

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
William P. Keesley, Circuit Court Judge

Case No.: 2008-CP-41-0004
Appellate Case No. 2012-212790

RECEIVED

DEC 16 2013

S.C. Supreme Court

Dennis N. Lambries,

Respondent,

v.

Saluda County Council;
T. Hardee Horne, Chairman;
William "Billie" Pugh, Councilman;
Steve Teer, Councilman;
Jacob Schumpert, Councilman; and
James Frank Daniel, Sr., Councilman

Petitioners

APPENDIX

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Attorneys for Petitioners

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

AUG 24 2012

S.C. Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
William P. Keesley, Circuit Court Judge

Case No.: 2008-CP-41-0004
S.C. Ct. App. Opinion No.4989, filed June 13, 2012

Dennis N. Lambries,

Respondent,

v.

Saluda County Council;
T. Hardee Horne, Chairman;
William "Billie" Pugh, Councilman;
Steve Teer, Councilman;
Jacob Schumpert, Councilman; and
James Frank Daniel, Sr., Councilman

Petitioners

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No: 2008-CP-41-0004

Dennis M. Lambries, on behalf of himself and
the Citizens of the County of Saluda Appellant,

v.

Saluda County Council, T. Hardee Horne, Chairman,
William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman,
and James Frank Daniel, Sr., Councilman Respondents

RECORD ON APPEAL

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA) FOR THE ELEVENTH JUDICIAL CIRCUIT
2009 JUL 13) PM 4:23

CLERK OF COURT
DENNIS N. LAMBRIES, ON BEHALF OF) SALUDA CO. S.C.
OF HIMSELF AND THE CITIZENS OF)
THE COUNTY OF SALUDA,)
PLAINTIFF,)

VS.)

ORDER

SALUDA COUNTY COUNCIL,)
T. HARDEE HORNE, CHAIRMAN,)
WILLIAM "BILLIE" PUGH,)
COUNCILMAN, STEVE TEER,)
COUNCILMAN, JACOB SCHUMPERT,)
COUNCILMAN, AND JAMES FRANK)
DANIEL, SR., COUNCILMAN,)
DEFENDANTS.)

C.A.No.: 2009-CP-41-0004

*Wife
#1*

This matter came before the court on Plaintiff's Motion for a Temporary Injunction and a Motion to Compel. Present at this hearing were the Plaintiff and his attorney, Richard R. Gleissner, as well as a number of the Defendants and their attorney, Christian G Spradley.

ISSUES BEFORE THE COURT

The issues before the Court are:

1. Should the Court issue an Order to temporarily enjoin Saluda County Council from amending its agenda during an open, publicized meeting?
2. Should the Court issue an Order to Compel Discovery?

FACTS

On December 8, 2008, at a regularly scheduled meeting of Saluda County Council in open session, a motion was made and seconded to amend the agenda to take up a Resolution. This motion passed unanimously. The resolution was also passed unanimously.

Plaintiff brings this action under the South Carolina Freedom of Information Act (hereinafter FOIA). He complains that the amending of the agenda was in violation of that Act. Plaintiff also brings a Motion to Compel based on written interrogatories to which Defendants have responded.

ARGUMENTS

A. Motion for Temporary Injunction

W/Plc #2
Plaintiff argues that the action of the County in amending its agenda is in violation of §30-4-80 of the Code of Laws of South Carolina, 1976, as amended, which states in pertinent part:

(a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

Plaintiff contends that an agenda is required for all meetings, and that the amendment of such agenda violates FOIA. He argues that under §30-4-100 of FOIA he is granted standing to bring this action. Plaintiff offered no other case law or statute to support his position.

The Defense argues that FOIA's purpose as stated in §30-4-15 of the Code of Laws of South Carolina, 1976, as amended, is to "make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." The Defense contends that the FOIA was not intended to dictate how open meetings are conducted, but to insure that meetings are open to public view and that the records of our governing bodies are open for inspection. Defendants argue that an agenda is not even required for a regular meeting under the FOIA. To support this position Defendants point to §30-4-80, as stated above, which states "[a]genda, if any, for regularly scheduled meetings . . ." (Italics added.) Beyond this Defendants argue that under §4-9-110 of the Code of Laws of South Carolina, 1976, as amended, that "[t]he [county] council shall determine its own rules and order of business." Saluda County Council has enacted rules that allow the agenda to be amended.

Defendants further argue that under Patton v. Richland County Council, 303 S.C. 47, 398 S.E.2d 497, "[g]enerally a court may not restrain by injunction the exercise of legislative power by municipal corporations, including counties." Defendants argue that Plaintiff is asking for a pure restraint on legislative powers, which under several cases in South Carolina is not proper. As the actions complained of by Plaintiff were not in a closed session and the record of the actions is open for public inspection, that there can

WPC
#3

not be a violation of FOIA. Defendants argue that for this Court to grant any injunction would violate the separation of powers between the judicial branch and the legislative branch of our government as specifically stated in Patton and its lineage.

Defendants then offered into evidence the agenda for a 1995 Saluda County Council meeting and the minutes of that same meeting. In those minutes it is clear that Saluda County Council amended their agenda in the same manner complained of in Plaintiff's Complaint and that Plaintiff took part in the amendment of that agenda as the Chairman of Saluda County Council. Defendants argue that even if the amendment of the agenda was improper, which they vehemently argue against, that since Plaintiff is requesting an injunction, he comes asking with unclean hands. Defendants contend that since an injunction is equitable relief, that all equitable maxims apply, to include, he who asks for equity must do equity, and he who asks for equity must come with clean hands. By Plaintiff partaking in the same exact act he complains of, Defendants argue he can not be granted the relief he requests. *THE COURT DOES NOT ACCEPT THE UNCLEAN*

*WAC
B-1*

HANDS ARGUMENT

(LPS)

B. Motion to Compel

Plaintiff argues that Defendants' responses to his discovery requests were inadequate and requests that this Court issue an Order to Compel Defendants to respond. Plaintiff specifically requests that Defendants be ordered to research their records and give Plaintiff a listing of all times since 2005 that Saluda County Council amended an agenda. Plaintiff further argued that Defendants could do the research for him.

Defendants argue that this request is not for documents, but for an interpretation of documents which are public record. Defendants further point out that in their

response to Plaintiff, they offered the documents to Plaintiff for his inspection during normal business hours at the Saluda County Council Office. Defendants argue that it would take them just as much time to do the research as it would Plaintiff.

DISCUSSION

A. Motion for Temporary Relief

It is clear that Plaintiff would have standing to bring an action under the Freedom of Information Act. In §30-4-100 of the Code of Laws of South Carolina, 1976, as amended, a violation is deemed an "irreparable injury for which no adequate remedy at law exists." Therefore I find that Plaintiff does have standing to bring this action.

As to the claim of a violation of FOIA, I find Defendants arguments are correct. In interpreting statutes, courts must give words there plain meaning. Words or groups of words can not be added or taken away. (Hartford Accident and Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301.) In the plain wording of §30-4-80 of the Code of Laws of South Carolina, 1976, as amended, it clearly states "[a]genda, if any, for regularly scheduled meetings . . ." There is no other interpretation possible except that an agenda is not even required under FOIA. Plaintiff incorrectly argues that a sentence later in the paragraph states that an agenda is required. This, however, appears to apply to only called, special, or rescheduled meetings, not to regularly scheduled meetings. I therefore find that an agenda is not required for a regularly scheduled meeting of public bodies.

I further find that there is no prohibition on a public body amending its published agenda. Plaintiff argues that to allow the amendment would be to allow the body to take up matters outside of public view. This is incorrect. As stated above, the purpose of

FOIA is to allow the public access to public information and for the activities of public bodies to be in open session and not behind closed doors. In the present case, the amendment of the agenda was performed in open session and in accordance with Saluda County Council rules of order as codified in their ordinances. These ordinances are public and therefore the public is charged with the knowledge thereof. The power to set up rules of order was granted to the counties in §4-9-110 of the Code of Laws of South Carolina, 1976, as amended. The amendment complained of was done in open session, in full public view. I therefore find that the amendment was proper and not a violation of the Freedom of Information Act.

*WPA
#6* *Saluda*
~~I also find that Plaintiff, acting as Chairman of Saluda County Council, partook in the act of amending the agenda of the September 11, 1995, regularly scheduled meeting of Saluda County Council not once, but four times. I therefore find, that even if there were a violation, which I do not, that Plaintiff would not be entitled to any relief under several equitable maxims.~~ *Saluda*

B. Motion to Compel

Defendants have complied with the discovery requests of Plaintiff. Plaintiff has been granted access to the documents and information and has chosen not to take advantage of the opportunity of inspecting the documents. I therefore find that Plaintiff is not entitled to an Order to Compel.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for a Temporary Injunction is DENIED; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Compel Discovery is DENIED.

IT IS SO ORDERED!

William P. Keesley
William P. Keesley
Judge of the Eleventh
Judicial Circuit

Lexington, South Carolina

May, 7, 2009

#7

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)
)
 DENNIS N. LAMBRIES, ON BEHALF)
 OF HIMSELF AND THE CITIZENS OF)
 THE COUNTY OF SALUDA,)
)
 PLAINTIFF,)
)
 VS.)
)
 SALUDA COUNTY COUNCIL,)
 T. HARDEE HORNE, CHAIRMAN,)
 WILLIAM "BILLIE" PUGH,)
 COUNCILMAN, STEVE TEER,)
 COUNCILMAN, JACOB SCHUMPERT,)
 COUNCILMAN, AND JAMES FRANK)
 DANIEL, SR., COUNCILMAN,)
)
 DEFENDANTS.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

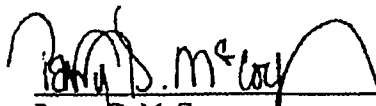
CERTIFICATE OF SERVICE
 BY U.S. MAIL

C.A. NO.: 2009-CP-41-0004

I, Penny D. McCoy, a legal assistant for Christian G. Spradley with the law firm of Moore, Taylor & Thomas, P.A., hereby certify that I served a copy of the ORDER to the following person by depositing a copy of the same in the United States Mail, first class delivery, with proper postage affixed thereto, this 23rd day of July, 2009:

Richard R. Gleissner
 Gleissner Law Firm, L.L.C.
 3610 Landmark Drive, Suite G
 Columbia, South Carolina 29204

MOORE, TAYLOR & THOMAS, P.A.


 Penny D. McCoy
 Legal Assistant to Christian G. Spradley

Saluda, South Carolina
 July 23, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

DENNIS M. LAMBRIES, on)
behalf of himself and the Citizens)
of the County of Saluda,)

Plaintiff,)

-vs-)

SALUDA COUNTY COUNCIL,)
ET AL.,)

Defendants.)

ORDER ON RECONSIDERATION

Case Number 2008-CP-41-0004

COURT CLERK
SALUDA COUNTY, S.C.

2010 AUG 12 AM 11:00

FILED

On July 24, 2009, the court entered an Order ruling in favor of the defendants.

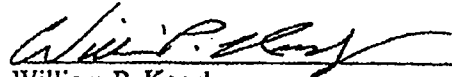
WJL
#1
The plaintiff filed a motion to reconsider. It is denied. The court is considering this as a motion to alter or amend under Rule 59(e). Pursuant to Rule 59(f), SCRPC, the parties were notified that the court would decide the motion on written submissions. A number of documents were submitted by the plaintiff.

The essence of the plaintiff's argument is that the court overlooked or misconstrued the law, and agendas were submitted for the court's review that were not given to the court at the hearing. Having reconsidered the matter, the court finds no basis to alter or amend the previous order. The court does not agree with the plaintiff's fundamental position that a county council cannot amend agendas for regularly scheduled meetings without advance notice or exigent circumstances. The court has reconsidered all the issues raised in their entirety, including the equitable rulings made, and has found no

basis upon which to alter or amend the decision entered a year ago.

AND IT IS SO ORDERED.

August 10, 2010


William P. Keesley
Judge

#2

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS

FILED

Dennis N. Lambries, on behalf of himself and the
Citizens of the County of Saluda

CIVIL ACTION COVERSHEET

2009 JAN 21 PM 3:26
Plaintiff(s)

vs.

CLERK OF COURT
SALUDA CO. S.C.

2009-CP-41-04

Saluda County Council, T. Hardee Horne,
Chairman, William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Shumpert,
Councilman, and James Frank Daniel Sr.,
Councilman,

Defendant(s)

(Please Print)

Submitted By: Richard R. Gleissner
Address: 3610 Landmark Drive, Suite G
Columbia, SC 29204

SC Bar #: 15139
Telephone #: 803-603-2228
Fax #:
Other:
E-mail: rick@gleissnerlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Label (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input checked="" type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

Date: JAN 21 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

2009 JAN 21 PM 3:26

Dennis N. Lambries, on behalf of himself
and the Citizens of the County of Saluda,

COURT OF COMMON PLEAS
SALUDA CO. S.C.

Civil Action No.

2009-CP-41-04

Plaintiff,

v.

SUMMONS

Saluda County Council,
T. Hardee Horne, Chairman,
William "Billie" Pugh, Councilman,
Steve Teer, Councilman,
Jacob Schumpert, Councilman, and
James Frank Daniel, Sr., Councilman,

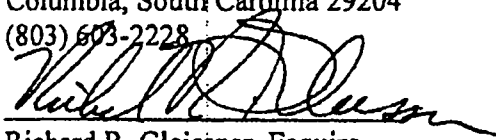
Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said pleading upon the subscribers at their offices, 3610 Landmark Drive, Suite G, Columbia, South Carolina 29204, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Gleissner Law Firm, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 603-2228

BY:


Richard R. Gleissner, Esquire
Attorneys for the Plaintiff

Columbia, South Carolina
January 9, 2009

FILED

STATE OF SOUTH CAROLINA 21 PM 3:26

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA CLERK OF COURT SALUDA CO. S.C.

Dennis N. Lambries, on behalf of himself)
and the Citizens of the County of Saluda,)

Civil Action No. 2009-CP-41-04

Plaintiff,)

v.)

COMPLAINT

Saluda County Council,)
T. Hardee Horne, Chairman,)
William "Billie" Pugh, Councilman,)
Steve Teer, Councilman,)
Jacob Schumpert, Councilman, and)
James Frank Daniel, Sr., Councilman,)

Defendants.)

NOW COMES Dennis N. Lambries, on behalf of himself and the Citizens of the County of Saluda, ("Lambries" or the "Plaintiff"), and complains against Saluda County Council (the "Council"), T. Hardee Horne, William "Billie" Pugh, Steve Teer, Jacob Schumpert, and James Frank Daniel, Sr. (the "Councilmen")(the Council and the Councilmen will hereinafter be referred to as the "Defendants"), as follows:

JURISDICTION AND VENUE

1. This suit is being brought in connection with operation of the Council by the Councilmen in direct violation of the Freedom of Information Act as codified in S.C. Code Sections 30-4-10 et seq. (the "Freedom of Information Act").

2. Pursuant to Section 30-4-100 of the South Carolina Code of Laws (the "Code"), any citizen may apply to the circuit court for either or both a declaratory judgment and injunctive relief

to enforce the provisions of the Freedom of Information Act and if they prevail are entitled to an award of reasonable attorney fees and other costs of the litigation.

3. Therefore, jurisdiction is proper in this Court and venue is proper in Saluda County, South Carolina.

THE PARTIES

4. Dennis N. Lambries is a citizen of Saluda County, South Carolina.

5. Saluda County Council (the "Council") is the governing body for Saluda County, South Carolina.

6. T. Hardee Home, William "Billie" Pugh, Steve Teer, Jacob Schumpert, and James Frank Daniel, Sr. and the presently elected members of the Council (the "Councilmen").

GENERAL BACKGROUND

7. In addition to being a citizen of Saluda County, the Plaintiff is the Chairman of the Saluda County Water & Sewer Authority ("SCWSA"). The SCWSA is charged with the responsibility of assisting and developing the water and sewer services within the geographic territory of Saluda County.

8. In that capacity, the Plaintiff has attempted to facilitate the economic development of Saluda and to facilitate the intergovernmental communications among the various municipal and county governmental organizations that are involved in water and sewer services.

9. In the past, through the Plaintiff's initiative, the SCWSA invited Council to have a member join them at their meetings. The Council and the Councilmen have ignored these invitations and refused to send even a representative to the meetings to facilitate communication.

10. In furthering communications, the SCWSA received a request by the Town of Monetta to extend its service area outside of its municipal boundaries. Rather than consider this request in a vacuum, the Plaintiff sent out a letter on November 18, 2008 to the municipalities and other governmental entities that have an interest in the providing of water and sewer to the citizens of Saluda County and invited them to a meeting to discuss proposed water and sewer service areas, including the requested extension by the Town of Monetta.

11. On December 8, 2008, the regularly scheduled meeting of Saluda County Council was held.

12. Attached hereto as Exhibit 1 is a copy of the Agenda for the December 8, 2008 meeting. There is no mention of SCWSA on the agenda. There is no mention of SCWSA's attempts to get the Council to participate in and communicate with it as it relates to water and sewer services.

13. Section 4-9-110 of the South Carolina Code of Laws governs the operation of the meetings of Council. This Section requires that "All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies." S.C. Code Ann. §4-9-110. One of the general law of South Carolina affecting meetings of public bodies is the Freedom of Information Act.

14. Section 30-4-80 of the Code specifically states that:

All public bodies ... must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice of any called, special or rescheduled meetings. Such notice must be posted as early as practicable but not

later than twenty-four hours before the meeting. The notice must include agenda, date, time and place of the meeting.

S.C. Code Ann. §30-4-80 (Law. Co-op. 2007).

15. The only exception to the requirement of public notice to include agenda, date, time and place of the meeting is that this "requirement does not apply to emergency meetings of public bodies." *Id.* As the attorney general stated in its 1984 opinion, "In the absence of truly exigent circumstances, FOIA requires public body to give notice, in a manner prescribed."

16. Contrary to the requirement of notice found in the Freedom of Information Act, Council and Councilmen amended the agenda for December 8, 2008 without notice and without exigent circumstances.

17. Upon information and belief, the County and Councilmen have similarly amended past agendas without notice and without exigent circumstances.

18. As a result of that amendment of the agenda in violation of the Freedom of Information Act, the Council passed a Resolution entitled "In re: Saluda County Water Plant and Saluda County Water and Sewer Authority." A copy of this resolution is attached hereto as Exhibit 2.

19. If Council and Councilmen had provided public notice of the amendment to the agenda, the public, including the Plaintiff, may have been able to prevent the Council and the Councilmen from acting without information and with false information. Instead, the Council and Councilmen were ignorant of the truth and acted without any basis in fact or law for the resolution that they passed in their ignorance.

20. Because this Resolution clearly appeared to be in violation of the Freedom of Information Act, the Plaintiff engaged in an investigation concerning the procedure for the amending of the agenda. Attached hereto as Exhibit 3 is a copy of the December 15, 2008 letter received by the Plaintiff in response to the investigation.

21. Included in the December 15, 2008 letter is a copy of a letter from the attorney for Council concerning the procedures used by Council in Amending the Agenda.

22. Of all things, the Council believes that Robert's Rules of Order apply to public notice of meetings and that Robert's Rules of Order is more important than the express requirements to provide the public with notice of the Agenda and issues to be addressed by the Council. Basically, the position of the Council, its Councilmen and its attorney is that no notice of anything need ever be given to the public, in direct contradiction of the dictates of the Freedom of Information Act.

FOR A FIRST CAUSE OF ACTION
(Preliminary Injunction, Permanent Injunction and
Declaratory Judgment)

The Plaintiff repeats and realleges the above-paragraphs as if set forth verbatim herein.

23. The procedure used by the Council and the Councilmen are in direct violation of the Freedom of Information Act.

24. Wherefore, the Plaintiff requests a preliminary injunction and permanent injunction to prevent any further amendments of the Agenda that provides public notice of a meeting without, as the South Carolina Attorney General has stated, "truly exigent circumstances".

25. Wherefore, the Plaintiff prays that the Court declare all resolutions, acts, ordinances and other statements made by Council and Councilmen in violation of the Freedom of Information

Act null and void, including the December 8, 2008 Resolution concerning the Saluda County Water Plant and Saluda County Water and Sewer Authority.

FOR A SECOND CAUSE OF ACTION
(Attorney Fees and Costs of this Litigation)

The Plaintiff repeats and realleges the above-paragraphs as if stated verbatim herein.

26. Pursuant to Section 30-4-100 of the South Carolina Code of Laws (the "Code"), any citizen may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of the Freedom of Information Act and if they prevail are entitled to an award of reasonable attorney fees and other costs of the litigation.

27. Wherefore Plaintiff is entitled to attorney fees and costs of bringing this litigation to enforce the requirements of the Freedom of Information Act.

WHEREFORE, the Plaintiff demands and prays for judgment and other relief against the Defendants, jointly and severally, as follows:

- (a) For a preliminary injunction to prevent the violation of the Freedom of Information Act during the pendency of this suit;
- (b) For a permanent injunction to prevent future violations of the Freedom of Information Act;
- (c) For a declaratory judgment that declares all ordinances, rules, resolutions or other statements by the Council and the Councilmen in violation of the Freedom of Information Act to be null and void; punitive damages;
- (d) For the reasonable attorney fees and costs of this action; and
- (e) For such other and further relief as is just and proper.

EXHIBIT 2

STATE OF SOUTH CAROLINA) RESOLUTION OF SALUDA COUNTY COUNCIL
) IN RE: SALUDA COUNTY WATER PLANT AND
 COUNTY OF SALUDA) SALUDA COUNTY WATER AND SEWER AUTHORITY

WHEREAS, Saluda County is informed and believes that the Saluda County Water and Sewer Authority is in negotiations with the Town of Batesburg-Leesville for the purposes of building a water plant, and

WHEREAS, Saluda County Water and Sewer Authority holds a permit from South Carolina Electric and Gas for the removal of water from Lake Murray, and that said permit is the last that will be issued by South Carolina Electric and Gas, and

WHEREAS, Saluda County Council is informed and believes that further investigation needs to take place to ensure that the best decision for Saluda County and its citizens is made, and

WHEREAS, Saluda County Council is informed and believes that any water plant built in Saluda County should be controlled, owned, and operated by Saluda County.

NOW, THEREFORE, Be It Ordained by the Governing Body of Saluda County:

1. Saluda County Council would request that Saluda County Water and Sewer Authority keep Saluda County Council apprised of the negotiations with the Town of Batesburg-Leesville.
2. Saluda County Council would request that Saluda County Water and Sewer Authority provide Saluda County Council a copy of any agreement drafted so that Saluda County Council may review the same prior to any such agreement being signed.
3. Saluda County Council would further request that Saluda County Water and Sewer Authority immediately enter into meetings with Saluda County Council to investigate the possibility of building a water plant through a partnership with all Saluda County Governmental entities.

ADOPTED AND APPROVED on this 8th day of December, 2008.

The undersigned Secretary/Clerk of the above-named County hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the County, that the foregoing resolution was duly adopted by said Governing Body of the County at a meeting of said Governing Body and that such resolution has not been amended or altered and is in full force and effect on the date stated below.

ATTEST:

Karen T. Whittle
 Karen T. Whittle, Clerk to Council
 Date: December 8, 2008

SALUDA COUNTY
 By T. Hardee Horne
 T. Hardee Horne, Chairman

EXHIBIT 3



OFFICE OF THE COUNTY COUNCIL

December 15, 2008

Dennis Lambries
1287 Mount Willing Road
Batesburg, South Carolina 29006

Dear Dennis,

Enclosed are the following documents per your request on December 10, 2008:

1. Copy of the published December 8, 2008, Saluda County Council agenda.
2. Copy of a letter from the County Attorney to the County Director concerning amending of agenda and referenced Saluda County Ordinance No. 03-05.
3. Copy of introduction of resolution and vote of each Council member.

If I can be of further assistance, please call.

Sincerely,

Karen T. Whittle
Clerk to Council

S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY
C. DAVID SAWYER, JR.



110 S. MAIN STREET
SALUDA, SOUTH CAROLINA 29138
TELEPHONE (864) 445-4544 or 866-604-4544
FAX (864) 445-7441

December 11, 2008

WILLIAM H. EDWARDS
STANLEY L. MYERS
BARRY L. THOMPSON, II
MELISSA K. MOORE
S. JAHUE MOORE, JR.

OF COUNSEL:
JANE H. DOWNEY

RETIRED:
BILLY C. COLEMAN

Ms. Sandra Padget
Saluda County Director
400 West Highland Street
Saluda, South Carolina 29138

Re: Request for Procedure for Amending Agenda of Saluda County Council

Dear Ms. Padget,

Per your request I have looked into the proper procedure for amendment of the agenda for a Saluda County Council meeting. I have taken into account Saluda County Ordinances, Robert's Rules of Order, and How to Conduct Effective Meetings from the Municipal Association of South Carolina.

Saluda County Code Rule 3 states that when no other ordinance speaks to an issue of parliamentary procedure that the newest edition of Robert's Rules of Order shall govern. Saluda County Code Rule 5 states that there shall be an agenda for every meeting and that such agenda shall be posted twenty-four (24) hours prior to any such meeting. Saluda County Code Rule 8(A)(4) states that it takes a two-thirds majority to "[d]efeate a motion to follow the agenda." The issue of amending the agenda is not discussed in the Saluda County Ordinances. Therefore, per Rule 3 we rely on Robert's Rules of Order.

Per Robert's,

"For a proposed agenda to become the official agenda for a meeting, it must be adopted by the assembly at the outset of the meeting. At the time that an agenda is presented for adoption, it is in order for any member to move to amend the proposed agenda by adding any item the member desires to add, or by proposing any other change.

It is wrong to assume, as many do, that the president 'sets the agenda.' It is common for the president to prepare a proposed agenda, but that becomes binding only if it is adopted by the full assembly, perhaps after amendments as just described. [RONR (10th ed.), p. 363, 1. 8-20; see also p. 16 of RONR In Brief.]"

It is therefore clear from Robert's that amendment of the agenda can be done at anytime prior to the adoption of the proposed agenda by any member.


The Municipal Association suggests that matters not on the agenda may be considered upon the request of a member unless objected to by two members. This is a proposed solution, which Saluda County has not adopted. Therefore it is only mentioned here for informational purposes.

Historically, Saluda County Council has required a motion to amend the agenda, a second to such motion, and a majority vote. This historical action by the Council is far above what is required by Saluda County Ordinance, Robert's Rules of Order, and the suggestion from the Municipal Association.

In the matter at issue, there was a motion, a second, and a unanimous vote to amend the agenda. It is my opinion that the amendment was proper and not only followed Saluda County Ordinance and Robert's; the imposed requirement for the amendment was more stringent than what was required or even suggested.

In response to the request, I would provide the requestor with a copy of this letter, attach a copy of the cited Saluda County Ordinances and refer the requestor to Robert's Rules of Order. Since Robert's Rules of Order is a copy written document there may be an issue with providing copies of the information. You may direct them to Robert's Rules of Order's website. There is a frequently asked question section on that site. Under this section there is an explanation of the rule that is on point. If you need anything further please let me know.

Yours Very Truly,



Christian G. Spradley

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF SALUDA)

DENNIS N. LAMBRIES, ON BEHALF)
 OF HIMSELF AND THE CITIZENS OF)
 THE COUNTY OF SALUDA,)
 PLAINTIFF,)

VS.)

SALUDA COUNTY COUNCIL,)
 T. HARDEE HORNE, CHAIRMAN,)
 WILLIAM "BILLIE" PUGH,)
 COUNCILMAN, STEVE TEER,)
 COUNCILMAN, JACOB SCHUMPERT,)

ANSWER AND COUNTERCLAIM

FILED
 2009 FEB -2 PM 2:18
 CLERK OF COURT
 SALUDA CO. S.C.

COUNCILMAN, AND JAMES FRANK)
 DANIEL, SR., COUNCILMAN,)
 DEFENDANTS.)

C.A.No.: 2009-CP-41-0004

NOW COME THE DEFENDANTS, by and through their attorney, Christian G. Spradley, answering the complaint of the Plaintiff, and complaining of the Plaintiff, would show unto the Honorable Court:

FOR A FIRST DEFENSE

1. Defendants DENY each and every allegation of the Complaint unless hereinafter specifically admitted.
2. Defendants DENY Paragraphs 1 and 2 of the Complaint and crave reference to South Carolina Statutes.
3. Defendants ADMIT paragraph 3 of the Complaint.
4. Defendants ADMIT Paragraphs 4, 5, 6, and 7 of the Complaint.

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5. Defendants DENY Paragraph 8 of the Complaint, but would admit that the Saluda County Water and Sewer Authority has made very limited communications with other Saluda County Governmental entities.

6. Defendants DENY Paragraph 9 of the Complaint and demand strict proof thereof.

7. Defendants DENY Paragraph 10 of the Complaint as the allegations are outside their knowledge and therefore demand strict proof thereof.

8. Defendants ADMIT Paragraph 11 of the Complaint.

9. Defendants ADMIT Paragraph 12 of the Complaint.

10. Defendants ADMIT Paragraph 13 of the Complaint and crave reference to South Carolina Statutes and case law interpreting those statutes.

11. Defendants crave reference to the South Carolina Statutes cited in Paragraph 14 of the Complaint.

12. Defendants DENY Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of the Complaint.

FOR A SECOND DEFENSE

13. Defendants restate all previous answers as if repeated here verbatim.

14. Declaratory judgments and injunctive relief are equitable remedies.

15. Plaintiff served as the Chairman of the Saluda County Council.

16. Plaintiff, in his official role of Chairman of the Saluda County Council chaired meetings of that council in which the agenda of the Saluda County Council meeting was amended to include new items.

CGS

17. Plaintiff has unclean hands, as he has allowed and ratified the exact action he now complains of as being in violation of certain acts.

18. Plaintiff's claims must therefore be DISMISSED based upon the equitable maxim of "unclean hands."

FOR A THIRD DEFENSE

19. Defendants restate all previous responses as if repeated herein verbatim.

20. Plaintiff has failed to state a claim upon which relief may be granted.

FOR A FORTH DEFENSE

21. Defendants restate all previous responses as if repeated herein verbatim.

22. Plaintiff is requesting that this Court, which is a member of the judicial branch of government, impose limitations on Defendants, who are members of the legislative branch of government.

23. Plaintiff's requested relief is therefore in violation of the separation of powers between the branches of government under the Constitution of the State of South Carolina, the Constitution of the United States of America, and case law derived there from.

24. Plaintiff's complaint must therefore be dismissed.

FOR A FIFTH DEFENSE

25. Defendants restate all previous responses as if repeated herein verbatim.

26. Plaintiff lacks standing to bring this action.

27. Plaintiff's action must therefore be dismissed.

**FOR A SIXTH DEFENSE
By Way of Counterclaim**

28. Defendants restate all previous responses as if repeated herein verbatim.

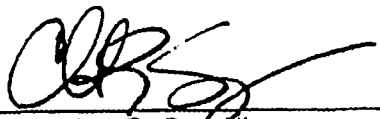
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29. Plaintiff's claims are frivolous and in violation of Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Act.

30. Defendants are therefore entitled to sanctions against Plaintiff and/or his attorney for violations of Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Act.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that this Honorable Court will dismiss all Plaintiff's causes of action; find such action to be frivolous under Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Act; and impose sanctions against Plaintiff and/or his attorney.

Moore, Taylor, and Thomas, P.A.



Christian G. Spradley
S. Jahue Moore
110 South Main Street
Saluda, South Carolina, 29138
(864) 445-4544
(864) 445-7441 Facsimile
Attorneys for the Defendants

Saluda, South Carolina
February 2, 2009

f

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)
)
 DENNIS N. LAMBRIES, ON BEHALF)
 OF HIMSELF AND THE CITIZENS)
 OF THE COUNTY OF SALUDA,)
)
 PLAINTIFF,)
)
 VS..)
)
)
 SALUDA COUNTY COUNCIL,)
 T. HARDEE HORNE, CHAIRMAN,)
 WILLIAM "BILLIE" PUGH,)
 COUNCILMAN, STEVE TEER,)
 COUNCILMAN, JACOB SCHUMPERT,)
 COUNCILMAN, AND JAMES FRANK)
 DANIEL, SR., COUNCILMAN,)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVEN JUDICIAL CIRCUIT

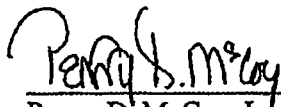
CERTIFICATE OF SERVICE

C. A. No.: 2009-CP-41-0004

DEFENDANTS.

This is to certify that I have this day served RICHARD R. GLEISSNER, Attorney for Plaintiff in the foregoing matter with the attached ANSWER AND COUNTERCLAIM by depositing in the United States Mail copies of same in an envelope with sufficient postage thereon addressed as follows:

Richard R. Gleissner
 Gleissner Law Firm L.L.C.
 3610 Landmark Drive, Suite G
 Columbia, SC 29204



 Penny D. McCoy, Legal Assistant to
 Christian G. Spradley, Attorney for Defendants
 110 S. Main Street
 Saluda, South Carolina 29138

Saluda, South Carolina
 February 2, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

Dennis N. Lambries, on behalf of himself)
and the Citizens of the County of Saluda,)
)
Plaintiff,)

Civil Action No. 2008-CP-41-0004

v.)

ANSWER TO COUNTERCLAIM

Saluda County Council,)
T. Hardee Home, Chairman,)
William "Billie" Pugh, Councilman,)
Steve Teer, Councilman,)
Jacob Schumpert, Councilman, and)
James Frank Daniel, Sr., Councilman,)
)
Defendants.)

FILED
2009 FEB 25 AM 10:05
CLERK OF COURT
SALUDA CO. S.C.

NOW COMES Dennis N. Lambries, on behalf of himself and the Citizens of the County of Saluda, ("Lambries" or the "Plaintiff"), and responds to the counterclaim of the Defendants, Saluda County Council (the "Council"), T. Hardee Home, William "Billie" Pugh, Steve Teer, Jacob Schumpert, and James Frank Daniel, Sr. (the "Councilmen")(the Council and the Councilmen are referred to as the "Defendants"), as follows:

FOR A FIRST DEFENSE

1. The Plaintiff denies the allegations contained in the Counterclaim and would show that this case is neither a frivolous action nor is it sanctionable under Rule 11 of the South Carolina Rules of Civil Procedure.

WHEREFORE, having responded to the allegations of the Counterclaim, the Plaintiff demands and prays for judgment and other relief against the Defendants, jointly and severally, as

provided for in the Complaint and would respectfully request a dismissal of the counterclaim against him and his attorney.

GLEISSNER LAW FIRM, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 603-2228
Attorney for the Plaintiff
Dennis N. Lambries on behalf of himself and the
Citizens of Saluda County

BY:


RICHARD R. GLEISSNER

Columbia, South Carolina
Feb 24, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)
)
 Dennis N. Lambries, on behalf of himself)
 and the Citizens of the County of Saluda,)
)
 Plaintiff,)
)
 v.)
)
 Saluda County Council,)
 T. Hardee Horne, Chairman,)
 William "Billie" Pugh, Councilman,)
 Steve Teer, Councilman,)
 Jacob Schumpert, Councilman, and)
 James Frank Daniel, Sr., Councilman,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2008-CP-41-0004

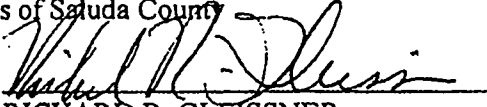
Certificate of Service

FILED
 2009 FEB 25 AM 10:05
 CLERK OF COURT
 SALUDA CO. S.C.

I, the undersigned attorney, hereby certify that I have served the Notice of Appearance in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to:

Christian G. Spradley, Esquire
 Moore, Taylor & Thomas, P.A.
 110 S. Main Street
 Saluda, South Carolina 29138

GLEISSNER LAW FIRM, L.L.C.
 3610 Landmark Drive, Suite G
 Columbia, South Carolina 29204
 (803) 603-2228
 Attorney for the Plaintiff
 Dennis N. Lambries on behalf of himself and the
 Citizens of Saluda County

BY: 
 RICHARD R. GLEISSNER

Columbia, South Carolina
 February 24, 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF SALUDA)

Dennis N. Lambries, on behalf of himself)
and the Citizens of the County of Saluda,)

Civil Action No. *2009-CP-41-04*

Plaintiff,)

MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION

v.)

Saluda County Council,)
T. Hardee Horne, Chairman,)
William "Billie" Pugh, Councilman,)
Steve Teer, Councilman,)
Jacob Schumpert, Councilman, and)
James Frank Daniel, Sr., Councilman,)

Defendants.)

FILED
2009 JAN 21 PM 3:27
CLERK OF COURT
SALUDA CO. S.C.

TO: SALUDA COUNTY COUNCIL, T. HARDEE HORNE, WILLIAM "BILLIE" PUGH,
STEVE TEER, JACOB SCHUMPERT, AND JAMES FRANK DANIEL, SR.

Dennis N. Lambries, on behalf of himself and the Citizens of the County of Saluda, ("Lambries" or the "Plaintiff"), by and through its undersigned counsel, does hereby move pursuant to Rule 65 of the South Carolina Rules of Civil Procedure (the "Rules") for a preliminary injunction and permanent injunction to prevent further violations of the Freedom of Information Act by Saluda County Council (the "Council"), T. Hardee Horne, William "Billie" Pugh, Steve Teer, Jacob Schumpert, and James Frank Daniel, Sr. (the "Councilmen")(the Council and the Councilmen will hereinafter be referred to as the "Defendants"). In support of this Motion, the Plaintiff Lambries would show:

FACTS

The facts relating to this motion are not in dispute and cannot be disputed. In addition to being a citizen of Saluda County, the Plaintiff is the Chairman of the Saluda County Water & Sewer Authority ("SCWSA"). The SCWSA is charged with the responsibility of assisting and developing the water and sewer services within the geographic territory of Saluda County. In that capacity, the Plaintiff has attempted to facilitate the economic development of Saluda and to facilitate the intergovernmental communications among the various municipal and county governmental organizations that are involved in water and sewer services.

In the past, through the Plaintiff's initiative, the SCWSA invited Council to have a member join them at their meetings. The Council and the Councilmen have ignored these invitations and refused to send even a representative to the meetings to facilitate communication. In furthering communications, the SCWSA received a request by the Town of Monetta to extend its service area outside of its municipal boundaries. Rather than consider this request in a vacuum, the Plaintiff sent out a letter on November 18, 2008 to the municipalities and other governmental entities that have an interest in the providing of water and sewer to the citizens of Saluda County and invited them to a meeting to discuss proposed water and sewer service areas, including the requested extension by the Town of Monetta.

On December 8, 2008, the regularly scheduled meeting of Saluda County Council was held. Attached to the Complaint as Exhibit 1 is a copy of the Agenda for the December 8, 2008 meeting. There is no mention of SCWSA on the agenda. There is no mention of SCWSA's attempts to get the Council to participate in and communicate with it as it relates to water and sewer services. There were no exigent circumstances relating to the SCWSA.

Nevertheless, Council and Councilmen amended the agenda for December 8, 2008 without notice and without exigent circumstances. Upon information and belief, the County and Councilmen have similarly amended past agendas without notice and without exigent circumstances. As a result of that amendment of the agenda in violation of the Freedom of Information Act, the Council passed a Resolution entitled "In re: Saluda County Water Plant and Saluda County Water and Sewer Authority." A copy of this resolution is attached to the Complaint as Exhibit 2.

If Council and Councilmen had provided public notice of the amendment to the agenda, the public, including the Plaintiff, may have been able to prevent the Council and the Councilmen from acting without information and with false information. Instead, the Council and Councilmen were ignorant of the truth and acted without any basis in fact or law for the resolution that they passed in their ignorance.

Because this Resolution clearly appeared to be in violation of the Freedom of Information Act, the Plaintiff engaged in an investigation concerning the procedure for the amending of the agenda. Attached to the Complaint as Exhibit 3 is a copy of the December 15, 2008 letter received by the Plaintiff in response to the investigation. Included in the December 15, 2008 letter is a copy of a letter from the attorney for Council concerning the procedures used by Council in Amending the Agenda.

Of all things, the Council believes that Robert's Rules of Order apply to public notice of meetings and that Robert's Rules of Order is more important than the express requirements to provide the public with notice of the Agenda and issues to be addressed by the Council. The Freedom of Information Act is not a parliamentary procedure that can be set aside at the whim of Council and Councilmen. The Freedom of Information Act is a fundamental right of the public and

the citizens of Saluda County to know what their government is to decide and what issues are going to be presented for discussion. Basically, the position of the Council, its Councilmen and its attorney is that no notice of anything need ever be given to the public, in direct contradiction of the dictates of the Freedom of Information Act.

THE LAW

Section 4-9-110 of the South Carolina Code of Laws governs the operation of the meetings of Council. This Section requires that "All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies." S.C. Code Ann. §4-9-110. One of the general law of South Carolina affecting meetings of public bodies is the Freedom of Information Act. Section 30-4-80 of the Code specifically states that:

All public bodies ... must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice of any called, special or rescheduled meetings. Such notice must be posted as early as practicable but not later than twenty-four hours before the meeting. The notice must include agenda, date, time and place of the meeting.

S.C. Code Ann. §30-4-80 (Law. Co-op. 2007).

The only exception to the requirement of public notice to include agenda, date, time and place of the meeting is that this "requirement does not apply to emergency meetings of public bodies." *Id.* As the attorney general stated in its 1984 opinion, "In the absence of truly exigent circumstances, FOIA requires public body to give notice, in a manner prescribed."

Contrary to the requirement of notice found in the Freedom of Information Act, Council and Councilmen believe that they can issue no notice to the Public and merely amend their agenda at their whim and fancy. Such total disrespect for the Freedom of Information Act cannot be tolerated and must be enjoined.

Generally, courts examine four factors in determining whether to issue a preliminary injunction: (1) the likelihood of success on the merits; (2) whether a party will suffer irreparable injury if the injunction is not granted; (3) whether the harm to the plaintiff outweighs the harm to the defendant; and (4) whether the injunction will serve the public interest. *See Metro Pub., Ltd. v. San Jose Mercury News*, 987 F.2d 637 (9th Cir. 1993). *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002) (To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.) When the injunction is specifically authorized by statute, as in this case with the specific authorization by the Freedom of Information Act, there is a lesser standard to apply to the issuance of a preliminary injunction. *See City of Columbia v. Pic-A-Flick Video, Inc.*, 340, S.C. 278, 531 S.E.2d 518 (2000).

(1) the likelihood of success on the merits

In this case, the Plaintiff is likely to succeed on the merits. The concept that Robert's Rule of Order can supplant the substantive requirements of public notice as required by the Freedom of Information Act is beyond comprehension. Clearly, the Freedom of Information Act requires meaningful notice to the public and if that requirement of meaningful notice can be avoid merely by using the Robert's Rules of Order as a procedural trick and artifice, the Freedom in Information Act could be and has been completely avoided by Council and the Councilmen.

(2) whether a party will suffer irreparable injury if the injunction is not granted

In this case, the citizens of Saluda County are being denied a substantive right to a meaningful participation in the decisions of their Council. Without notice, without exigent circumstances, without public input the Council and the Councilmen have taken it upon themselves to operate in complete violation of the laws of South Carolina. Clearly, the Resolution of December 8, 2008 was born in ignorance and without any basis in fact or law. Without an injunction, there is no telling how many more resolutions, ordinances and acts will similarly be determined through the mere ignorance of the Council and Councilmen and through the clear violation of the substantive rights of the citizens of Saluda County.

(3) whether the harm to the plaintiff outweighs the harm to the defendant

In this case, there is no harm to the Defendants. There can be no harm to the Defendants in requiring them to follow the express dictates of the South Carolina General Assembly.

(4) whether the injunction will serve the public interest

The Freedom of Information Act is more than a mere parliamentary procedure. It is a public right. The public must be allowed to know what their elected officials are going to discuss and what their elected officials are to resolve. Thus, the injunction will not only serve the public interest but it is mandated by the public interest.

CONCLUSION

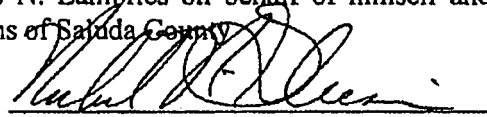
The Plaintiff is a citizen of Saluda County. The Council and the Councilmen are clearly, routinely, and regularly violating the dictates of the Freedom of Information Act. They have done so in approving a Resolution on a subject that they knew little about and acted in complete ignorance of the facts associated with the matter. Upon information and belief, this Council and these

Councilmen routinely amend the publicized agenda without notice to the public and at their whim and fancy. Such action is in contradiction to the public interest, in violation of the Freedom of Information Act and must be enjoined.

Respectfully Submitted,

GLEISSNER LAW FIRM, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 603-2228
Attorney for the Plaintiff
Dennis N. Lambries on behalf of himself and the
Citizens of Saluda County

BY:



RICHARD R. GLEISSNER

Columbia, South Carolina
JANUARY 9, 2008

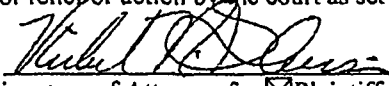
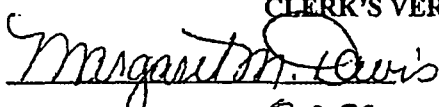
STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)
)
 Dennis N. Lambries, on behalf of himself and the)
 Citizens of the County of Saluda)
 Plaintiff)
)
 v.)
)
 Saluda County Council, Et Al.,)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-41-04

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Richard R. Gleissner, Bar No. 15139 Address: 3610 Landmark Drive, Suite G Columbia, SC 29204 phone: 803-603-2228 fax: e-mail: rick@gleissnerlaw.com other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion for Injunction Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> 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 <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	January 9, 2009 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: <input type="checkbox"/> Other:	
JUDGE'S SECTION	CLERK'S VERIFICATION
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
Collected by:  <input checked="" type="checkbox"/> MOTION FEE COLLECTED: 25.00	Date Filed: _____

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 SALUDA CO. S.C.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF SALUDA)	
Dennis N. Lambries, on behalf of himself)	
and the Citizens of the County of Saluda,)	Civil Action No. 2008-CP-41-0004
)	
Plaintiff,)	
)	MOTION FOR RECONSIDERATION
v.)	
)	
Saluda County Council,)	
T. Hardee Horne, Chairman,)	
William "Billie" Pugh, Councilman,)	
Steve Teer, Councilman,)	
Jacob Schumpert, Councilman, and)	
James Frank Daniel, Sr., Councilman,)	
)	
Defendants.)	

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 SALUDA CO. S.C.

On July 24, 2009, the Plaintiff received the Order Denying it Motion for Preliminary Injunction. The Plaintiffs would request that the Court reconsider these Orders because it fails to require agendas for "called" meetings of a public body.

Law/Analysis

Plaintiffs ask this Honorable Court to reconsider its Order pursuant to Rule 58(e), SCRPC, First Union Nat'l Bank v. Hitman, Inc., 306 S.C. 327, 330, 411 S.E.2d 681, 683 (Ct. App. 1991), and applicable case law.

Under the current Order, the Court has interpreted the Section 30-4-80 of the Code specifically states that:

All public bodies ... must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times and places of such meetings. Agenda, if any,

for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice of any called, special or rescheduled meetings. Such notice must be posted as early as practicable but not later than twenty-four hours before the meeting. The notice must include agenda, date, time and place of the meeting.

S.C. Code Ann. §30-4-80 (Law. Co-op. 2007). The Court relies upon the language “if any” to hold that no agenda is needed for a regularly scheduled meeting. The court simply ignores the requirements provided for in the last three sentences and simply ignores the requirement that an agenda be published for a “called” meeting.

The Freedom of Information Act does not contain a definition of the phrase “called meeting.” However, other sections of the South Carolina Code are illustrative on this issue. Specifically, Section 4-11-265(A) relating to the budget authority of a governing body states, “The legislative delegation of any county, including the Senator, may, by majority vote at a duly called meeting, initiate a referendum in that county to determine the wishes of the registered electors residing in the geographical areas of all special purpose and public service districts (districts) with regard to budgetary powers and election of the governing bodies of the districts.” Under Saluda County’s theory, the ability to initiate a referendum is not allowed at regularly scheduled meetings.

Similarly, Section 6-25-115(F) provides that special purpose districts have the following authority to issue a “construction note ... pursuant to this chapter without obtaining the consent or approval of this State or its political subdivision, or an agency, commission, or instrumentality of this State, but such a construction note may not be issued without the prior approval of a majority of the commissioners of the joint system present and voting at a duly called meeting of it.” Again, is it possible that a construction note may not be issued at the regularly scheduled meetings?

Lastly, concerning the ability of school districts, Section 59-19-80 states "No teacher or other employee shall be employed or any purchase made except in a duly called meeting of the board." Clearly, the hiring of teachers are regularly accomplished at "regular" meetings and for the court to hold that a regular meeting is not a "called" meeting is inconsistent with the use of this phrase in the remaining sections of the South Carolina Code of Laws.

So, the real issue is what is a "called" meeting. Clearly, called meetings are not limited to special meetings or rescheduled meetings. Why would the legislature use the phrase "called, special or rescheduled" meetings in the requirement for agendas? A review of the other sections of the South Carolina Codes seems to suggest that a called meeting is merely one in which the members of a body are "summoned to attend". See Black's Law Dictionary (5th Edition). Whether one is summoned to attend a regularly scheduled meeting or a special meeting is irrelevant. If the body is being called to take formal action, an agenda is required.

The only exception to the requirement of public notice to include agenda, date, time and place of the meeting is that this "requirement does not apply to emergency meetings of public bodies." *Id.* As the attorney general stated in its 1984 opinion, "In the absence of truly exigent circumstances, FOIA requires public body to give notice, in a manner prescribed." This exception is consistent with the definition that a called meeting. An emergency meeting can take place at a regularly scheduled meeting but "truly exigent circumstances" must be shown.

In this case, Saluda County admits that it regularly engages in formal action, "called action", without fulfilling the requirements of the Freedom of Information Act and the Plaintiff respectfully requests that the court reconsider its order and grant the Plaintiff a temporary injunction.

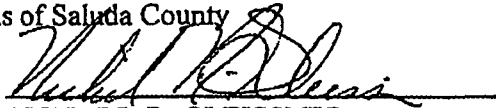
CONCLUSION

The Plaintiffs respectfully ask this Honorable Court to reconsider the Order received by Plaintiff on July 24, 2009. The Plaintiff respectfully asks the court to correct the legal error contained in its order and grant the Plaintiff's request for a preliminary injunction.

Respectfully Submitted,

GLEISSNER LAW FIRM, L.L.C.
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 603-2228
Attorney for the Plaintiff
Dennis N. Lambries on behalf of himself and the
Citizens of Saluda County

BY:


RICHARD R. GLEISSNER

Columbia, South Carolina
August 3, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

Dennis N. Lambries, on behalf of himself)
and the Citizens of the County of Saluda,)
)
Plaintiff,)

Civil Action No. 2009-CP-41-04

v.)

CERTIFICATE OF SERVICE

Saluda County Council,)
T. Hardee Horne, Chairman,)
William "Billie" Pugh, Councilman,)
Steve Teer, Councilman,)
Jacob Schumpert, Councilman, and)
James Frank Daniel, Sr., Councilman,)
)
Defendants.)

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CLERK OF COURT
SALUDA CO. S.C.
J. H. L. S. S.

I, the undersigned employee of the Gleissner Law Firm, LLC, hereby certify that I have served Plaintiff's Motion to Reconsider in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to:

Christian G. Spradley, Esquire
Moore, Taylor & Thomas, P.A.
110 S. Main Street
Saluda, SC 29138

Anissa Terpstra
Anissa Terpstra, Paralegal

August 3, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)
)
 Dennis N. Lambries, on behalf of himself and the)
 Citizens of the County of Saluda)
 Plaintiff)
)
 v.)
)
 Saluda County Council, Et Al.,)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-41-04

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Richard R. Gleissner, Bar No. 15139 Address: 3610 Landmark Drive, Suite G Columbia, SC 29204 phone: 803-603-2228 fax: e-mail: rick@gleissnerlaw.com other:	Defendant's Attorney: Christian G. Spradley, Bar No. Address: 110 S. Main Street Saluda, SC 29138 phone: 864-445-4544 fax: 864-445-7441 e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Reconsider Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> 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 <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant _____ Date submitted _____	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
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CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF SALUDA)	
Dennis N. Lambries, on behalf of himself)	
and the Citizens of the County of Saluda,)	Civil Action No. 2008-CP-41-0004
)	
Plaintiff,)	
)	AFFIDAVIT OF DENNIS N. LAMBRIES
v.)	
)	
Saluda County Council,)	
T. Hardee Horne, Chairman,)	
William "Billie" Pugh, Councilman,))	
Steve Teer, Councilman,)	
Jacob Schumpert, Councilman, and)	
James Frank Daniel, Sr., Councilman,)	
)	
Defendants.)	

Personally appeared before me, Dennis N. Lambries, who, after being duly sworn, deposes and states:

1. My name is Dennis N. Lambries. I am a resident of Saluda County, a property owner in Saluda County and over the age of 21. I make this affidavit on my own personal knowledge.
2. In 2009, I was awarded a Doctor of Philosophy in Political Science from the University of South Carolina. I received my Masters Degree in Political Science from the University of South Carolina in 1981.
3. In 1998, I became employed by the University of South Carolina's Institute for Public Affairs. While at the Institute, I was responsible for assisting local governments and training local government officials on assorted topics. Several of the training sessions involved discussions concerning the Freedom of Information Act and its requirements for local government.
4. I believe that an open government is the cornerstone of our democratic system and that the Freedom of Information Act supports this open government as stated by the General Assembly in its findings and purpose of the Freedom of Information Act as found in Section 30-4-15:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

5. The requirement that business be performed in the open and that citizens be advised of the performance of public officials requires that the citizens receive notice of proposed action, not just action that has already taken place. Thus, without notice of the agenda indicating the actions to be taken by a public body, there can be no open government and there can be no avenue for the citizens to fully participate in their government. Indeed, in the absence of notification of the actions that a council anticipates taking, the only way that citizens can be aware of such actions, prior to being taken, is to attend every meeting of county council.
6. The importance of notifying the public of meetings is reflected in Section 30-4-80(e):

All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

If a council can amend the published agenda at the beginning of a meeting to include action items that were not included in the notification to individuals and groups noted above, then the requirement to include efforts made to comply with the notification requirements of the Freedom of Information Act is an administrative statement rather than a reflection of actual notification efforts.

There may be legitimate reasons for amending a published agenda such as correcting grammatical errors, deleting a public presentation at the request of the scheduled presenter, receiving information, or entering executive session. However, none of these amendments to the published agenda require that the council take final action on an item that is added.

7. I requested that my attorney review the Minutes of Meetings prepared for Saluda County Council and maintained by the Clerk of Saluda County Council. He was

able to locate instances since January 2007 where items to the agenda for the meeting were added during the meeting itself. I have reviewed the minutes and attach copies of these 11 minutes of meetings as exhibits to this affidavit. The amendments can be summarized as follows:

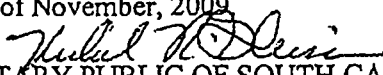
- January 8, 2007 - Amended to allow consideration of an ordinance that would have rescinded the 2006 property tax reassessment. Counsel voted against ordinance rescinding reassessment.
- June 13, 2007 - Amended to allow discussions on new Gas Program but no one was present to actually discuss the program and thus no action was taken.
- October 29, 2007 - Amended to allow the County to commit to fund non-federal share of a project in Saluda.
- November 12, 2007 - Amended to allow the reduction of millage rate.
- February 28, 2008 - Amended to approve changes to ordinance relating to Inspection and Enforcement of Mobile and Manufactured homes.
- May 12, 2008 - Amended to allow first reading of \$2.68 million in general revenue bonds.
- June 9, 2008 - Amended to obtain approval for Saluda to participate in the Upper Savannah Housing Initiative - no money committed unless Saluda gets grant, then 25% co-payment is committed.
- July 14, 2008 - Amended to allow the first reading of an ordinance relating to Flood Damage prevention and control.
- August 11, 2008 - Amended to make changes to Ordinance 07-08 and to allow Third Reading and include a public hearing on this ordinance relating to mobile homes.
- December 8, 2008 - Amended to approve the expenditures of \$2,500 to the Justice Assistance Grant program.
- June 22, 2009 - Amended to obtain approval to expend \$4,100 to the Little River Festival out of the Accommodations Tax Fund.

8. Members of county councils are elected to make decisions and take actions that they believe to be in the best interest of the citizens of the county. I have no reason to doubt that council, in taking these actions, thought they were acting in the best interest of the citizens of Saluda County. Therefore, I would request that the court dismiss that portion of my complaint that seeks to have the court declare as void those actions taken in violation of the Freedom of Information Act.
9. My disagreement with council is the manner in which these actions were accomplished. Trust in government is essential in a democratic society. Councils must avoid the appearance that they are manipulating the notification requirements of the Freedom of Information Act to take action that the citizens have no way of knowing are even being considered. They must avoid taking actions without the citizens at least having the opportunity to voice their support or opposition to any such action, either directly to individual members of council or in the public setting of a county council meeting.
10. The court must uphold the requirement of the Freedom of Information Act that requires governing bodies to provide notice of their intended actions, before the meetings and must enjoin Saluda County from its regular practice of amending the agenda for meetings thereby limiting the ability of citizens to participate in their government.

FURTHER AFFIANT SAYETH NOT.


Dennis N. Lambries

Sworn to before me this 16th
day of November, 2009


NOTARY PUBLIC OF SOUTH CAROLINA

My Commission Expires: January 7, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No: 2008-CP-41-0004

Dennis M. Lambries, on behalf of himself and
the Citizens of the County of Saluda Appellant,

v.

Saluda County Council, T. Hardee Horne, Chairman,
William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman,
and James Frank Daniel, Sr., Councilman Respondents

NOTICE OF APPEAL

Plaintiff/Appellant files this Notice of Appeal in regard to the attached Orders Plaintiff received or about July 23, 2009 and August 12, 2010. The attached Orders appear to be finalized versions of the rulings of Judge William P. Keesley in regard to Plaintiff's Motion for a Temporary Injunction and Plaintiff's Motion for Reconsideration.



Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
3610 Landmark Drive, Suite G
Columbia, South Carolina 29204
(803) 603-2228
Attorneys for Appellants

Columbia, South Carolina
September 3, 2010

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No: 2008-CP-41-0004

Dennis M. Lambries, on behalf of himself and
the Citizens of the County of Saluda Appellant,

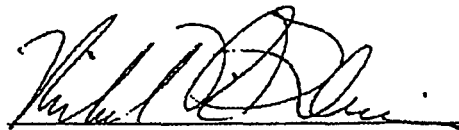
v.

Saluda County Council, T. Hardee Horne, Chairman,
William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman,
and James Frank Daniel, Sr., Councilman Respondents

CERTIFICATE OF SERVICE

I, the undersigned attorney of the Gleissner Law Firm, LLC, hereby certify that I have served Plaintiff's Notice of Appeal in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to:

Christian G. Spradley, Esquire
Moore, Taylor & Thomas, P.A.
110 S. Main Street
Saluda, SC 29138


Richard R. Gleissner, Esquire

September 3, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No: 2008-CP-41-0004

Dennis M. Lambries, on behalf of himself and
the Citizens of the County of Saluda Appellant,

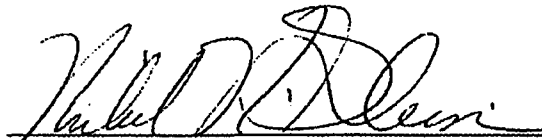
v.

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William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman,
and James Frank Daniel, Sr., Councilman Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

February 9, 2011



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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William Paul Keesley, Circuit Court Judge

Case No: 2008-CP-41-0004
Court Of Appeals Number: 20101714666

Dennis N. Lambries Appellants,

v.

Saluda County Council, T. Hardee Horne, Chairman, William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman, and
James Frank Daniel, Sr., Councilman, Respondents

FINAL BRIEF OF APPELLANT

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(864) 445-4544
Attorneys for Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. *Whether the Freedom of Information Act requires government bodies to give notice to the public of items they intend to discuss and decide upon at public meetings?*

STATEMENT OF THE CASE

Dennis N. Lambries ("Lambries") brought this action seeking preliminary and permanent injunction to prevent what he believes are violations of the Freedom of Information Act by Saluda County Council (the "Council"), T. Hardee Horne, William "Billie" Pugh, Steve Teer, Jacob Schumpert, and James Frank Daniel, Sr. (the "Councilmen")(the Council and the Councilmen will hereinafter be referred to as "Saluda"). See Record at p. 12 (Complaint, p. 1). On July 24, 2009, Lambries received notice of an order denying his motion for preliminary injunction. See Record at p. 2 (July 13, 2009 Order Motion to Reconsider, p. 1). On August 2, 2009 moved for a reconsideration of the Order. See Record at p. 48 (Motion to Reconsider, p. 1.) That motion for reconsideration was decided by Order that was received on August 12, 2010. See Record at p. 10 (August 12, 2010 Order). This appeal was filed on September 3, 2010.

STANDARD OF REVIEW

A dispute regarding the interpretation of a statute is a matter of law for the court. *Stewart v. Richland Mem'l Hosp.*, 350 S.C. 589, 593, 567 S.E.2d 510, 512 (Ct. App. 2002), *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007); *Sloan v. South Carolina Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466-67, 636 S.E.2d 598, 605-06 (2006) (stating the

appellate court is free to decide the question based on its consideration of law, public policy, and the court's sense of justice).

FACTS

On December 8, 2008, the regularly scheduled meeting of Saluda was held. See Record at p. 17 (Complaint, ¶ 11), Record p. 23 (Exhibit 1), and Record p. 32 (Answer ¶ 8). During the meeting, Saluda amended the agenda without notice and without exigent circumstances and passed a resolution not on the pre-meeting agenda. See Record at p. 18 (Complaint ¶ 12), p. 26 (Exhibit 2), and p. 32 (Answer ¶ 9). Upon finding out about the resolution and amendment, Lambries investigated the practices of Saluda to find that Saluda regularly amends its agenda pursuant to Roberts Rules of Order and without any notice to the public. See Record at p. 28 (Complaint Exhibit 3), Record 56-57 (Affidavit of Lambries ¶ 7). In fact, for the period from January 2007 through June 2009, Saluda amended its agenda, without notice to the public and without exigent circumstances, eleven (11) times. Record at p. 56-58 (Affidavit of Lambries ¶ 7).

LEGAL ARGUMENT

- I. *The Freedom of Information Act does require government bodies to give notice to the public of items they intend to discuss and decide upon at public meetings.*

Section 4-9-110 of the South Carolina Code of Laws (the "Code") governs the operation of the meetings of Saluda. This Section requires that "All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies." S.C. Code Ann. §4-9-110 (Law Co-op. 2007). One of the general laws of South Carolina affecting meetings of public bodies is the Freedom of Information Act. S.C. Code Ann §§ 30-4-10 et seq. (Law Co-op 2007). Section 30-4-80 of the Code specifically states in relevant part that:

All public bodies ... must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice of any called, special or rescheduled meetings. Such notice must be posted as early as practicable but not later than twenty-four hours before the meeting. The notice must include agenda, date, time and place of the meeting.

S.C. Code Ann. §30-4-80 (Law. Co-op. 2007). The only exception to the requirement of public notice to include agenda, date, time and place of the meeting is also included in this same section where it states that this “requirement does not apply to emergency meetings of public bodies.” *Id.*

In its initial Order denying the preliminary injunction, the trial court focused on the phrase “if any” in determining that no notice of any kind is ever required for regular meetings after they are scheduled at the beginning of the calendar year and amendments to the agenda can be freely made. As pointed out in the motion to reconsider, the court simply ignores and renders completely meaningless the requirements provided for in the last three sentences of the statute and simply ignores the requirement that an agenda be published for a “called” meeting. Under the trial court’s ruling, regular meetings are not “called” meetings and do not require the notice provisions required for “called” meetings. Basically, regular meetings become completely exempt from the remaining section of the statute because of the inclusion of the phrase “if any” after the word “agenda.”

“Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.” *Collins Music Co., Inc. v. IGT*, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting *TNS Mills, Inc. v. South Carolina Dep’t of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). Further, a court should not consider a particular

clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law. *Hinton v. South Carolina Dep't of Prob., Parole, and Pardon Servs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004); *Doe v. Roe*, 353 S.C. 576, 580, 578 S.E.2d 733, 735-36 (Ct. App. 2003). Here, there is no reason to exclude regular meetings from the requirement that the governing body give notice, through an agenda, of what they intend to speak about and decide.

In determining the legislative intent, if the language of an act creates doubt or uncertainty, the construing court may search for that intent beyond the borders of the act itself. *State v. Morgan*, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002). When interpreting one section of the Code, sometimes the court looks at other sections that use the same language in giving meaning to the section under consideration. *See Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007).

The Freedom of Information Act does not contain a definition of the phrase "called meeting." However, other sections of the South Carolina Code are illustrative on this issue. Specifically, Section 4-11-265(A) relating to the budget authority of a governing body states, "The legislative delegation of any county, including the Senator, may, by majority vote at a duly called meeting, initiate a referendum in that county to determine the wishes of the registered electors residing in the geographical areas of all special purpose and public service districts (districts) with regard to budgetary powers and election of the governing bodies of the districts." S.C. Code Ann. §4-11-265(A) (Law Co-op. 2007). Under Saluda's theory and the trial court's Order, the ability to initiate a referendum is not allowed at regularly scheduled meetings because these regularly scheduled meetings are not the "called" meetings as required by this section of the Code.

Similarly, Section 6-25-115(F) provides that special purpose districts have the following

authority to issue a “construction note ... pursuant to this chapter without obtaining the consent or approval of this State or its political subdivision, or an agency, commission, or instrumentality of this State, but such a construction note may not be issued without the prior approval of a majority of the commissioners of the joint system present and voting at a duly called meeting of it.” S.C. Code Ann. §6-25-115(F) (Law. Co-op. 2007). Again, is it possible that a construction note may not be issued at the regularly scheduled meetings?

Lastly, concerning the ability of school districts, Section 59-19-80 states “No teacher or other employee shall be employed or any purchase made except in a duly called meeting of the board.” S.C. Code Ann. §59-19-80 (Law. Co-op 2007). Clearly, the hiring of teachers are regularly accomplished at “regular” meetings and for the court to hold that a regular meeting is not a “called” meeting is inconsistent with the use of this phrase in the remaining sections of the Code.

So, the real issue is what is a “called” meeting? Clearly, called meetings are not limited to special meetings or rescheduled meetings. Why would the legislature use the phrase “called, special or rescheduled” meetings in the requirement for agendas? A review of the other sections of the Code seems to suggest that a called meeting is merely one in which the members of a body are “summoned to attend”. See BLACK’S LAW DICTIONARY (5th Edition). “[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Mun. Ass’n of South Carolina v. AT&T Commc’n of Southern States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); see also *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) (“In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning.”). Whether one is summoned to attend a regularly scheduled meeting or a special meeting is irrelevant. If the body is being called to take

formal action, an agenda is required.

To give meaning to the phrase “if any” in the statute, one needs merely conclude that if no formal action is to be taken, no agenda is required. This interpretation gives meaning to all of the sentences of the Freedom of Information Act.

Further, the only exception to the requirement of public notice to include agenda, date, time and place of the meeting is that this “requirement does not apply to emergency meetings of public bodies.” S.C. Code Ann. §30-4-80 (Law Co-op. 2007). As the attorney general stated in its 1984 opinion, “[i]n the absence of truly exigent circumstances, FOIA requires public body to give notice, in a manner prescribed.” If, as held by the trial court, amendments to agendas may be freely made, the language providing for an exception to the requirement again, is rendered completely without meaning. “The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect.” *Nucor Steel v. S.C. Pub. Serv. Comm’n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1992). If formal action is to be taken, the requirement to show “exigent circumstances” to avoid the requirement of notice is given meaning. Further, these emergency meetings can take place at a regularly scheduled meeting but “truly exigent circumstances” must be shown.

CONCLUSION

An open government is the cornerstone of our democratic system and that the Freedom of Information Act supports this open government. As stated by the General Assembly in its findings and purpose of the Freedom of Information Act as found in Section 30-4-15:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials

and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (Law. Co-op. 2007). The requirement that business be performed in the open and that citizens be advised of the performance of public officials requires that the citizens receive notice of proposed action, not just action that has already taken place. Thus, without notice of the agenda relating to the actions to be taken by a public body, there can be no open government and there can be no avenue for the citizens to fully participate in their government.

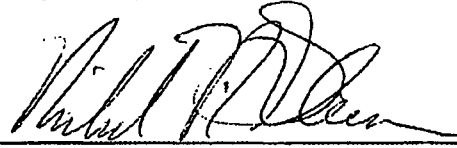
As stated in *In re Hospital Pricing Litigation*, 377 S.C. 48, 659 S.E.2d 131 (2008), “[a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” See also *Broadhurst v. City of Myrtle Beach Election Comm’n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). Further, the history of the period in which the statute was passed may be considered in interpreting the statute. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519 n.6, 642 S.E.2d 751 n.6 (2007). In this case, the Freedom of Information Act was passed at a time when legislatures were very concerned about open government and the need for the people to have access to their governmental bodies.

“Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.” *TNS Mills, Inc. v. South Carolina Dep’t of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998). In this case, Saluda regularly engages in formal action by amending its agenda during “called” meetings without any notice to the public.

This practice must stop and this court must reverse the decision of the trial court that allows, as a matter of law, this practice to continue.

Respectfully submitted,

By:



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February 7, 2011

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William Paul Keesley, Circuit Judge

Case No. 2008-CP-41-0004
Court of Appeals Number: 20101714666

Dennis N. Lambries, on Behalf of Himself and
the Citizens of the County of Saluda,Appellant

v.

Saluda County Council, T. Hardee Horne, Chairman, William "Billy" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman, and
James Frank Daniel, Sr., Councilman.Respondents

FINAL BRIEF OF THE RESPONDENT

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Date: February 16, 2011

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STATEMENT OF THE ISSUE ON APPEAL

Whether the Freedom of Information Act requires government bodies to give notice to the public of items they intend to discuss and decide upon at public meetings?

STATEMENT OF THE CASE

Dennis N. Lambries ("Appellant") brought this action seeking a preliminary and permanent injunction against Saluda County Council ("Council") "to prevent any further amendments of the Agenda . . .". See Record at p. 19 (Complaint, p. 5). At a regularly scheduled meeting of Saluda County Council the agenda was amended by unanimous vote to add taking action on a resolution which requested certain considerations be taken by the Saluda County Water and Sewer Authority. A hearing was held before the Honorable William P. Keesley who denied Appellant request for a preliminary injunction by Order filed July 13, 2009. See Record at p. 7. Appellant filed a Motion for Reconsideration which was denied by Order filed August 12, 2010. See Record at p. 10 and 11 (Order on Reconsideration at p. 1 and 2). This appeal was thereafter filed.

ARGUMENT

Whether the Freedom of Information Act requires government bodies to give notice to the public of items they intend to discuss and decide upon at public meetings?

Appellant argues that the action of the County, in amending its agenda, is in violation of §30-4-80 of the Code of Laws of South Carolina, 1976, as amended, which states in pertinent part:

(a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such

meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

Appellant contends that an agenda is required for all meetings, and that the amendment of such agenda violates the Freedom of Information Act ("FOIA"). Appellant offered no other case law or statute to support his position at the hearing held on this matter.

FOIA's purpose as stated in §30-4-15 of the Code of Laws of South Carolina, 1976, as amended, is to "make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." FOIA was not intended to dictate how open meetings are conducted, but to insure that meetings are open to public view and that the records of our governing bodies are open for inspection.

In interpreting statutes, courts must give words their plain meaning. Words or groups of words can not be added or taken away. Hartford Accident and Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979). In the plain wording of §30-4-80 of the Code of Laws of South Carolina, 1976, as amended, it clearly states "[a]genda, if any, for regularly scheduled meetings . . ." There is no other interpretation possible except that an agenda is not even required under FOIA for regularly scheduled meetings. The reason for this is clear. The public is put on notice as to the date and time of all regularly scheduled meetings at the beginning of the calendar year. These meetings are held on a

regular schedule which is preset and these meetings are to handle the general duty of governing. No special notice needs to be given. If the public is interested knowing what is discussed they can attend the meetings. "Special" or "Called" meetings are not scheduled and the public has no prior knowledge of date or time. They are "called" to handle a specific issue that is normally important, unusual, or time sensitive. Due to the extra hardship of short notice, §30-4-80 places an additional requirement of having a published agenda for these special meetings so that the public knows exactly what is going to be discussed.

Appellant points to other statutes in an attempt to define "called meeting." None of these apply to a county nor do they dictate how a county meeting is conducted or scheduled. Each statute discussed utilized the term "duly called meeting." Even if these statutes are determined to apply, it is clear from the reading of them and other statutes in the same Chapter, that the term "duly called meeting" means a legal meeting, or a meeting held in compliance with South Carolina Law, which is different from a "called or special meeting."

Within the Chapter including §6-25-115 cited by Appellant, there is also §6-25-60(c) which states that "[a]ny action taken by the joint system under the provisions of this chapter may be authorized by resolution at any regular or special meeting . . ." Within this Chapter it is clear that there are regular meetings and special meetings, but they are both "duly called meetings."

§59-19-80 as cited by Appellant must also be read in its entirety. This statute places special notification provisions on any meeting in which a teacher is to be employed or a purchase made. The statute states that every member of the board must be "notified

in writing by the clerk of the board at least three days in advance [of the meeting], unless a written waiver of such notice of meeting is signed [by the member]." In no other South Carolina statute does this requirement appear. Therefore, for the meeting to be legal and "duly called" every member must be given three days written notice.

The last statute Appellant cites is §4-11-265 deals with a meeting of the legislative delegation of a county. Any action by a legislative delegation of a county is a very limited action and there are no regularly scheduled meetings of the delegation. There are no rules as to how a meeting under this statute would be called, held or even recorded. The legislative delegation is therefore a very special group which is exempted from scheduling meetings at the beginning of the calendar year.

There are statutes which clearly state there differences between regular meetings and called or special meetings:

- §1-3-245 states that a member of a state board may be removed if he misses 3 consecutive "regularly scheduled meetings." This would not apply to missing or being absent from special or called meetings;
- §48-59-40 (d) states that the South Carolina Conservation Bank "shall meet at least twice annually in regularly scheduled meetings and in special meetings as the chairman my call";
- §23-4-140 states that a "majority of the members at any regular meeting or called meeting constitutes a quorum of the Governor's Committee on Criminal Justice;
- §40-41-30 states that license fees in a county shall be fixed "at any subsequent, regular, or specifically called meeting";

- §5-7-250 states that Municipal Corporations “shall meet regularly at least one in every month . . . Special meetings may be held on the call of the mayor . . .”; and
- §4-9-110 states that County Council’s “shall meet once a month . . . Special meetings may be called by the chairman . . .”

It is clear that within South Carolina Statutes there is a difference between regularly scheduled meetings and called or special meetings. The legislature dealt with regularly scheduled meetings in §30-4-80 differently from called or special meetings due to this difference.

In Herald Publishing Company, Inc. v. Barnwell, 291 S.C. 4, 351 S.E.2d 878 (Ct.App.1986), the Appellant argued that “the Council violated the procedural requirements of [FOIA] by changing the published agenda . . .” The Court rejected this argument stating “[w]e are unable to discern any prejudice to the [appellant] as a result of their not having an agenda . . . in advance of the meeting taking place. Substantial compliance with the Act will satisfy its requirements were a technical violation has no demonstrated effect on a complaining party.” In the present case, the County complied with giving notice of their meetings at the beginning of the year, proper notice was given of the meeting, agendas were provided to the requesting parties and news agencies, a vote was taken in open session to amend the agenda in compliance with Saluda County rules of order, and upon request Appellant was provided with the minutes of the meeting of which he complains. In essence, even utilizing Appellant’s logic, with which Respondent does not agree, Respondent substantially complied with the requirements and there has been no showing of any prejudice to Appellant and there has been no showing of any

effect on Appellant. Therefore, under Herald, there has been no violation of FOIA.

Patton v. Richland County Council, 303 S.C. 47, 398 S.E.2d 497 (1990), holds that “[g]enerally a court may not restrain by injunction the exercise of legislative power by municipal corporations, including counties.” Appellant is asking for a pure restraint on legislative powers. The actions complained of by Appellant were not in a closed session, did not take place at a secret meeting and the record of the actions is open for public inspection. There can not be a violation of FOIA. To grant Appellant the relief he requests would violate the separation of powers between the judicial branch and the legislative branch of our government as specifically stated in Patton and its lineage. No where has the legislature stated that the amendment of an agenda is in violation of any law in the State of South Carolina.

Under §4-9-110 of the Code of Laws of South Carolina, 1976, as amended, “[t]he [county] council shall determine its own rules and order of business.” Saluda County Council has enacted rules that allow the agenda to be amended. There is no prohibition on a public body amending its published agenda. Plaintiff argues that to allow the amendment would be to allow the body to take up matters outside of public view. This is incorrect. As stated above, the purpose of FOIA is to allow the public access to public information and for the activities of public bodies to be in open session and not behind closed doors. In the present case, the amendment of the agenda was performed in open session and in accordance with Saluda County Council rules of order as codified in their ordinances. These ordinances are public and therefore the public is charged with the knowledge thereof. Further, Appellant, acting as Chairman of Saluda County Council, partook in the act of amending the agenda.

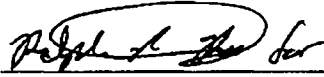
CONCLUSION

The South Carolina Court of Appeal has previously declined to find a FOIA violation where a county took up matters not on its published agenda. See Herald Publishing Co. FOIA does not prohibit changes to a published agenda. Therefore there can not be a violation of FOIA. Nothing was done in a closed meeting as the vote to amend was taken in open session of a regularly scheduled meeting. Appellant can not even point to a technical violation of FOIA.

Throughout South Carolina statutes, there is clearly a difference between regularly scheduled meetings and called or special meetings. The requirement of an agenda for called or special meeting is due to the public having short notice of the meeting. Regular meetings do not require agendas because the meetings are scheduled well in advance and any item of business may be handled. Appellant is correct in his stated definition of a "called meeting." He cites Black's Law Dictionary as stating it is a meeting where the members are "summoned to attend" which is exactly correct. Members are only summoned to special or called meetings. They are not summoned to regularly scheduled meetings as those dates and times would have been set in January. There is no requirement that an agenda exist under §30-4-80. If there is no requirement for an agenda, the argument that the public must be notified of the issues to be raised at the meeting 24 hours in advance must fail. If there is no issue with the notification there can be no violation of FOIA.

Based on the foregoing, the Circuit Court's denial of the temporary injunction should be affirmed.

Respectfully submitted,



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February 16, 2011

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William Paul Keesley, Circuit Judge

Case No. 2008-CP-41-0004

RECEIVED

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SC Court of Appeals

Denis M. Lambries, on behalf of himself and
The Citizens of the County of Saluda.....Appellant,

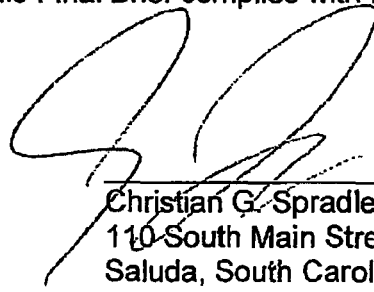
v.

Saluda County Council, T. Hardee Horne, Chairman,
William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman,
and James Frank Daniel, Sr., Councilman.Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

March 17, 2011



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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Dennis N. Lambries, Appellant,

v.

Saluda County Council; T.
Hardee Horne, Chairman;
William "Billie" Pugh,
Councilman; Steve Teer,
Councilman; Jacob Schumpert,
Councilman; and James Frank
Daniel, Sr., Councilman, Respondents.

Appeal From Saluda County
William P. Keesley, Circuit Court Judge

Opinion No. 4989
Heard March 15, 2012 – Filed June 13, 2012

REVERSED

Richard R. Gleissner, of Columbia, for Appellant.

Christian Giresi Spradley, of Saluda, for
Respondents.

KONDUROS, J.: Dennis Lambries appeals the circuit court's ruling that the amendment of the agenda by the Saluda County Council (the Council) during its meetings does not violate the Freedom of Information Act (FOIA). We reverse.

FACTS

Lambries filed suit against the Council contending its practice of amending its agenda during regularly scheduled meetings violated FOIA. The circuit court concluded specific language in section 30-4-80 of the South Carolina Code (2007) indicated no agenda was required for regularly scheduled meetings and the amendments to the agenda were made in open public sessions in accordance with the Council's procedures so the action did not violate FOIA.¹ This appeal followed.

STANDARD OF REVIEW

"Statutory interpretation is a question of law." Hopper v. Terry Hunt Constr., 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007). This court may decide matters of law with no particular deference to the circuit court. Pressley v. REA Constr. Co., 374 S.C. 283, 287-88, 648 S.E.2d 301, 303 (Ct. App. 2007).

LAW/ANALYSIS

Lambries argues the circuit court's interpretation of section 30-4-80 of the South Carolina Code (2007) was erroneous because it undercuts the purpose of FOIA to inform the public about business to be addressed at meetings of public bodies. We agree.

¹ Lambries initially requested that certain acts of the Council be declared null and void, but he abandoned those claims and seeks only an interpretation of FOIA that will prevent the Council from amending its agenda during meetings in the future.

Section 30-4-80 provides:

(a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

....

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

Section 30-4-15 of the South Carolina Code (2007) discusses the purpose of FOIA.

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Id. (emphasis added).

The circuit court determined the "if any" language in section 30-40-80(a) means that nothing requires Council to have an agenda for a regularly scheduled meeting. However, this interpretation is inconsistent with the requirement that agendas be posted twenty-four hours prior to a meeting. Applying such a construction, Council could circumvent the notice requirement by simply not preparing a formal agenda and then discussing matters on an ad hoc basis at the meeting. Such conduct would not be in keeping with the purpose of FOIA, and we will not construe a statute in a way that defeats the legislative intent. See Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006) ("A statute as a whole must receive [a] practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers."); Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (stating courts will reject the ordinary meaning of words if accepting such an interpretation of a statute leads to an absurd result that would defeat the plain legislative intention.); id. ("If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect."). Additionally, if as Council argues no agenda is required because regularly scheduled meetings are open to the public, then the publication requirement when there is an agenda is superfluous. Meetings with or without an agenda are equally open to the public.

However, if "agenda"² is not viewed narrowly as only a formally prepared piece of paper but instead represents the impactful actions and business the paper memorializes, the statute can be read harmoniously. Then, the "if any" language simply recognizes that regularly scheduled meetings of public bodies may occur during which no formal action or discussion is to take place. If so, there is no agenda and no requirement for publication of a blank piece of paper.

The remainder of subsection (a) requires publication of the agenda for any called or special meeting. By implication, a called or special meeting would only occur if an item required formal discussion or action. This interpretation of the statute gives logical effect and meaning to each part of the statute and is in accord with the purpose of FOIA to notify the public of the activities of public bodies.

The remaining question is whether a published agenda for a regularly scheduled meeting can be amended during the meeting without violating FOIA. This is a close question, because no provision appears to prohibit such action. However, to allow an amendment of the agenda regarding substantive public matters undercuts the purpose of the notice requirement in section 30-4-80. A narrow construction of FOIA may support the position that so long as regularly scheduled meetings are open to the public, they are conducted in compliance with FOIA. However, such a construction would be inconsonant with the agenda notice requirement for regularly scheduled meetings and would go against the instruction that FOIA is to be liberally construed. See N.Y. Times Co. v. Spartanburg Cnty. Sch. Dist. No. 7, 374 S.C. 307, 311, 649 S.E.2d 28, 30 (2007) (stating FOIA is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the legislature); Evening Post Publ'g Co. v. City of N. Charleston, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (holding FOIA exemptions are to be narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government).

While Lambries does not argue Council's deeds have been done with ill intent, permitting the amendments to the agenda during a regularly

² Agenda is not defined in FOIA.

scheduled meeting is a practice that could be abused and violates the spirit of FOIA. A South Carolina Attorney General opinion, while not authoritative, eloquently describes the ideal conduct for meeting the obligations set forth under FOIA.

Public bodies are encouraged to take all steps necessary to comply with both the letter and the spirit of the Act, to carry out the express purpose of keeping the public informed about the performance of their public officials and the conduct of public business. If any doubt exists as to action to be taken, the doubt should be resolved in a manner designed to promote openness and greater notice to the public.

1989 S.C. Op. Att'y Gen. 89-111, 1989 WL 406201 (October 11, 1989).

We recognize our decision may be inconvenient in some instances, but the purpose of FOIA is best served by prohibiting public bodies governed by FOIA from amending their agendas during meetings. Therefore, the ruling of the circuit court is

REVERSED.

GEATHERS, J., concurs.

PIEPER, J., dissents in a separate opinion.

PIEPER, J., dissenting:

I respectfully dissent. The majority opinion is well-reasoned and compelling. However, I am reluctant to reverse the denial of temporary injunctive relief by the trial court because the statute is completely silent as to whether a public body can amend an agenda that is not required for a regularly scheduled meeting. "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). "[I]t is vital in a democratic

society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity" S.C. Code Ann. § 30-4-15 (2007). FOIA must be construed to make it possible for citizens to learn and report fully the activities of public officials. Id. Section 30-4-80 of the South Carolina Code provides the following:

- (a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

S.C. Code Ann. § 30-4-80 (2007).

Section 30-4-80 is completely silent as to whether an amendment to a published agenda for a regularly scheduled meeting is permitted. What is clear is that an agenda is not required for a regularly scheduled meeting, as indicated by the "if any" language in the statute. See S.C. Code Ann. § 30-4-80 (2007) ("Agenda, if any, for regularly scheduled meetings"). Because an agenda is not required for a regularly scheduled meeting, it is difficult to conclude that the statute's silence clearly demonstrates legislative intent to prohibit a public body from amending a discretionary agenda. Additionally, Council's amendment of the agenda did not violate FOIA's

purpose of providing the public access to a public body's actions behind closed doors. Council's amendment of the agenda did not infringe on Lambries' ability to learn and report fully on the activities of the public officials. While the public was not informed of the amendment to the agenda, the meeting was performed in an open and public manner, and the public was advised of both the meeting and the decisions reached at the meeting.

Moreover, because a FOIA violation can be criminal in nature, the law should be clear as to what is proscribed; otherwise, unintended prosecutions could be threatened. See S.C. Code Ann. § 30-4-110 (2007) ("Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense"). Until the legislature resolves this issue, I would not judicially impose requirements that would have the effect of creating new and potentially unintended criminal liability. Furthermore, in light of the admitted lack of legislative clarity on this issue, I would alternatively affirm the trial court's denial of Lambries' temporary injunction, as the decision to grant or deny an injunction is within the discretion of the trial court. See Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("An order granting or denying an injunction is reviewed for abuse of discretion."). Based on the foregoing reasons, I would affirm the order of the trial court.

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
William P. Keesley, Circuit Court Judge

Case No. 2008-CP-41-0004

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JUN 28 2012
SC Court of Appeals

Dennis N. Lambries,

Appellant,

v.

Saluda County Council;
T. Hardee Home, Chairman;
William "Billie" Pugh, Councilman;
Steve Teer, Councilman;
Jacob Schumpert, Councilman; and
James Frank Daniel, Sr., Councilman.

Respondents

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, respondents, the Saluda County Council and its chairman and members, respectfully request rehearing of this case, decided in an opinion filed June 13, 2012, Opinion No. 4989. In this appeal, appellant, Dennis N. Lambries, challenged the lower court's denial of a temporary injunction prohibiting the amendment of the Council's published agenda for regularly scheduled meetings. The Court of Appeals reversed, holding an agenda cannot be amended without violating the Freedom of Information Act ("FOIA"). Respondents

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MCCOY TAYLOR
& THOMAS, P.A.

respectfully ask the Court to rehear this appeal, based on the following principles and authorities that the Court overlooked or misapprehended.

The Court misapprehended the correct standard of review. As noted by the dissent, the decision to grant or deny an injunction is within the discretion of the trial court, and an order denying an injunction is reviewed for abuse of discretion. See *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The FOIA does not expressly prohibit amendment of a previously published agenda but is instead silent on that subject. Where the statute is silent on the matter, the Court should find that the lower court did not abuse its discretion in denying a temporary injunction prohibiting such amendments.

The majority overlooked the principle that, in construing a statute, the courts give words their plain meaning and words or groups of words cannot be added or taken away. See *Hartford Accident and Indemnity Co. v. Lindsay*, 273 S.C. 79, 254 S.E.2d 301 (1979). The majority's interpretation of the statute does not give the phrase "if any" its plain and ordinary meaning. Section 30-4-80 clearly contemplates that agenda are not mandatory for regularly scheduled meetings, stating, "[a]genda, if any, for regularly scheduled meetings . . ." The clear meaning of this language is that agenda are discretionary, not mandatory, for regularly scheduled meetings. Where no agenda is required for such meetings, it cannot be an FOIA violation to amend a discretionary agenda.

In its interpretation of the statute, the majority overlooked the clear dichotomy of the FOIA's requirements with respect to three categories of meetings. The relevant statute provides as follows:

(a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

S.C. Code Ann. § 30-4-80. Under this statute, the first three sentences apply to regularly scheduled meetings. The fourth, fifth, and sixth sentences apply to called, special, or rescheduled meetings. The seventh sentence applies to emergency meetings. The plain language of this statute treats regularly scheduled meetings differently than called, special, or rescheduled meetings and imposes differing notice and agenda requirements. As to first category of meetings – regularly scheduled meetings – agenda are not mandatory. To find otherwise fails to give meaning to the language “if any.”

In rejecting the plain meaning of the phrase “if any,” the majority invoked the purpose of the FOIA. In so doing, however, the majority expanded the stated purpose of the FOIA. The FOIA’s purpose is to “make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.”

S.C. Code Ann. § 30-4-15. The FOIA is not intended to dictate how open meetings are conducted, but to insure that meetings are open to public view and that the records of governing bodies are open for inspection. The majority’s construction goes further than

the purpose of allowing the citizens to “learn and report” official activity, imposing an agenda requirement for regularly scheduled meetings not expressly provided by statute.

In an apparent effort to give meaning to the “if any” language, the Court found that no agenda is required for a regularly scheduled meeting of a public body at which no formal action or discussion is to take place. In so doing, the Court overlooked the rules of error preservation applicable in the appellate courts. This argument was not raised to or ruled upon in the lower court. Throughout this action, appellant has contended that a regularly scheduled meeting is a “called” meeting and that an agenda is required under the sixth sentence of the statute for all called meetings, including regularly scheduled meetings. Throughout this action, appellant has also argued that *the only exception* to the agenda requirement is found in the seventh sentence of the statute – the exception for emergency meetings of public bodies. In oral argument, for the first time, appellant advanced the argument that no agenda is required for regularly scheduled meetings if there is to be no formal action or discussion, an argument inconsistent with appellant’s prior assertion that emergency meetings are *the only exception* to the agenda requirement. The majority premised its holding on this new argument, not raised to and ruled upon in the court below. Because this contention was first asserted in oral argument, it was not preserved, and it could not serve as the basis for the Court’s decision to reverse the lower court’s denial of a temporary injunction.

However, if such an argument had been preserved for review, the majority’s rationale has engrafted onto the FOIA a requirement not contained in its language. The majority has defined “called or special meeting” in a manner not addressed or contemplated by the language of the statute. The majority held that “[b]y implication, a

called or special meeting would only occur if an item required formal discussion or action.” Respondent respectfully submits that nothing in the FOIA implies such a construction of those terms. The distinction the majority embraces between a meeting in which formal action or discussion takes place and a meeting in which formal action or discussion does not take place has no foundation in the language of the FOIA. Indeed, respondent respectfully submits that a meeting without action or even discussion would be no meeting at all. The majority’s construction placed on the FOIA statute cannot be squared with the plain language of the statute, which clearly treats differently three separate and distinct categories of meetings – (1) regularly scheduled meetings, (2) called, special, or rescheduled meetings, and (3) emergency meetings – and imposes different notice and agenda requirements on each category.

The majority characterized as a “close question” whether a published agenda for a regularly scheduled meeting can be amended during the meeting without violating the FOIA. The majority recognized that the FOIA does not specifically prohibit amendment of an agenda, but nonetheless found that allowing amendment of agenda undercuts the purpose of the FOIA. In so ruling, the majority misapprehended the statute’s plain language by imposing a prohibition in an area about which the statute is silent. With respect to agenda for regularly scheduled meetings, nothing in the FOIA prohibits amending an agenda at the meeting of a public body, and the majority exceeded its judicial authority in reading such a prohibition into the statute.

The majority also overlooked the principle that prohibits the judiciary from restraining by injunction the exercise of legislative power by municipal corporations, including counties. *See Patton v. Richland County Council*, 303 S.C. 47, 398 S.E.2d 497

(1990). The majority's interpretation of the FOIA operates as a restraint on legislative power, imposing a prohibition on amending an agenda not contained in the FOIA.

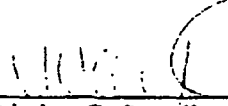
The majority also overlooked S.C. Code Ann. § 4-9-110, which provides that "[t]he [county] council shall determine its own rules and order of business." Saluda County Council has enacted rules that allow the agenda to be amended. The FOIA contains no express prohibition on a public body amending its published agenda. By reading such a prohibition into the FOIA, the majority has gone beyond a liberal construction of the FOIA and expanded its scope to impose a requirement not contemplated by the purpose or the plain language of the statute. The majority overlooked that the doctrine of separation of powers prohibits its legislating from the bench and imposing a prohibition against amending agenda not contained in the FOIA.

The majority misapprehended the impact of a public body's amendment of its agenda during a regularly scheduled meeting. Such action does not undermine the FOIA's purpose of allowing public access to public information. It does not undermine the FOIA's design that the activities of public bodies be in open session and not behind closed doors. It does not negate the purpose that the public be able to learn and report the actions of governing bodies.

The majority also overlooked that an FOIA violation can be criminal in nature. As the dissent recognized, the majority's judicial imposition of requirements not expressed in the FOIA has the potential to lead to new and unintended criminal prosecutions.

For all the reasons articulated in the respondent's brief, the dissenting opinion, and this petition, the Court should rehear this case and affirm the order of the lower court denying the temporary injunction.

Respectfully submitted,



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June 28, 2012.

The South Carolina Court of Appeals

Dennis N. Lambries, Appellant,

v.

Saluda County Council, T. Hardee Horne, Chairman,
William "Billie" Pugh, Councilman, Steve Teer,
Councilman, Jacob Schumpert, Councilman, and James
Frank Daniel, Sr., Councilman, Respondents.

Appellate Case No. 2010-171466

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Daniel G. Pieper

J.

U. Ke

J.

John D. Besten

J.

Columbia, South Carolina

cc:

Richard R. Gleissner
Christian Giresi Spradley

FILED

25 July 2012