenville, South Carolina

July 11, 2008

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for The Cliffs at Glassy, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

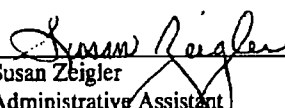
Pleadings:

**RESPONSE OF THE CLIFFS AT GLASSY, INC. TO
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF PLAINTIFFS**

Counsel Served:

James G. Carpenter, Esq.
Jennifer J. Miller, Esq.
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, SC 29601

Ronald W. McKinney, Esq.
City of Greenville
P.O. Box 2207
Greenville, SC 29602



Susan Zeigler
Administrative Assistant

July 11, 2008

Excise Tax: \$ _____
Tax Lot No. _____ Parcel Identifier No. _____
Verified by _____ County on the _____ day of _____, 2006
by _____

Mail after recording to:

This instrument was prepared by W. Scott Jones, Post Office Box 7216, Asheville, NC 28802

Brief description for index:

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this _____ day of _____, 2006, by and between

GRANTORS

The Cliffs at Glassy, Inc., a South Carolina Corporation

GRANTEE

The City of Greenville, South Carolina, a municipal corporation

Address: General Manager
Commissioner of Public Works
The City of Greenville, S.C.
P.O. Box 687
407 West Broad Street
Greenville, SC 29602

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of _____ Township, Henderson County, North Carolina and more particularly described as follows:

LYING and BEING in Green River Township, Henderson County, NC and **BEING** all of Tract "A" containing 0.04 acres as shown on a plat of a survey for the "Commissioners of Public Works, City of Greenville, SC", which said plat is duly recorded in the Office of the Register of Deeds for Henderson County, North Carolina in Slide 6225, reference to which is hereby made for a more particular description.

The property hereinabove described was acquired by Grantor by instrument recorded in Deed
Book at Page

A map showing the above described property is recorded in Slide 6225.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions: Easements, restrictions and rights-of-way of record.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

THE CLIFFS AT GLASSY, INC.

BY: _____ (SEAL)
Marty Ritsch, Treasurer

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for the aforesaid, certify that Marty Ritsch, Treasurer, appeared before me this day and I have personal knowledge of the identity of the principal; acknowledging to me that he is the Treasurer of THE CLIFFS AT GLASSY, INC., a SC Corporation and that by authority duly given and as the act of the corporation, he voluntarily signed the foregoing instrument in its name on its behalf as its act and deed.

This the ____ day of _____ 2006.

_____, Notary Public
(type or print name on above line)
My Commission Expires: _____

PREPARED BY HORTON, DRAWDY, WARD & JENKINS, P.A., 307 PETTIGRU STREET,
GREENVILLE, SC 29601

GRANTEE'S ADDRESS:

STATE OF SOUTH CAROLINA)	LIMITED WARRANTY
)	TITLE TO REAL ESTATE
COUNTY OF GREENVILLE)	

KNOW ALL MEN BY THESE PRESENTS, that

The City of Greenville, South Carolina,

in consideration of One and no/100 (\$1.00) Dollar and other valuable consideration, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s), the receipt of which is hereby acknowledged has granted, bargained and sold and released and by these presents does grant, bargain, sell and release unto

The Cliffs At Glassy, Inc.:

ALL that certain piece, parcel or lot of land situate, lying and being near the peak of Corbin Mountain in Greenville County, South Carolina, containing 0.29, more or less, and being shown as Tract "B" on a plat entitled Survey for Tract "B" Cliffs At Glassy, Inc., prepared by Lindsay & Associates, Inc. dated November 5, 2004 and recorded in the R/D Office for Greenville County in Plat Book 1069 at page 58, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a point on the common property line of the grantor and the grantee which is located on a tie line N. 22-24-20 W. 730.59 feet from a 5/8 inch rebar; thence along the common property line of the grantee and the grantor N. 22-24-20 W. 39.31 feet to the center of a new road and continuing N. 22-24-20 W. 189.98 feet to again the center of said road; thence continuing N. 22-24-20 W. 39.91 feet to a point in the common line of the property of the grantor and grantee; thence on a new arc along the eastern edge of said new road the following courses and distances: S. 71-06-20 E. 29.37 feet; thence S. 59-51-20 E. 29.89 feet; thence S. 49-49-20 E. 29.28 feet; thence S. 40-10-20 E. 30.84 feet; thence S. 32-20-40 E. 28.89 feet; thence S. 22-05-40 E. 28.14 feet; thence S. 06-13-10 E. 27.75 feet; thence S. 08-16-20 E. 23.64 feet; thence S. 08-35-00 W. 28.82 feet; thence S. 17-34-20 W. 28.28 feet; S. 27-16-50 W. 28.13 feet.

By the acceptance of the within deed, the grantee acknowledges and affirms that no easement by necessity, implication or otherwise is created by the within conveyance encumbering the remaining property of the grantor, in that the grantee is the owner of the adjoining premises and title to the within parcel shall merge into and become a part of the same and access otherwise provided by the grantee.

Further, by the acceptance of the within deed, the grantee acknowledges the reservation and granting of an easement to the grantor herein for access to said road for emergency purposes as depicted on the plat recorded in the R/D Office for Greenville County, South Carolina in Plat Book 49L, page 89.

This is a portion of the property conveyed to the grantor herein by deed of Timberlands, Inc. dated May 16, 1956 and recorded on May 16, 1956 in the R/D Office for Greenville County in Deed Book 552, page 469.)

The within conveyance is made subject to all easements, rights-of-way or restrictions of public record affecting said property.

Tax Map No. 664.2-1-1

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever.

WITNESS the grantor's(s') hand(s) and seal(s) this 19th day of June, 2008.

SIGNED sealed and delivered in the presence of:

WITNESS:

City of Greenville

Cynthia Schlabach
Notary

By: James M. Berry
City Manager
By:

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF GREENVILLE)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within written deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 19th day of June, 2008.

Ronald D. McKinney (SEAL)
Notary Public for SOUTH CAROLINA
My Commission Expires: September 14, 2005

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- (1) I have read the information on this affidavit and I understand such information.
- (2) The property being transferred is located at 0.29 acres, Tract B, bearing Part of Greenville County Tax Map Number 0664.02-01-001.00, was transferred by City of Greenville to The Cliffs at Glassy, Inc. on June 24, 2008.
- (3) Check one of the following: The deed is
- a. ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - c. ☐ exempt from the deed recording fee because (see Information section of affidavit):

(If exempt, please skip Items 4-7 and go to Item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

- (4) Check one of the following if either Item 3.a. or 3.b. above has been checked. (See Information section of this affidavit.)
- a. ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$210,166.44
 - b. ☐ The fee is computed on the fair market value of the realty which is _____
 - c. ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

(5) Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: _____

(6) The deed recording fee is computed as follows:

- a. Place the amount listed in Item 4 above here: _____
- b. Place the amount listed in Item 5 above here: _____
(If no amount is listed, place zero here.)
- c. Subtract Line 6.b. from Line 6.a. and place result here: _____

(7) The deed recording fee due is based on the amount listed on line 6.c. above and the deed recording fee due is: \$778.85

(8) As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: attorney.

(9) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000.00 or imprisoned not more than one year, or both.

SWORN before me this 24 day of
June, 2008.

Notary Public for SC

My Commission Expires: 9-29-08

David B. Ward
Responsible Person Connected with the Transaction
David B. Ward

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than \$100.00;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF GREENVILLE	) Case No(s) : 2008CP2302255
	)
The South Carolina Public	)
Interest Foundation, and	)
Edward D. Sloan, Jr., and	)
Robert M. Lloyd, individually	)
and as taxpayers of the City	)
of Greenville, S.C., and on	)
behalf of all others similarly	)
situated,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
City of Greenville, Mayor Knox	)
H. White, and The Cliffs at	)
Glassy, Inc.	)
	)
Defendant.	)

COPY

October 02, 2008
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

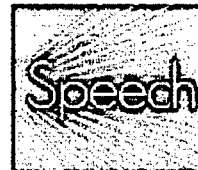
JAMES CARPENTER, Esquire
Attorney for the Plaintiff

RIVERS STILWELL, Esquire
Attorney for the Defendant

KATHLEEN KEMPE, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	4			
Certificate of Reporter	43			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 2nd day of October, 2008 at approximately 12:00 p.m.)

THE COURT: Okay. We are to decide a motion for partial summary judgement by The Cliffs of Glassy and a motion for summary judgement by the City.

MR. CARPENTER: Your Honor, before -- there were two motions we filed before that.

THE COURT: And the motions that are filed by, by the plaintiff. Motion for leave to amend the Complaint?

MR. CARPENTER: Right. And then there was, uh, -- back in May, we filed a motion for partial judgement on the pleadings.

THE COURT: Okay. Any opposition to the amendment of the Complaint?

MR. STILWELL: I'm prepared to argue against the amendment, Your Honor, uh, as excepted. I filed a brief where I dealt with the two causes of action and tried to, uh, add, which I say would be futile amendments. I can do it either way. It can be amended and I can argue against it or I can say it's a futile amendment.

THE COURT: Let's, uh -- let's let it be

1 amended and you argue against it. How about that?

2 MR. STILWELL: That's fine, Your Honor.

3 THE COURT: Cause if you're right, you're
4 going to win either way. Okay? So motion to amend
5 is granted.

6 MR. CARPENTER: Thank you, Your Honor.

7 THE COURT: And, uh, so now do all of the
8 motions relate basically to the same aspect of the
9 merits of the case?

10 MR. CARPENTER: There are three causes of
11 action in the Amended Complaint. Uh, when we filed
12 the first motion for partial judgement on the
13 pleadings, we had only the first cause of action.
14 The Cliffs, uh, -- the Cliffs' motion addresses all
15 three causes of action. The City's motion only
16 addresses the first cause of action because we
17 filed our motion to file supplemental complaint the
18 same day that the City filed their motion for
19 summary judgement. It just happened that way. So,
20 uh, what, uh, -- the things that are at issue, I
21 think, are, uh, on the first cause of action, our
22 motion for partial judgement on the pleadings and
23 the defendant's two motions for summary judgement.

24 The facts of the case are, uh, they arise out
25 of the Cliffs' development up in northern

1 Greenville county. We have, uh, -- we found in the
2 Greenville County Register of Deeds website -- and
3 we've attached a copy to some of our earlier
4 pleadings -- a plat. The earliest one we found is
5 dated June 14, 2000. Uh, I have printed out and
6 brought copies for everybody. This copy is a
7 little more legible than the one that's attached to
8 one of our pleadings because of the way that it's
9 organized on the paper.

10 June of 2000, the surveyor, Mr. Lindsey, who
11 works for the Cliffs, surveyed some land, uh,
12 related to The Cliffs' valley development and
13 chose, uh, in the middle of this exhibit, a
14 property line running across a road at the top of
15 the -- top center part of the page. Where that
16 property line -- to the right of the property line
17 is the property of the City of Greenville. To the
18 left of the property line is property owned by The
19 Cliffs.

20 What this shows is when The Cliffs put in this
21 road, there was a gully that that road goes around.
22 What they did was put in a road across property
23 owned by the City of Greenville without permission.
24 Their own surveyor found in 2000 with this survey
25 and with another one that was done in August of

1 2000 which shows, uh, --

2 THE COURT: This road was put in when?

3 MR. CARPENTER: I don't know when the road
4 was put in, but it was put in pretty clearly across
5 the city watershed property. It was put in before
6 June of 2000. It is a trespass, or the legal word
7 is purpresture, on the City of Greenville property,
8 the watershed property that's owned by the City.

9 The plat I just handed up was done without
10 the lots being drawn in. The plat in August is a
11 little bit more of a close up. It also shows the
12 lots being drawn in. I can show that to the Court.
13 This also came off of the, uh, Greenville County
14 Register of Deeds Office website. It again shows
15 the road going across the property line onto the
16 watershed property.

17 This issue was brought to the attention of the
18 City some time after these surveys were, uh, made,
19 filed. And the, uh, City did not take any, uh,
20 significant action to repel this trespass or to,
21 uh, do anything to amend or correct this trespass
22 on the city property.

23 Mr. Sloan filed this lawsuit March 21 of this
24 year. And about two weeks later, April 4th of this
25 year, the City had a first reading of an ordinance

1 to sell, uh, this slice of property to The Cliffs
2 at Glassy, uh, to try to correct this trespass that
3 they had made. Uh, but for eight years, at least
4 eight years, the City had done nothing to address
5 this trespass.

6 Mr. Sloan's first cause of action is called
7 purpresture. The definition of purpresture is an
8 encroachment by a private party for a private
9 party's own use on publicly owned property for the
10 benefit of the private party without authorization.
11 We've asked for declaratory judgement on that. The
12 facts are admitted that this, uh, road was built on
13 watershed property without prior permission or
14 authorization. And we'd ask for declaratory
15 judgement that this was a purpresture, an
16 unauthorized use of publicly owned property for a
17 private person.

18 Now, as I said, after we filed suit, two weeks
19 later, the City had the first reading of an
20 ordinance to sell this property to The Cliffs at
21 Glassy or The Cliffs Valley. Uh, in May, we filed
22 a motion for partial judgement on the pleadings for
23 declaratory judgement that this was a purpresture
24 and asking the court to require the City to put up
25 a fence and stop the repeated trespasses on the

1 watershed property.

2 In the summer, uh, June and July, the City
3 carried through with the sale of this property to
4 The Cliffs at Glassy. And that gave rise to the
5 second and third of our causes of action, which are
6 now, I guess, deemed filed. The second cause of
7 action arises out of the sale of the property. The
8 ordinance that allowed the sale of the property is
9 attached to our Amended Complaint. Section 7 of
10 the ordinance says that the city manager shall be
11 authorized to approve and execute such deeds,
12 acceptances and agreements as are herein provided
13 for upon receipt of the payment described in
14 Section 3 above.

15 The documents that we've obtained in discovery
16 show that several days prior to the receipt of the
17 payment, the city manager approved and executed the
18 deed to transfer this property to The Cliffs at
19 Glassy. That is a violation of the ordinance.
20 That's what the, uh, -- that's what the second
21 cause of action relates to.

22 The third cause of action in the new Complaint
23 arises from Article 3, Section 31 of the South
24 Carolina Constitution which says lands belonging to
25 or under the control of the State shall never be

1 donated directly or indirectly to private
2 corporations, nor shall such land be sold to
3 corporations for a less price than that from which
4 it can be sold to individuals. We've alleged that
5 that imposed the duty on the City to find out and
6 ascertain whether an individual would have paid
7 more to the City for its title to that land than
8 The Cliffs paid. The City did not make any such
9 determination. They just went ahead and sold it
10 without making a determination. Our contention in
11 the third cause of action is they didn't fulfill
12 their duty required by the Constitution in relation
13 to the price by which this land was sold to a
14 corporation.

15 Our motion for summary judgement relates to
16 the first of those causes of action. Declaratory
17 judgement that this was a purpresture, that it was
18 unauthorized taking of publicly owned property for
19 a private, uh, entity and unauthorized and, uh,
20 asking for declaratory judgement and costs and
21 attorney's fees. The defendants, I think, will
22 address both the first cause of action in the first
23 Complaint and also at least Mr. Stilwell will want
24 to address the second and third cause of action.

25 **MR. STILWELL:** Your Honor, Mrs. Kempe will