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**Jun 20 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas,

Patrick C. Fant, III, Circuit Court Judge

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Case No. 2023-CP-23-04246  
Appellate Case No. 2024-000999

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Annacey Park Homeowners  
Association, Inc. and the City of  
Greenville, Respondents,

v.

Anderson Laurens Road AA, LLC and  
Anderson Laurens Road ZZ, LLC, Appellants.

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MOTION TO REINSTATE APPEAL

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The Appellants, Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC, (“Appellants”) respectfully move, pursuant to Appellate Rule 260(a), SCACR, for an Order reinstating their appeal. The Court issued an Order of Dismissal filed June 18, 2024, for “failure to timely serve the notice of appeal” pursuant to Rule 203(b)(1), SCACR.

This Motion to Reinstate is based upon the grounds that Appellants, in accordance with Rule 203(b)(1), SCACR, timely filed their Notice of Appeal. A Form 4 Order was filed by the Honorable Patrick C. Fant, III on April 10, 2024. In response, Appellants timely filed a Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative, for

Reconsideration Pursuant to Rule 59(e) with the Circuit Court on April 19, 2024 (“Appellants’ Post-Trial Motion”). Thereafter, Respondent Annacey Park Homeowners Association, Inc. filed a Reply to Appellants’ Post-Trial Motion on April 22, 2024 (“Respondent’s Reply”). On April 24, 2024, Judge Fant’s Law Clerk emailed the attorneys involved, seemingly granting Appellants’ Rule 52(b) Motion and denying Appellants’ Rule 59(e) Motion. Such email declared that “Judge Fant has reconsidered his April 10, 2024, Order and stands by his Order. However, Judge Fant requests that Counsel for Annacey Park Homeowners Association, Inc. prepare an Amended Formal Order to include findings of fact and conclusions of law consistent with the written Motion, as well as argued orally at the April 8<sup>th</sup>, 2024 hearing.” On June 4, 2024, the Circuit Court issued a further Order denying Appellants’ Post-Trial Motion (the “Final Order”). A copy of Appellants’ Post-Trial Motion, Respondent’s Reply, the Court’s email of April 24, 2024 and the Final Order are attached hereto as **Exhibit A**.

Appellants’ Amended Notice of Appeal to identify these filings is attached hereto as **Exhibit B**.

The Appellants acknowledge that the Notice of Appeal failed to identify Appellants’ Post-Trial Motion, Respondent’s Reply and the Final Order but assert that all parties received notice of such filings. No prejudice has been suffered by any party. Appellants, therefore, respectfully request that their appeal be reinstated.

Respectfully submitted,

June 20, 2024

/s/ William B. Swent  
William B. Swent, S.C. Bar No. 13519  
Aimee V. Leary, S.C. Bar No. 100657  
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*Attorneys for Appellants*

**EXHIBIT A**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC,	)	C.A. No. 2023-CP-23-04246
	)	
Petitioners,	)	<b>PETITIONERS' NOTICE OF MOTION</b>
	)	<b>AND MOTION TO ALTER OR AMEND</b>
v.	)	<b>PURSUANT TO RULE 52(b) OR, IN THE</b>
	)	<b>ALTERNATIVE, FOR</b>
Annacey Park Homeowners Association, Inc. and the City of Greenville,	)	<b>RECONSIDERATION PURSUANT TO</b>
	)	<b>RULE 59(e)</b>
Respondents.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE that Petitioners Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC (hereinafter "Petitioners"), by and through their undersigned counsel, hereby move pursuant to Rule 52(b) SCRPC, or in the alternative Rule 59(e) SCRPC, for alteration, amendment or reconsideration of this Court's Order entered on April 10, 2024, denying Petitioners' request for statutory abandonment of any public rights affecting a certain strip of land (commonly identified as "Kellett Drive") and/or for confirmation of title to real property interests coincident therewith. A copy of the Order is attached hereto as **Exhibit A**.

**I. BACKGROUND—DEFENDANTS OFFERED NO PROOF OF DEDICATION**

A merits hearing was held before Judge Patrick C. Fant on April 8, 2024 during which the parties put forward documentary facts and stipulations and presented witness testimony. At the outset of the hearing, Petitioner confronted the City of Greenville's responsive pleading, paragraph 3, wherein the City denied the existence of any public right, title or interest in Kellett Drive, "apart from existing and planned public utility easements." See Answer of the City of Greenville dated October 6, 2023. Specifically, Petitioners asserted that, unless other parties to the pending action were able to prove public dedication of Kellett Drive, the Court's singular charge would be to

address Petitioners' prayer for confirmation of title. The parties had stipulated to reversionary interests, and thus the quiet title prayer presented neither a question of fact nor a point of law requiring resolution. Anticipating an argument on the subject of dedication, Petitioners proceeded to put forward proof of compliance with statutory abandonment procedures and demonstrated that the only interests in opposition to abandonment were the discrete, private interests of Annacey Park residents. In turn, the Annacey Park Homeowners Association, Inc. (the "HOA") argued that its private concerns should be elevated above the aggregate interests of all other Greenville City residents, but the HOA failed entirely to prove *or even to argue* the existence of a dedicated public interest requiring abandonment.

## II. RULE 52 REQUIREMENTS

Rule 52(a) SCRCF requires that the Court set forth factual findings based upon the evidence presented at a merits-hearing and that the Court set forth its conclusions of law. This is a fundamental function of circuit courts. The South Carolina Supreme Court has enunciated the standard as follows:

Trial courts, sitting without juries in an action at law, write their findings specially and separately: to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; *it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.* Coble v. Coble, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C.1980) (internal citations omitted) (applying North Carolina's equivalent of our Rule 52(a), SCRCF); see also United States v. Birnbach, 400 F.2d 378 (8th Cir.1968). *Compliance with the rule also allows the trial judge to satisfy the interest of judicial economy by dealing fully and properly with all issues before the court.* See In re Las Colinas, Inc., 426 F.2d 1005 (1st Cir.1970) (construing Fed.R.Civ.P. Rule 52 on which our rule is based).

In re Treatment & Care of Luckabaugh, 351 S.C. 122, 132–33, 568 S.E.2d 338, 343 (2002) (emphasis added). In Church v. McGee, the South Carolina Court of Appeals likewise emphasizes the importance of Rule 52(a) SCRPC:

“We do not require a lower court to set out findings on all the myriad factual questions arising in a particular case.” Luckabaugh, 351 S.C. at 133, 568 S.E.2d at 343. “*But the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below.*”

Church v. McGee, 391 S.C. 334, 346, 705 S.E.2d 481, 487 (Ct. App. 2011) (emphasis added).

### III. ARGUMENT FOR ALTERATION, AMENDMENT OR RECONSIDERATION

#### A. The HOA Failed to Prove or Even Argue Dedication.

The HOA failed to put forward any evidence or even argue that Kellett Drive had been dedicated as a public right of way. Accordingly, Petitioners respectfully request that the Court amend its Order to confirm the absence of any public rights in and to Kellett Drive and give repose to title interests according the parties’ filed stipulation. As an initial matter, the burden of proving dedication rested with the HOA. “Since we know that individual owners of property are not apt to transfer it to the community or subject it to public servitude without compensation, the burden of proof to establish dedication is upon the party claiming it.” Anderson v. Hemingway, 269 S.C. 351, 237 S.E.2d 489 (1977) (citing, *inter alia*, Tyler v. Guerry, 251 S.C. 120, 160 S.E. (2d) 889 (1968); 23 Am. Jur. (2d), Dedication, § 75). Furthermore, “[i]n situations where title is claimed by dedication rather than an actual conveyance, the actions of the parties ‘must be so unequivocal and positive as to leave little doubt that it was the intention of the owner to dedicate the same to the public use.’” Vick v. SCDOT, 347 S.C. 470, 556 S.E.2d 693 (2001) (quoting Shia v. Pendergrass, 222 S.C. 342, 348, 72 S.E.2d 699, 701 (1952)). “To perfect a claim of dedication, a party must show two elements: (1) the owner's clear and unmistakable intention to dedicate the property to public use, and (2) acceptance of that property by the public.” Tupper v. Dorchester County, 326

S.C. 318, 326, 487 S.E.2d 187, 191-92 (1997). Setting aside the HOA's failure to offer evidence of any prior owner's intent to dedicate, the unequivocal pleading from the City of Greenville is that it denies the acceptance of Kellett Drive as a public road.<sup>1</sup> Petitioners submit that the City's denial of acceptance without any countering assertions or evidentiary submission compounds the HOA's failed burden of proof, but without question, the absence of any evidence of effort to prove dedication obviates a ruling on statutory abandonment.

**B. Furthermore, the HOA Failed to Prove Public Interests are Served by Kellett Drive.**

The Court's Order summarily concludes that statutory closure of Kellett Drive is "not in the best interests of all concerned." Without factual findings in support of this declaration, Petitioners and appellate courts are precluded from assessing whether this bald conclusion represents a proper application of the law. As stated in First Baptist Church of Mauldin v. City of Mauldin, 308 S.C. 226 229 417 S.E.2d 592, 593-4 (1992), "it must appear clearly that no consideration other than that of the public interest could have prompted the action." The Court's Order suggests an alternative standard whereby "all" parties in interest—private and public—must be served by a closure decree, but such an alternate standard is inconsistent with South Carolina precedents. Besides the First Baptist decision, there are any number of decisions upholding a public road closure in spite of private objectors. According to Rule 52 SCRPC, Petitioners respectfully request factual findings of the Court that support establishing a public right and obligation pertaining to Kellett Drive. Specifically, Petitioners seek findings that overcome the City Engineer's 1) concern about the physical condition of Kellet Drive (disrepair and substandard

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<sup>1</sup> Petitioners point to Town of Kinstree v. Chapman, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013) as a precisely similar dispute, where the governing principle of law is laid bare: The burden of proof as to dedication must precede any finding for or against statutory abandonment because, without a prior finding of public rights, the public road closure statute is inapplicable.

original construction), 2) understanding that Kellett Drive was never meant to provide anything other than emergency access to Annacey Park, and 3) concerns over public safety, in that Kellett Drive invites access to Laurens Road “a major arterial highway” without the benefit of a traffic signal. Similarly, the Petitioners hope the Court will reveal its findings consistent with the likes of First Baptist, wherein Justice Toal identified factors that might guide a statutory closure decision: e.g., productive energies of the community, public safety balanced against private inconvenience, and the availability of alternate routes of travel. Petitioners submit that the only evidence of a broader public interest presented at the merits hearing was the testimony of the City Engineer (all of which testimony confirmed the City’s opposition to a declaration of Kellett Drive as a public road), and the only argument against closure was that of a private, abutting landowner.

WHEREFORE, Petitioners respectfully request that this Court reconsider its ruling and issue an altered or amended Order declaring that the HOA failed to satisfy its burden of proving Kellett Drive was ever dedicated to public use. Hence, the Court should further Order that fee simple title to Kellett Drive is vested according to filed stipulations. Alternatively, Petitioners submit that the Court’s Order should be altered or amended to identify the evidentiary submissions that convinced the Court a public right was established according to governing law, making factual findings consistent Rule 52(a) SCRPC and identifying what *public* interests were ascertained as would support imposing safety hazards and unwarranted road improvement and maintenance obligations on the citizens of the City of Greenville.

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Respectfully submitted this, the 19th day of April, 2024.

**FOX ROTHSCHILD LLP**

          /s/          William B. Swent          

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Attorneys for Petitioners

Greenville, South Carolina

**EXHIBIT A**

Anderson Laurens Road AA LLC et al  
PLAINTIFF(S)

Annacey Park Homeowners Association Inc et al  
DEFENDANT(S)

**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
- STAYED DUE TO BANKRUPTCY**
- 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:

Please see the attachment on Page 2 below.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/10/2024 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

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This matter is before the Court on Petitioner's Motion For Final Hearing for a determination regarding Petitioner's Petition for Statutory Abandonment of Public Rights and Permanent Road Closure (Kellet Drive). Based on a review of the file, submissions of the parties, and oral arguments the Petitioner's Petition is hereby DENIED because it is not in the best interest of all concerned that Kellet Drive be abandoned or closed.

It is so ordered.

ELECTRONICALLY FILED - 2024 Apr 10 3:42 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2304246  
ELECTRONICALLY FILED - 2024 Apr 19 2:20 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2304246



Greenville Common Pleas

**Case Caption:** Anderson Laurens Road AA LLC , plaintiff, et al vs. Annacey Park Homeowners Association Inc , defendant, et al  
**Case Number:** 2023CP2304246  
**Type:** Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2024-04-10 15:02:44 page 3 of 3

ELECTRONICALLY FILED - 2024 Apr 10 3:42 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2304246  
ELECTRONICALLY FILED - 2024 Apr 19 2:20 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2304246

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

2023CP23-04246

Anderson Laures Road AA, LLC )  
and Anderson Laures Road ZZ, )  
LLC, )

Plaintiff(s), )

REPLY TO PETITIONER’S NOTICE AND  
MOTION TO ALTER OR AMEND  
PURSUANT TO RULE 52(b) OR, IN  
THE ALTERNATIVE, FOR  
RECONSIDERATION PURUSUANT TO RULE  
59(e)

Annacey Park Homeowners )  
Association, Inc. and the City of )  
Greenville )

Defendant(s). )

Annacey Park Homeowners Association, Inc. (hereinafter “Defendant HOA”), hereby submits this Reply to Petitioner’s Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative for Reconsideration Pursuant to Rule 59(e) (“Motion to Reconsider”).

Petitioner’s Motion to Reconsider improperly attempts to shift the burden of proof to Defendant, Annacey Park Homeowners Association, Inc. (“HOA” or Annacey Park”). The Petitioner, as the party having initiated the action, has the burden of proof to prove its case. Throughout the Petitioner’s Motion to Reconsider, Petitioner alleges that the HOA failed to prove particular elements or claim the HOA failed to carry its burden of proof, however, the HOA has no obligation to prove any element or claim. The Petitioner, as the party having brought the action, is required to prove its case – to carry the burden of proof – which it has failed to do as to either claim and therefore the Motion to Reconsider must be denied.

In order for a court to issue an order closing a road, the Court must first determine that the closure or abandonment must be in the best interest of all concerned. See, S.C. Code Ann §57-9-20 (“If the court shall determine that it is to be the best interest of all concerned that such street, road, or highway be abandoned or closed . . .”), First Baptist Church of Mauldin v. City of Mauldin, 308 S.C. 226, 229, 417S.E.2d 592, 593-594 (“Under Section 57-9-20, the court is empowered to close roads on a finding that is in the best interest of all concerned.”).

The undisputed testimony showed that it is not in the best interest of all concerned for Kellett Road to be closed or abandoned.

Further, Petitioner's reliance on First Baptist Mauldin, to support its position that the Kellett Road should be closed is misplaced. The Court in First Baptist Mauldin stated "it must appear clearly that no consideration other than that of the public interest could have prompted the action." 308 S.C. 226, 229. The evidence presented and Petitioner's counsel's statements show that Kellett Road is merely an inconvenience for Petitioner. The Petitioner seeks Kellett Road closure so it can connect its two properties into one single property and that Petitioner seeks to use for its sole benefit.

WHEREFORE, Petitioner having failed to show that all concerned are benefited by the closure of Kellett Road and failing to have carried the burden to all other claims, the HOA submits that the Petitioner's Motion to Reconsider must be denied.

**Babb, Bixler and Dollar**

**BY: s/A. Lyon Bixler**  
**A. Lyon Bixler, SC Bar No. 100543**  
**Everette H. Babb, SC Bar No. 452**  
**Patrick O. Dollar, SC Bar No. 101719**  
**Attorney for the Defendant**  
**Bixler and Dollar, LLC**  
**505 W. Butler Road**  
**Greenville, South Carolina 29607**  
**(864) 422-0022**

**Greenville, South Carolina**  
**April 22, 2024**

## Leary, Aimee Victoria-Ann

---

**From:** Fant, Patrick III Law Clerk (Joshua Dressendorfer) <pfantlc@sccourts.org>  
**Sent:** April 24, 2024 9:24 AM  
**To:** Swent, William B.; mspinelli@greenville.sc.gov; lbixler@bbdlawsc.com; zakiyag@BBDlawsc.com; Leary, Aimee Victoria-Ann; pdollar@bbdlawsc.com  
**Subject:** [EXT] Re: Anderson Laurens Road AA LLC, v. Annacey Park Homeowners Association Inc., (2023cp2304246)

Good morning everyone,

Based on a review of Petitioners' Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative, for Reconsideration Pursuant to Rule 59(e), as well as Respondents' Reply to Petitioners' Motion, Judge Fant has reconsidered his April 10, 2024, Order and stands by his Order. However, Judge Fant requests that Counsel for Annacey Park Homeowners Association, Inc. prepare an Amended Formal Order to include findings of fact and conclusions of law consistent with arguments in the written Motion, as well as argued orally at the April 8<sup>th</sup>, 2024 hearing.

Counsel for Annacey Park Homeowners Association Inc., please prepare a proposed Amended Order and share with opposing counsel. Then, please send the proposed order to me and I will forward it to Judge Fant for his review and approval.

Respectfully,

Joshua Dressendorfer, Esq.  
Law Clerk to The Honorable Patrick C. Fant, III  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601  
(864) 467-8559 (Telephone)  
(864) 467-8815 (Fax)

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Anderson Laurens Road AA, LLC )  
and Anderson Laurens Road ZZ, )  
LLC, )  
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Petitioners, )  
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Annacey Park Homeowners )  
Association, Inc. and the City of )  
Greenville )  
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Defendant(s). )  
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\_\_\_\_\_ )

**IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT**

**2023CP23-04246**

**ORDER**

This matter is originally before the Court on Petitioners, Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC, petition seeking the statutory abandonment of any public rights and permanent road closure of Kellett Drive, pursuant to S.C. Code Ann. §57-9-10, et, seq. A hearing was held on April 8, 2024. Present at the hearing was William B. Swent and Aimee V. Leary on behalf of Petitioners, A. Lyon Bixler on behalf of Annacey Park Homeowners Association, Inc. and Michael J. Spinelli on behalf of the City of Greenville.

Following the April 8, 2024, hearing this Court denied the Plaintiff's request to statutorily abandon any and all public rights and permanently close Kellett Road by order dated April 10, 2024. Petitioners timely filed a Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative, for a Reconsideration pursuant to Rule 59(e) on April 19, 2024.

The Petitioners and Defendant, Annacey Park Homeowners Association, Inc. dispute whether or not Kellett Drive should be abandoned and permanently closed. At the hearing, the Petitioners alleged that Kellett Drive is private property and that it is in the best interest of the public and all concerned that Kellett Drive be permanently closed.

Based on the pleadings, the stipulations of the parties, and the testimony and evidence presented at the hearing and arguments of counsel I find, conclude and Order as follows:

### **Findings of Facts**

1. The Summons and Petition with attached exhibits was filed on August 18, 2023.
2. Service was made upon Defendants as evidenced by the proof of service filed with the Court.
3. Defendant, Annacey Park Homeowners Association, Inc. filed an Answer on September 22, 2023.
4. Defendant, City of Greenville filed an Answer on October 9, 2023.
5. Notice of Hearing was provided to all parties.
6. The parties stipulated as to certain facts and admission of certain evidence.

### **Discussion**

The Petitioner, for the first time, at the final hearing on this action raised the issue that Kellett Drive is not a city street. In support of this position, the Petitioner relies on Defendant, City of Greenville's Answer. In the City of Greenville's ("City") Answer, the City alleged it currently has no interest in Kellett Drive apart from the utility easement. An engineer for the city testified that the City was not interested in Kellett Drive due to the disrepair and substandard condition of the road. However, there is a distinction between the City not seeking to claim an interest due to and Kellett Drive not being a public street. Furthermore, the Petitioner's pleadings seek to abandon public street and several Exhibits submitted to the Court, by Petitioner, identify the public right of way proposed to be abandoned.

Petitioners sought the statutory abandonment of any public rights and the permanent closure of Kellett Road pursuant to S.C. Code §57-9-10, et seq. In order for a court to permanently abandon or close a road, the court must determine that the closure or abandonment is in the best interest of all concerned. See, S.C. Code Ann. §57-9-20. At the beginning of the hearing the

parties stipulated the admission of statements from numerous members of Annacey Park Subdivision all of which opposed the closure of Kellett Road. Further, there was a letter from the landscape company for Annacey Park Subdivision which stated that the closure of Kellett Road would significantly impede their ability navigate the community and believed closure of Kellett Road would compromise its safety protocols and would increase the risk of accidents in delivering its services to Annacey Park.

During the hearing testimony was presented that Kellett Road was frequently used by the residents of Annecy Park subdivision. In fact, Kellett Road is essential for the residents of Annecy Park. Testimony was presented that stressed the importance of Kellett Road to provide, at least, secondary emergency services and access to Kellett Road. Therefore, based on the pleadings, the stipulations of the parties, and the testimony presented at trial, I find that it is in the best interest of all concerned that the Petitioners request to abandon the any public interest and permanently close Kellett Road be denied.

Petitioners' reliance on First Baptist Church of Mauldin v. City of Mauldin, 308S.C. 226, 417, S.E.2d 592 (1992) to support the closure of Kellett Road is misplaced. Petitioners allege that First Baptist stands for the position that the court shall close a road if the "broader public interest" is served. However, First Baptist makes clear that the court is empowered to close roads "on a finding that it is in the best interest of all concerned." Id. at 594. In its analysis, the South Carolina Supreme Court evaluated the public interest – that the church was an asset to the community and its continued growth was in the public interest; the road posed a danger that outweighed the inconvenience to those using the road as a short-cut – and the private interest of the church. The Court noted that the mere fact that the closure of a road was instigated by an abutting landowner, or the fact that a private interest must be served incidentally does not invalidate or prevent the road

closure. Id. However, the Court warned that a road may not be closed solely to benefit an abutting landowner and it appears clearly that no consideration other than the public interest could have prompted the action. Id.

This current matter presents the inverse to that of situation present in First Baptist. Here it clearly appears the primary consideration in initiating this action, requesting the abandonment and closure of Kellett Road, is the benefit of Petitioners and any public benefit is incidental to the primary purpose.

THEREFORE, IT IS ORDERED that Petitioners' Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative, for a Reconsideration pursuant to Rule 59(e) is DENIED.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW



**Greenville Common Pleas**

**Case Caption:** Anderson Laurens Road AA LLC , plaintiff, et al vs. Annacey Park Homeowners Association Inc , defendant, et al

**Case Number:** 2023CP2304246

**Type:** Order/Other

**So Ordered**

**Patrick C. Fant, III**

**EXHIBIT B**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas,

Patrick C. Fant, III, Circuit Court Judge

---

Case No. 2023-CP-23-04246  
Appellate Case No. 2024-000999

---

Annacey Park Homeowners  
Association, Inc. and the City of  
Greenville, Respondents,

v.

Anderson Laurens Road AA, LLC and  
Anderson Laurens Road ZZ, LLC, Appellants.

---

AMENDED NOTICE OF APPEAL

---

Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC hereby appeal the following orders of the Honorable Patrick C. Fant, III, Circuit Court Judge:

- **Form 4 Order Denying Petitioners' Petition for Statutory Road Closure**, filed April 10, 2024; and
- **Order Denying Petitioners' Motion to Alter or Amend, or in the Alternative for Reconsideration**, filed June 4, 2024.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on June 4, 2024.

Respectfully submitted,

June 20, 2024

/s/ William B. Swent  
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Aimee V. Leary, S.C. Bar No. 100657  
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WSwent@FoxRothschild.com  
ALeary@FoxRothschild.com  
*Attorneys for Appellants*

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2304246

Anderson Laurens Road AA LLC et al  
PLAINTIFF(S)

Annacey Park Homeowners Association Inc et al  
DEFENDANT(S)

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
- STAYED DUE TO BANKRUPTCY**
- 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:

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order  ends  does not end the case.  See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/10/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

This matter is before the Court on Petitioner's Motion For Final Hearing for a determination regarding Petitioner's Petition for Statutory Abandonment of Public Rights and Permanent Road Closure (Kellet Drive). Based on a review of the file, submissions of the parties, and oral arguments the Petitioner's Petition is hereby DENIED because it is not in the best interest of all concerned that Kellet Drive be abandoned or closed.

It is so ordered.



**Greenville Common Pleas**

**Case Caption:** Anderson Laurens Road AA LLC , plaintiff, et al vs. Annacey Park Homeowners Association Inc , defendant, et al  
**Case Number:** 2023CP2304246  
**Type:** Order/Electronic Form 4

**So Ordered**

**Patrick C. Fant, III**

Electronically signed on 2024-04-10 15:02:44 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Anderson Laurens Road AA, LLC )  
and Anderson Laurens Road ZZ, )  
LLC, )  
 )  
Petitioners, )  
 )  
 )  
 )  
Annacey Park Homeowners )  
Association, Inc. and the City of )  
Greenville )  
 )  
Defendant(s). )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

2023CP23-04246

ORDER

This matter is originally before the Court on Petitioners, Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC, petition seeking the statutory abandonment of any public rights and permanent road closure of Kellett Drive, pursuant to S.C. Code Ann. §57-9-10, et, seq. A hearing was held on April 8, 2024. Present at the hearing was William B. Swent and Aimee V. Leary on behalf of Petitioners, A. Lyon Bixler on behalf of Annacey Park Homeowners Association, Inc. and Michael J. Spinelli on behalf of the City of Greenville.

Following the April 8, 2024, hearing this Court denied the Plaintiff's request to statutorily abandon any and all public rights and permanently close Kellett Road by order dated April 10, 2024. Petitioners timely filed a Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative, for a Reconsideration pursuant to Rule 59(e) on April 19, 2024.

The Petitioners and Defendant, Annacey Park Homeowners Association, Inc. dispute whether or not Kellett Drive should be abandoned and permanently closed. At the hearing, the Petitioners alleged that Kellett Drive is private property and that it is in the best interest of the public and all concerned that Kellett Drive be permanently closed.

Based on the pleadings, the stipulations of the parties, and the testimony and evidence presented at the hearing and arguments of counsel I find, conclude and Order as follows:

**Findings of Facts**

1. The Summons and Petition with attached exhibits was filed on August 18, 2023.
2. Service was made upon Defendants as evidenced by the proof of service filed with the Court.
3. Defendant, Annacey Park Homeowners Association, Inc. filed an Answer on September 22, 2023.
4. Defendant, City of Greenville filed an Answer on October 9, 2023.
5. Notice of Hearing was provided to all parties.
6. The parties stipulated as to certain facts and admission of certain evidence.

**Discussion**

The Petitioner, for the first time, at the final hearing on this action raised the issue that Kellett Drive is not a city street. In support of this position, the Petitioner relies on Defendant, City of Greenville's Answer. In the City of Greenville's ("City") Answer, the City alleged it currently has no interest in Kellett Drive apart from the utility easement. An engineer for the city testified that the City was not interested in Kellett Drive due to the disrepair and substandard condition of the road. However, there is a distinction between the City not seeking to claim an interest due to and Kellett Drive not being a public street. Furthermore, the Petitioner's pleadings seek to abandon public street and several Exhibits submitted to the Court, by Petitioner, identify the public right of way proposed to be abandoned.

Petitioners sought the statutory abandonment of any public rights and the permanent closure of Kellett Road pursuant to S.C. Code §57-9-10, et seq. In order for a court to permanently abandon or close a road, the court must determine that the closure or abandonment is in the best interest of all concerned. See, S.C. Code Ann. §57-9-20. At the beginning of the hearing the

parties stipulated the admission of statements from numerous members of Annacey Park Subdivision all of which opposed the closure of Kellett Road. Further, there was a letter from the landscape company for Annacey Park Subdivision which stated that the closure of Kellett Road would significantly impede their ability navigate the community and believed closure of Kellett Road would compromise its safety protocols and would increase the risk of accidents in delivering its services to Annacey Park.

During the hearing testimony was presented that Kellett Road was frequently used by the residents of Annacey Park subdivision. In fact, Kellett Road is essential for the residents of Annacey Park. Testimony was presented that stressed the importance of Kellett Road to provide, at least, secondary emergency services and access to Kellett Road. Therefore, based on the pleadings, the stipulations of the parties, and the testimony presented at trial, I find that it is in the best interest of all concerned that the Petitioners request to abandon the any public interest and permanently close Kellett Road be denied.

Petitioners' reliance on First Baptist Church of Mauldin v. City of Mauldin, 308S.C. 226, 417, S.E.2d 592 (1992) to support the closure of Kellett Road is misplaced. Petitioners allege that First Baptist stands for the position that the court shall close a road if the "broader public interest" is served. However, First Baptist makes clear that the court is empowered to close roads "on a finding that it is in the best interest of all concerned." Id. at 594. In its analysis, the South Carolina Supreme Court evaluated the public interest – that the church was an asset to the community and its continued growth was in the public interest; the road posed a danger that outweighed the inconvenience to those using the road as a short-cut – and the private interest of the church. The Court noted that the mere fact that the closure of a road was instigated by an abutting landowner, or the fact that a private interest must be served incidentally does not invalidate or prevent the road

closure. Id. However, the Court warned that a road may not be closed solely to benefit an abutting landowner and it appears clearly that no consideration other than the public interest could have prompted the action. Id.

This current matter presents the inverse to that of situation present in First Baptist. Here it clearly appears the primary consideration in initiating this action, requesting the abandonment and closure of Kellett Road, is the benefit of Petitioners and any public benefit is incidental to the primary purpose.

THEREFORE, IT IS ORDERED that Petitioners' Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative, for a Reconsideration pursuant to Rule 59(e) is DENIED.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW



**Greenville Common Pleas**

**Case Caption:** Anderson Laurens Road AA LLC , plaintiff, et al vs. Annacey Park Homeowners Association Inc , defendant, et al  
**Case Number:** 2023CP2304246  
**Type:** Order/Other

So Ordered

Patrick C. Fant, III

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RECEIVED

Jun 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas,

Patrick C. Fant, III, Circuit Court Judge

Case No. 2023-CP-23-04246

Appellate Case No. 2024-000999

Annacey Park Homeowners  
Association, Inc. and the City of  
Greenville, Respondents,

v.

Anderson Laurens Road AA, LLC and  
Anderson Laurens Road ZZ, LLC, Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Motion to Reinstate Appeal with exhibits by depositing a copy of it in the United States Mail, postage prepaid on June 20, 2024, addressed to their attorneys of record as follows:

A. Lyon Bixler, Esquire & Patrick O. Dollar  
BIXLER AND DOLLAR, LLC  
505 W. Butler Road  
Greenville, South Carolina 29607  
lbixler@bbdlawsc.com;  
dollar@bbdlawsc.com  
*Attorneys for Respondent Annacey Park  
Homeowners Association, Inc.*

Office of the City Attorney  
Michael J. Spinelli  
206 South Main Street (29601)  
Post Office Box 2207  
Greenville, SC 29602  
mspinelli@greenville.sc.gov  
*Attorney for Respondent City of Greenville*

[SIGNATURE PAGE FOLLOWS]

*/s/ William B. Swent*  
William B. Swent, S.C. Bar No. 13519  
Aimee V. Leary, S.C. Bar No. 100657  
FOX ROTHSCHILD LLP  
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ALeary@FoxRothschild.com  
*Attorneys for Appellants*

RECEIVED

Jun 20 2024

SC Court of Appeals



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WILLIAM B. SWENT  
Direct No: 864.751.7605  
Email: wswent@foxrothschild.com

June 20, 2024

**Via Email (ctappfilings@sccourts.org) & US MAIL**

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

RE: Annacey Park Homeowners Association, Inc. and the City of Greenville v.  
Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC  
Civil Action No. 2023-CP-23-04246  
Appellate Case No. 2024-000999

Dear Ms. Kitchings:

Enclosed for filing is Appellants' Motion to Reinstate Appeal with exhibits in the above case along with the following:

- (1) Proof of service of the Motion to Reinstate Appeal on the Respondents.
- (2) A filing fee of \$50.00.

By copy of this letter, copies of the same are being served upon counsel for Respondents.

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Massachusetts Minnesota Missouri  
Nevada New Jersey New York North Carolina Oklahoma Pennsylvania South Carolina Texas Washington



June 20, 2024

Page 2

Thank you for your assistance in this matter.

Sincerely,

Fox Rothschild LLP

*/s/ William B. Swent*

William B. Swent

WBS/ela

Enclosures

cc: Via U.S. Mail & e-mail (lbixler@bbdlawsc.com & pdollar@bbdlawsc.com) to A. Lyon Bixler, Esquire & Patrick O. Dollar, BIXLER AND DOLLAR, LLC, Attorneys for Respondent Annacey Park Homeowners Association, Inc.

Via U.S. Mail & e-mail (mspinelli@greenvillesc.gov & lmwells@greenvillesc.gov) to Office of the City Attorney, Michael J. Spinelli, Attorney for Respondent City of Greenville