

107842

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal From Beaufort County

Court of Common Pleas

Hon. Jocelyn Newman, Circuit Court Judge

RECEIVED

APR 13 2026

SC Court of Appeals

Case No. 2024-000961

Ryan McAvoy.....Appellant,

v.

Town of Hilton Head Island.....Respondent.

PETITION FOR REHEARING

The Town of Hilton Head Island, South Carolina (herein, the "Town"), petitions the Court for a rehearing in this case under the authority of Rule 221, SCACR. The Court filed its Opinion 2026-UP-163 on April 1, 2026 (herein, the "Opinion").

In the Opinion, the Court overlooked or misapprehended the following points:

1. McAvoy did not challenge the finding of Judge Newman that both Braddock's Cove Creek, the Harbour Town Yacht Basin, and the submerged lands there are public

property of the State of South Carolina and of the United States.¹ This case begins and ends with that point. If the property to which the public funds are committed is public property, then the public is the beneficiary. The incidental benefit to private property owners who abut the public property does not make the maintenance of public property an improper expenditure.²

2. The Court has misconstrued the holding in *Anderson v. Baehr*, 265 S. C. 153, 217 S.E.2d 43, 47 (1975), and overlooked the cases that have interpreted it.³ In *Anderson*, the Supreme Court pointed out that the legislature, in adopting the challenged statute, made no findings of a public purpose. *Anderson*, 217 S.E.2d at 47.⁴ In *Carll v. South*

¹ See Brief of Appellant, p. 3, which reads: “However, with accepting the Court Findings of Fact, Plaintiff contends that the Circuit Court made an error of law in limiting its determination of a private purpose to part of the location of the dredging rather than examining the primary objective of the project and the primary beneficiaries.” Indeed, the Court found in the Opinion that McAvoy’s witness “. . . had navigated the waterways of both Harbour Town Marina and Braddock Cove Creek.” Opinion 2026-UP-163, p. 3. The Court also found that the Harbour Town Yacht Basin contains limited navigable waters.” Opinion 2026-UP-163, p. 7. The descriptor “limited” does not change the fact that the waterway is a navigable public property. There is no challenge to the Court’s finding that the waterways are publicly owned property.

² Under McAvoy’s argument and the Opinion, the maintenance of a sparsely populated public rural road, or a publicly owned dead end street would violate the Constitution.

³ The Court’s reliance on *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017), is similarly misplaced. That facts of that case are that public funds were spent to inspect bridges that were admittedly privately owned. Those are not the facts of this case, where the property that is to be dredged is publicly owned.

⁴ *Anderson* is also distinguishable for this reason: In *Anderson*, the statutory scheme allowed the municipality to utilize its ability to issue tax free bonds to acquire and develop a property, with the payments due on the bonds to be made by a private owner, and, on repayment of the bonds, transfer the property to the private owner for nominal

Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331, 443 (1985), the Supreme Court held that “the legislative determination as to what constitutes a public purpose or public need is entitled to great weight.” In *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631, 636 (2000), the Supreme Court distinguished *Anderson* because of the lack of findings regarding the public purpose of the statute by the General Assembly.

In this case, the Town Council made specific findings related to the public purpose in its Resolution authorizing execution and delivery of the contract, including the public’s use of the waterways for docking, sightseeing, navigation, access to public amenities and the benefits of the waterways on Hilton Head Island, and the benefit to the health, safety, and welfare to the citizens of the Town.⁵

In *Carll*, at 327 S.E. 2d at 334, the Supreme Court held: “The findings of the Legislature are critical to resolution of the public purpose issue.” In *Nichols v. South Carolina Public Research Authority*, 290 S.C. 415, 425-426, 315 S.E.2d 155, 161 (1986), the Supreme Court held:

Finally, legislation may subserve a public purpose even though it (1) benefits some more than others and, (2) results in a profit to individuals. Legislation does not have to benefit all of the people in order to serve a public purpose. At the same time, legislation is not for a private purpose merely because some individual makes a profit as a result of the enactment.

consideration. *Anderson* did not contemplate facts present in this case, which is the public funds are committed to improvement of property that is now public and which will remain public

⁵ Exhibit 1, R. pp. 210 – 211.

And:

[i]t is uniformly held by courts throughout the land that the determination of public purpose is one for the legislative branch.... The question of whether an Act is for a public purpose is primarily one for the Legislature.

3. Here, the Town Council found the public purpose, and the findings of the Town Council are supported by the only evidence in the record. The evidence is that both Braddock Cove Creek, the Harbour Town Yacht Basin and the submerged lands under them are public property of the State of South Carolina and of the United States.⁶ Both are publicly owned waterways.⁷ The expenditure of public funds to maintain public property is not prohibited by S.C. Const. art X, Sections 5 and 11. Further, the evidence is that the dredging is to maintain and improve navigation in publicly owned waterways.⁸

By shifting the focus to marinas that have been permitted by the State to exist in the publicly owned waterways, the Court misconstrued the law regarding public purpose.

⁶ Trial Exhibit 11, R. 250-284; Trial Exhibit 18, R. 293-378.

⁷ While the Harbour Town Yacht Basin and Braddock's Cove Creek extend into the land mass that is occupied by Sea Pines Plantation, neither are within, nor a part of, Sea Pines Plantation. The public's property begins at mean high water. S. C. Code Ann. 49-39-10(F)(Supp. 2025).

⁸ The permit issued by SCDHEC for the dredging states that the purpose is:
To remove sediments from the existing tidal waterways associated with Calibogue Sound in order to provide adequate depths for recreational and commercial vessels utilizing the waterways.

Exhibit 19, R. 305.

The witness John Brinkley testified that the purpose of the dredging is to maintain navigation. R. 111, l. 17 – 19. The fact that maintaining navigation also allows vessels

The fact that the dredged waterways facilitate access to a privately owned marina is no more consequential than the fact that public road facilitates access to the private businesses that abut it.

CONCLUSION

For the foregoing reasons, the Town of Hilton Head Island, South Carolina, urges this Court to reconsider Opinion 2026-UP-163 and to affirm the

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By: 

Curtis L. Coltrane (S.C. Bar No.: 1344)

LaQuin J. Andrus (S.C. Bar No.: 106520)

Post Office Box 6808

Hilton Head Island, SC 29938

T: (843) 785-5551

F: (843) 785-5552

Attorneys for The Town of Hilton Head Island

curtis@coltraneandwilkins.com

laquin@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 10th day of April, 2026.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal From Beaufort County

Court of Common Pleas

Hon. Jocelyn Newman, Circuit Court Judge

Case No. 2024-000961

RECEIVED
APR 13 2026
SC Court of Appeals

Ryan McAvoy.....Appellant,

v.

Town of Hilton Head Island.....Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Petition for Rehearing of The Town of Hilton Head Island, South Carolina, was this day served on James G. Carpenter and Jennifer J. Miller by overnight delivery, Federal Express Tracking Number 8705 3564 3690 to 819 East North Street, Greenville, SC, 29601.

COLTRANE & WILKINS, LLC

By:



Curtis L. Coltrane (S.C. Bar No.: 1344)

Post Office Box 6808

Hilton Head Island, SC 29938

T: (843) 785-5551

F: (843) 785-5552

Attorneys for The Town of Hilton Head Island

curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 10th day of April, 2026.

COLTRANE & WILKINS, LLC
ATTORNEYS AT LAW

RECEIVED
APR 13 2026

POST OFFICE BOX 6808
HILTON HEAD ISLAND, SC 29938
(843) 785-5551
(843) 785-5552 (Fax)

SC Court of Appeals

Curtis L. Coltrane
E-Mail: curtis@coltraneandwilkins.com
Certified Circuit Court Mediator
Certified Circuit Court Arbitrator
Certified Federal Court Mediator

Curtis L. Coltrane*
John W. Wilkins
LaQuin J. Andrus
*Also Member Virginia Bar

April 10, 2026

Hon. Jenny Abbott Kitchings
CLERK S.C. COURT OF APPEALS
1220 Senate Street
Columbia, SC 29210

Via Federal Express:
Tracking Number 8705 36473570

RE: McAvoy v. Town of Hilton Head Island
Appellate Case 2024-000961
My File THH-22-006

Dear Ms. Kitchings:

Enclosed for filing you will find the Petition for Rehearing of the Town of Hilton Head Island, South Carolina, in connection with the Court's Opinion 2026-UP-163, filed on April 1, 2026. Also enclosed is a Certificate of Service and filing fee in the amount of Fifty and no/100 (\$50.00) Dollars. I am,

Sincerely,


COLTRANE & WILKINS, LLC

Curtis L. Coltrane

CLC/tdr

cc: James G. Carpenter, Esq. (via Federal Express Tracking Number 8705 3564 3690)
Jennifer J. Miller (via Federal Express Tracking Number 8705 3564 3690)
Hon. Alan R. Perry
Mr. Marc A. Orlando
Enc.: As Stated

ORIGIN ID:SAVA (843) 785-5551
CURTIS L. COLTRANE
COLTRANE & WILKINS, LLC
2 CORPUS CHRISTI PLACE
SUITE 105
HILTON HEAD ISLAND, SC 29928
UNITED STATES US

SHIP DATE: 10APR26
ACTWGT: 0.50 LB
CAD: 104984683/INET4535

BILL SENDER

TO **HON. JENNY A. KITCHINGS**
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET

58KJ3087D484B

COLUMBIA SC 29201

(803) 743-1890 REF:
INV: DEPT:
PO:



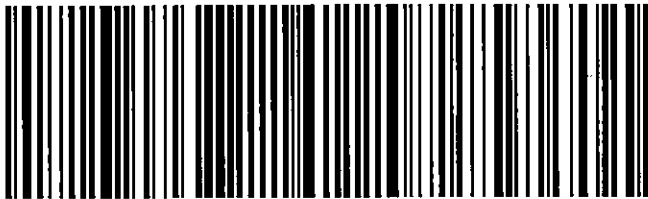
J2510261207107

MON - 13 APR 5:00P
STANDARD OVERNIGHT

TRK#
0201 8705 3647 3570

XW USCA

29201
SC-US CAE



RECEIVED

APR 13 2026

SC Court of Appeals

After printing this label:
CONSIGNEE COPY - PLEASE PLACE IN FRONT OF POUCH
1. Fold the printed page along the horizontal line.
2. Place label in shipping pouch and affix it to your shipment.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed with in strict time limits, see current FedEx Service Guide.