THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-06482

Appellate Case No. 2013-000329

Harrison Partners, LLC, ... Appellant,

v.

Renewable Water Resources, ... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the additional sustaining grounds found by the Circuit Court, which Appellant never challenged, ripen to finality thereby foreclosing this Appeal?

2. To the extent background facts prove material, did Appellant convincingly prove the Hearing Officer's background findings were unsupported by evidence?

3. Did Appellant convincingly prove that no evidence supported the Hearing Officer's findings that Appellant, not ReWa, caused project delays and failed to complete its permit application?

4. Did the Hearing Officer err by finding Appellant lacked vested rights when Appellant substantially failed to complete its permit application?

5. Can Appellant raise constitutional arguments for the first time on Appeal and, if so, did Appellant prove a violation beyond a reasonable doubt?

STATEMENT OF THE CASE

Without first exhausting administrative remedies, Harrison Partners, LLC ("Appellant" or "HP") filed a Summons and Complaint against Renewable Water Resources ("ReWa") on September 9, 2009. Pursuant to a motion to dismiss, the Honorable Edward W. Miller dismissed the suit without prejudice pending an administrative hearing before ReWa. Appellant thereafter failed to file a Complaint in the administrative action. As a result, the Hearing Officer used Appellant's Complaint from the earlier dismissed Circuit Court action.

An administrative hearing proceeded on March 22nd and 23rd, 2011. Hearing Officer Michael D. Glenn ("Hearing Officer") presided. The Parties each introduced significant testimonial and documentary evidence. After the hearing, the Parties supplemented the record with the depositions of unavailable witnesses. The Parties compiled an eleven hundred (1100) page record.

The Hearing Officer issued his decision on September 1, 2011. Appellant thereafter appealed the Hearing Officer's decision to the Greenville County Circuit, as provided by ReWa's Sewer Use Regulation. Appellant commenced its appeal on September 29, 2011.

The Honorable Edward W. Miller heard Appellant's appeal on September 4, 2012. On November 16, 2012, Judge Miller affirmed the decision of the Hearing Officer. Appellant then filed a Motion to Reconsider on December 7, 2012. Judge Miller denied Appellant's Motion to Reconsider on January 10, 2013. Appellant filed the instant appeal.

I. STATEMENT OF FACTS

General Background

First organized as a special purpose district pursuant to South Carolina Act 362 in 1925, ReWa has provided sewer treatment services to Upstate residents for the past eighty-nine (89) years.[1] See S.C. Act 362 (1925). ReWa furnishes wastewater treatment services to over 400,000 customers in Greenville County and parts of Anderson, Spartanburg, Pickens, and Laurens Counties. See https://www.rewaonline.org/service-area.php. Seventeen subdistricts, comprised of various municipalities and other special purpose districts, discharge sewage from their

[1] ReWa formerly operated as Western Carolina Regional Sewer Authority ("WCRSA").

collection systems into ReWa's trunk lines for treatment at ReWa's wastewater treatment plants ("WWTP"). (Id.)[2]

Beginning in the Spring/Summer of 2006, Appellant purchased land in the southern tip of Greenville County below ReWa's Lower Reedy Wastewater Treatment Plant. (App. Brief p. 2.) No public sewer service existed in the basin where Appellant purchased the property. (R. p. 660, line 8-633, line 8.) And when it bought the property, Appellant knew no public sewer service could be offered until public providers had reviewed and approved finalized engineering plans and issued a flow acceptance letter ("Flow Acceptance Permit"). (See e.g., R. p. 794, Ex. 13.)[3] Appellant planned to build a residential housing development on the property which it later named Rivertrace. (App. Brief p. 2.)

Appellant hired Scott Bolo, P.E. ("Bolo") from the Insite Group as Rivertrace's head engineer. (App. Brief p. 8.) Bolo was also one of Appellant's shareholders. (Id.) Bolo proposed to pump sewer "uphill" with a pump station, force main, and across the back of ReWa's property to reach the front of the Lower Reedy Wastewater Treatment Plant. (See R. p. 760, Ex. 2; see also R. p. 600, lines 1-19 (describing what needed to

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[2] This distinction is important because many of the factual misstatements made in Appellant's Brief arise out of its misapprehension of the respective roles of the seventeen subdistricts and ReWa.

[3] Interestingly, Appellant was not the first developer who approached ReWa about developing the land where Rivertrace was proposed to be located. Prior to Appellant's purchasing the Rivertrace property, approximately five different prospective purchasers contacted Bishop about sewer service on the subject property. (R. pp. 599-600.) After analyzing the difficulty of sewering the project, all such developers decided not to purchase the land. (R. p. 600, lines 20-23)("Q. After they spoke with you about the difficulty in obtaining sewer service, you never heard from them again? A. No. That's correct.")

happen to get sewer to the property in the absence of existing public sewer service.) Appellant essentially sought to extend the sewer system out of order in order to reap the benefits of cheaper un-sewered land.[4]

As reflected by the evidence from the administrative hearing, Appellant's project faced a slew of problems causing the project to founder, including those caused by Bolo. (See *infra.*) First, because Appellant bought the land knowing no public sewer service was available, the project required a force main and pump station. But, the subdistrict embracing Appellant's land, Metropolitan Sewer District ("Metro"), understandably declined to own and maintain the force main and pump station. Second, Appellant collaborated on the sewer line project with another development named Riversway (owned by the Windsor Aughtry Company), whose project was no less than a year behind that of Appellant in relation to its timing. (R. pp. 624, line 23-625, line 2.)[5]

Third, unlike any other project, Appellant proposed to build its force main across ReWa's property. (R. p. 624, lines 14-16; R. p. 875:2-24.) Then, as discussed below, Appellant failed to identify the proposed route across ReWa's property for over

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[4] The costs of later installing permanent gravity systems in the area were something Appellant refused to acknowledge as a legitimate concern of the public entities left to provide the collection, trunkline, and treatment services in the basin. Of course, by the time public gravity lines were installed in the basin, Appellant would have been long since gone.

[5] While Scott Bolo ("Bolo"), HP's chief engineer, testified that HP's project was not complicated, it appears that Insite Group actively advertised the project as "technically challenging." (Compare R. p. 318, lines 20-21 ("Q. Was this a technically challenging project? A. No, it wasn't") *with* R. p. 798, Ex. 16 (Insight Group Advertisement stating: "The extended off-site routing and tie-ins made this project technically challenging."); see also R. p. 973 (Unanswered Requests for Admission, #8 admitting: "The Rivers Trace project was technically challenging.")

seventeen months despite repeated requests. (See *infra*.) When Appellant finally provided the proposed route, it was technically infeasible. (Id.) Thereafter, ReWa helped Appellant to identify alternative solutions but, in each instance, Appellant failed to provide ReWa the necessary data and materials to approve the project's Flow Acceptance Permit. (Id.)

Much of Appellant's brief (and underlying case) proves to be a red herring. In addition to serially misstating the Record, Appellant highly exaggerates the impact of an amendment ("Amendment") to ReWa's Sewer Use Regulation ("Regulation") in May of 2008. (App. Brief, *passim*.) ReWa amended its Regulation to address the proliferation of private collector systems ("PCS") in its service area. (R. pp. 881, line 21-882, line 16.) ReWa studied the impact of the rise in PCSs and found they: stymied orderly development of public sewer infrastructure, posed substantial risks stemming from their undercapitalized private utility owners, foisted long-term externality costs on ReWa's other constituents, and created environmental oversight complications since PCSs ballooned the number of entities discharging into ReWa's system ballooned. (R. pp. 880-882; see also R. pp. 475, line 13-476, line 25.) The Amendment was then specifically crafted, after a protracted public comment period, to allow projects like Rivertrace to proceed. (R. p. 495:5-21.) Thus, while it is true that Appellant's project foundered, it did not do so because of the amendment to the Sewer Use Regulation.

SUMMARY OF ADMINISTRATIVE HEARING FACTS

Appellant bottoms almost the entirety of its Brief on misstatements and highly spun distortions of the underlying Record, which it then repeats—over and over again

in each later section of its Brief.[6] (See App. Brief.) For example, Appellant falsely accuses ReWa of delaying its project beginning in March of 2006 so it could enact a regulatory amendment in May of 2008—an amendment ReWa only began considering in December of 2007. (See, e.g., App. Brief, pp. 23-24, 30.) Appellant also portrays ReWa's attempts to help it find a viable route for service as efforts to delay its Project. Contrary to Appellant's representations, what the actual evidence showed is that the peculiarities of the project led to Appellant pursuing various (yet never finalized) routes and options over several years. The facts surrounding each route/option are as follows:

A. Appellant's Problems Finding a Viable Route:

- **Route 1—The Flag Lot Route: 3/16/06 to 8/29/07 (17 Month Delay):**

Appellant first met with ReWa staff sometime in early 2006. (Compare, R. p. 794, Ex. 13 *with* R. p. 605, lines 1-4 (Unaware of any prior e-mails).) It was during this timeframe that the first route was proposed. In highly unusual fashion, Appellant's proposed route crossed through ReWa's Lower Reedy Wastewater Treatment Plant.[7] While Appellant had no right to cross ReWa land, and while ReWa had an absolute right to deny the route outright, ReWa informed Appellant it would consider allowing Appellant to cross ReWa land with a force main.[8] Prior to this time, no party had ever

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[6] Due to this tactic, it is virtually impossible for ReWa to correct every misstatement made by Appellant. Unfortunately, this is not the first time Appellant has used this tactic. At the Circuit Court level, Appellant made so many factual misstatements ReWa had to annotate Appellant's Brief. (See R. pp. 1179-1224.)

[7] Bishop testified the idea was first proposed in a joint meeting with HP members. (R. p. 607, lines 9-13.)

[8] Appellant's initial route has become known as the "Flag Lot" route referring to various properties adjacent to the ReWa property. (R. p. 604, lines 4-5) (As of March 16, 2006, "[w]e are talking about—I think it's been referred to as the flag lot route.")

requested to cross ReWa plant property. (R. pp. 607, line 23-608, line 3) (Board approval required in part "because we've never had a request like that before" and because a formal right of way would be required.); R. p. 472, lines 3-6) ("Q. Have you ever had a private pump force main go across your plant property? A. No. This was very unique to us.")

In e-mail correspondence dated March 16, 2006, Brian Bishop ("Bishop"), ReWa's Engineering Supervisor, cautioned: "Please keep in mind Western Carolina has not made a determination regarding right of way access [for the Flag Lot Route] through our treatment plant property. I would recommend that you provide us with a potential force main route for our review before you finalize your design." (R. p. 794, Ex. 13, ¶2) (emphasis added); R. p. 287, lines 8-15.) According to Bishop, his purpose in requesting the proposed route early in the process was "two-fold": (1) Bishop "needed to see exactly where the route was going to be"; and (2) "I was really trying to help them out in a way to say, "Look, don't spend a lot of money on this until we determine whether this is really the route that's going to be approved." (R. p. 606, lines 2-12.) As discussed below, Bolo altogether ignored Bishop's advice. Bolo, in fact, failed to identify the potential force main route until seventeen months later and completed substantial engineering work in the interim.

In the same correspondence, Bishop confirmed capacity in ReWa's Lower Reedy Sewer Treatment Plant. (R. p. 794, Ex. 13.) Confirmation of plant capacity is the first step in pursuing a Flow Acceptance Permit since if no capacity exists in the treatment plant, all other preconditions to service prove irrelevant. (R. p. 601, lines

20-24)(Confirming as first step in the process.)[9] Bishop then generally outlined the preliminary steps Bolo would need to complete before ReWa would consider issuing a Flow Acceptance Permit. (R. p. 794, Ex. 13.) Such steps included:

- Obtaining a right of way from ReWa;
- Designing the sewer lines and pump station to meet both the specifications of ReWa and the Metropolitan Sewer Subdistrict ("Metro");
- Reaching "an agreement between all parties...[defining] ownership/operation of the pump station and force main."[10]

(Id. at ¶3; see also R. p. 290, lines 1-20 (admitting Bishop related requirements for Flow Acceptance Permit to Appellant on 3/16/06).) Finally, Bishop noted ReWa's "willingness to serve this project is contingent upon the property owner complying with all requirements/standards of Western Carolina, Metropolitan Sewer and the Greenville County Planning Commission." (R. p. 794, Ex. 13.)[11]

A lull of activity on the project then ensued for approximately 11 months. E-mail correspondence from Bishop dated February 9, 2007 reflects Bishop reminding Appellant: "As part of the permit application, we need the survey map and description for the portion of the force main which will be located on our property." (R. p. 795,

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[9] During the administrative hearing, ReWa introduced a sample Flow Acceptance Letter, which is the last step in the process. (Compare R. p. 794, Ex. 13 *with* R. p. 828, Ex. 32.)

[10] Bishop testified that such an agreement could be called a "sustainability agreement." (R. p. 609, lines 10-13.) It would be, at this stage, that a gravity surcharge would be discussed. (Id.)

[11] Bishop testified that requirements for ReWa, Metro, and Greenville County were distinct. (R. pp. 609, line 14-610, line 25.) All filings required by each agency must be made to "each one of these agencies." (Id.; see also R. p. 458, lines 1-12 (Metro reviews for Metro, ReWa reviews for ReWa.)

Ex. 14, ¶2) (emphasis added)); (R. p. 614, lines 8-17 (ReWa still had not received any of the requested materials and "needed the plans to be able to...see whether we could approve [Flag Lot Route] or not.") Bishop's testimony emphasized the extreme importance of the force main's location on ReWa's property. (R. pp. 619, line 2-621, line 1.) The proposed line could impact service to a huge number of ReWa customers served by the sixty million dollar, Lower Reedy Treatment Plant. (R. p. 619, lines 2-16.)

By this point in time (February 9, 2007), Appellant had decided to construct the proposed sewer infrastructure with Windsor Aughtry (for the Riversway development) causing Bishop to note again: "[W]e will need the final plans and profiles for both subdivisions and the force main route along with the flow request in order to provide you with the flow acceptance letter. This also needs to be submitted to Metro Sewer for their approval and O&M letter." (R. p. 795, Ex. 14 at ¶3) (emphasis added).) Bishop testified he thereafter never received the final Flag Lot Route, nor did he ever receive fully designed force main plans. (R. pp. 614, line 18-615, line 1.)

Knowing full well that Appellant had submitted none of the information required by ReWa for a Flow Acceptance Permit, a mere three days after receiving Bishop's February 9, 2007 e-mail correspondence, Bolo wrote to Bishop and asked, "Could you please send me a willingness to serve letter for this project as it is a requirement for the DHEC permits?" (R. p. 796, Ex. 15.) Surprised by the question, on February 14, 2007, Bishop predictably responded yet again: "I cannot send the flow acceptance letter until we have the final plans for both subdivisions and the force main route along with working out the easement agreement." R. p. 796, Ex. 15; R. p. 621, lines 15-

22.)[12] Contrary to Bolo's testimony, Bishop confirmed he asked for the materials because Appellant had not sent them. (R. p. 614, lines 8-17.) Bolo answered, "Ok thanks. Edward is putting the easements together. We can finalize our subdivision and forward to your attention." (R. p. 796, Ex. 15.) Unsurprisingly, this never occurred. (R. pp. 614, line 18-615, line 1; R. p. 153, lines 8-10 (Appellant's own contractor testifying he never saw final plans for Appellant); R. p. 157, lines 1-4 (Appellant's contractor confirming he never say a survey).)[13]

Later the same day (on February 14, 2007), Bishop again wrote to Bolo noting the remainder of what HP needed to submit to ReWa for review. (R. pp. 594-595) (Bishop discussing correspondence and its intent). Those items included:

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[12] With respect to the issue relating to the Flag Lot Route plans, Bolo lacks all credibility. Bolo testified that he submitted surveyed plans for the Flag Lot Route to ReWa, although no such survey was ever received. (R. pp. 341-42.) When asked to produce the fully surveyed line at his deposition, Bolo produced a blank CD. (Id.) Despite months of requests from ReWa, three days before the administrative hearing, Bolo electronically produced a simple line drawing which even Gene McCall from Condor (Appellant's engineering consultant) testified did not constitute a surveyed line. (R. p. 162, lines 11-16 ("Well that's not a survey, no.") McCall testified that he never saw a survey for any route. (R. p. 157, lines 1-4.) Of note, Appellant had never supplied ReWa with even the simple line drawing during the application process. Bolo then testified under oath the line contained invisible, imbedded data. (R. p. 343, lines 1-4.) When after the hearing ReWa's engineers examined the electronic submission for the imbedded data testified to by Bolo, no electronic data was found on the same.

[13] Notwithstanding multiple pieces of correspondence from Bishop asking for the proposed force main route, in dizzying circularity, Bolo testified at the hearing that he did not submit the requested proposed route because he was waiting for Bishop to approve the route even before Bolo identified the route. (R. p. 332, lines 17-20) ("Q. March 21, 2007 reflects that you hadn't sent in the easement application yet. A. Well, maybe because you all hadn't approved the route..."); R. p. 350, lines 2-4 ("Well, why would you complete an encroachment permit application for a route that was not approved?") This is important because almost the entirety of Appellant's brief cites Bolo's testimony which was replete with statements contradicted by the documentary evidence, the evidence of almost all other witnesses, and, at times, his own testimony. In short, Mr. Bolo was not a credible witness.

1. $220 review fee for each subdivision
2. Request for flow—not to exceed 2-year build out
3. Stamped plans
4. I will also need a statement that the pump stations are designed to meet WCRSA's minimum requirements.

(R. p. 799, Ex. 17.) Bishop then noted, "Please be patient with the approval process since these projects are not typical." (Id.) Notwithstanding Bishop's instructions to Bolo to submit the required information to ReWa, over and over again, in ever-shifting testimony, Bolo would now—have the Court of Appeals believe Appellant satisfied all of the requirements by submitting the information to Metro (not ReWa), materials he notably could never provide and failed to introduce into evidence. (Compare R. 298, lines 4-6)(Bolo: "the entire time we were submitting to Metropolitan; and then ReWa would be copied on what we were submitting to Metropolitan" *with* R. p. 311, lines 12-19 ("ReWa doesn't have any finalized plans, sir. Do you realize that? A. But Metro does.") In truth, ReWa never received finalized plans and Appellant has never produced what it claims to have sent to Metro.

On March 21, 2007, in an e-mail, Bolo wrote to Bishop and noted Appellant was still "finalizing the WCRSA easement forms forwarded." (R. p. 800, Ex. 18.) Yet, Bolo still had not provided ReWa with "a final survey engineered route" and still had not supplied ReWa with the engineering plans for the force main across ReWa's property. (R. p. 598, lines 2-22; see also R. p. 130, lines 8-10 (Never saw final plans).) Over a year after Bishop first told Appellant not to proceed until he received final approval of the proposed route, Bolo still had not done so and continued to proceed with the project without supplying the information required by ReWa to

proceed.[14] (R. p. 627, lines 3-24; see also R. p. 972 (Unanswered Requests for Admissions #6 admitting, "HP never completed surveys of the Flag Lot Route.")

On July 3, 2007, Bolo's assistant, Ashley Hornung, once again wrote to Bishop about obtaining approval to cross ReWa's property. (See R. p. 801, Ex. 19.) Hornung's e-mail reflects that, as of this date, Appellant still had not surveyed the proposed route and supplied the same to ReWa. (Id.) In fact, Hornung asks Bishop whether she can send un-surveyed copies of the proposed route as appearing on Appellant's "engineering sheets." (R. p. 801, Ex. 19.) At this point, ReWa still does not have the most basic information requested from Appellant concerning the Flag Lot Route. (R. p. 627, lines 22-24)(Still had not received proposed route.) Bishop told Hornung the surveys were required to approve the route and specify a recordable legal description in the easement, if approved. (R. p. 631, lines 9-20.)

Appellant, in fact, never identified the proposed route across ReWa's property until August of 2007, over seventeen months after the first meeting on the project. (R. pp. 601, line 8-604, line 17; R. p. 481, lines 5-8 (Route first identified to ReWa in August 2007 noting "he'd come to me in August about that.")[15] Even then, Appellant never submitted an easement application or the required surveys. (R. p. 617, lines 4-16; R. p. 153, lines 20-24) (No encroachment application and no final plans.) Appellant similarly failed to submit engineering plans for the force main proposed to cross

[14] Note, throughout its Brief, Appellant serially represents to the Court that ReWa caused the delay in Appellant's project, which is simply untrue.

[15] Ironically, Appellant repeatedly notes the Project should have been operational within a year, at the most. (See e.g. App. Brief p. 7 ("[N]early two years into the process that should have lasted at most a year.") ReWa agrees but the delay was caused by Appellant, not ReWa. This is why the representations in Appellant's Brief prove so disingenuous.

ReWa's land, let alone finalized plans for the Flag Lot Route. (R. pp. 614, line-615, line 17; R. p. 153, lines 8-24 (Appellant's own consultant does not recall any final plans for pump or force main.)

On August 29, 2007, Mike Deaton (a conspicuously absent corroborating witness if Bolo's testimony had been true), an Insite Group employee, finally disclosed the proposed route and walked its path with Bishop. (R. p. 802, Ex. 20.)[16] According to Bishop, it became immediately apparent to both Bishop and Deaton the route was not viable. (R. p. 802-03, Ex. 20; R. p. 636, lines 1-25.) Bishop immediately informed Bolo of the problems. (R. p. 637, lines 2-7 (E-mailed Bolo about problems either the same day or next morning.) The problems cited in Bishop's e-mail to Bolo included:

- 2/3 of the route was "heavily forested";
- One particular section dropped 20+ feet and then rose 30+ feet;
- There was no room to re-route "the force main to decrease the elevation";
- Construction would be "very expensive";
- "An access road would have to be built";
- "The force main would be laid very deep";
- "A significant number of trees would have to be removed";
- "A high potential for rock" existed";

[16] Notably, Bishop set the meeting within only a few days of when he was contacted by Deaton disclosing the proposed route and requesting assistance in completing a survey. (R. p. 632, lines 14-23.) In bizarre testimony, Bolo testified that Bishop met Deaton to clear the property. (R. p. 346, lines 2-25) ("He was going out to the site on August 29, 2007 to construct a line, to clear the right-of-way and go in.") Bolo was not at the meeting. (Id.) The testimony also rings hollow since much of the Flag Lot Route, outside of ReWa's fenced plant property, runs through a shared driveway and would require no clearing whatsoever. (R. p. 633, line 10-634, line 18.) At this time (or ever), no easement application had been received from ReWa and, thus, not approved by ReWa's Board. (R. p. 614, line 4-23.) Understandably, Bishop testified he would never have allowed land to be cleared in the absence of route approval and executed easement. R. p. 633, lines 2-9) ("Q. That never happened, did it? A. No, it did not happen."); (See also R. p. 634, lines 5-10.)

- The route would interfere with new security measures and a new fiber optic cable;
- Condor's ownership of the force main would interfere with the new security measures; and
- ReWa was not receptive to "having trees removed or having the potential for rock blasting at the site."

(R. p. 802, Ex. 20; R. p. 636, lines 1-25; see also R. pp. 462-463 (discussing operational problems facing ReWa relative to proposed Flag Lot Route once disclosed by Appellant.)[17] Within five (5) hours of receiving Bishop's e-mail, Bolo responded in agreement: "I read your notes and can understand what you are saying about the route." (R. p. 802, Ex. 20.)

Tellingly, Bolo would not answer even the most basic questions about the Flag Lot Route. (See R. pp. 200-397 (*passim*).) He transparently deflected his responses to some other point of time occurring months and years later. (Id.) But Bolo was not confused. He intentionally confused his responses and purposefully conflated what occurred on different routes. (Id.) To answer the questions candidly would mean Bolo had to admit the entire delay for the first 17 months of Appellant's project occurred exclusively at his own hand.

The Flag Lot Route can be summarized as follows:

- In March of 2006, Bishop informed Bolo to shore up the forced main route on ReWa's property before he begins engineering design. (R. p. 637, lines 8-11.)

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[17] Interestingly, during the testimony of Jay Alexander, an employee of Windsor Aughtry, Alexander testified that Bolo never disclosed Bishop's concerns with the Flag Lot Route. (R. pp. 857 (p.20), line 11-859 (p.22), line 2.) This could very well explain why Bolo now attempts to blame ReWa for the delay. That is to say, Bolo knows ReWa informed him, at the project's start, to confirm the proposed route before completing substantial engineering work. Bolo's failure to do so created the problems Appellant and Windsor Aughtry encountered in August of 2007.

- Bolo ignores Bishop and HP does not contact him about the route for eighteen months. (Id. at lines 12-15.)

- Once HP actually contacts Bishop about the route, Bishop walks the route within only a few days. (Id.)

- After Bishop walks the route with Deaton, he communicates problems with the route to Bolo within 24 hours. (Id. at lines 16-19.)

- The problems with the route could have been detected as early as March of 2006, had Bolo followed Bishop's advice and supplied the requested information. (Id. at lines 22-25.)

- Bolo's unwillingness to supply the proposed route to Bishop caused a delay in the project for the first 17 months.[18] (Id.)

Notwithstanding all of the evidence, Appellant's Brief blames ReWa for its self-inflicted delays. (See e.g., App. Brief, pp. 8-9 & *passim* (Suggesting ReWa needlessly drew out the process.)

- **Route 2—The Bishop Proposal: 8/27/07 to 11/26/07 (3 Month Delay):**

Even after the Flag Lot Route failed, ReWa sought to help Appellant find a solution. In the same e-mail dated August 27th, 2007, Bishop informed Bolo of an alternate solution. (R. pp. 802-03, Ex. 20.) Bishop wrote:

> With that said, I would propose the following:
>
> 1. Have the Riversway subdivision pump to your site using the right of way you recently purchased.
> 2. Install a pump station sufficient to pump your site flow along with the Riversway flows.

[18] Gene McCall testified the average length of the project would be three to six months. (R. p. 114, lines 10-17.) While ReWa believes such an estimate is too short for a project of this complexity, if taken as true, by McCall's own testimony, Bolo delayed Appellant's project somewhere in the range of 3 to 6 times as long as it should have lasted by failing to supply basic route information, a survey, and the design plans requested by ReWa starting in March of 2006.

3. Run your force main up Harrison Bridge road to Metropolitan's gravity sewer.
4. All that would be needed to install the force main is a DOT encroachment which would not cost. Additionally, there is sufficient room to install the force main and would be much easier, quicker and less expensive even if you had to upgrade Metro's existing gravity line.

(R. pp. 802-03, Ex. 20.)

Bolo testified he loved the solution proposed by Bishop, which has become known as the "Bishop Proposal." (R. p. 355, lines 14-18.) Bolo also conceded the Bishop Proposal constituted a viable engineering solution. (R. p. 355, lines 19-21)("Engineering wise, it was [viable].") Indeed, Bolo pursued the Bishop Proposal and even sent ReWa a proposed sketch of the new route. (See R. pp. 770-71, Ex. 7.) But, to date, it is not exactly clear why Appellant abandoned the Bishop Proposal.

According to Bolo, in some testimony, Metro queered the route. (R. p. 355, lines 17-18)("Metropolitan wouldn't allow us to use their easement."); see also R. p. 973 (Unanswered Requests for Admissions #9 admitting, "The Bishop Proposal would have worked if Appellant could have had access to existing right of ways owned by the Metropolitan Sewer Sub-district.")[19] In other testimony (after impeachment), Bolo admitted Appellant's project collaborator, Windsor Aughtry, objected to the Bishop Proposal because of increased costs. (R. p. 370, line 12-371, line 6); see also R. p. 973 (Unanswered Request for Admission #7 admitting, "The owners of the Riversway development objected to the Bishop Proposal due to cost reasons."; R. p. 805, Ex. 21

[19] ReWa would note for the Court that it could affirm the lower court based upon Appellant's failure to respond to ReWa's requests for admission alone. Scott v. Greenville Housing Authority, 353 S.C. 639, 648 (2003) ("Admissions under Rule 36 are treated as admissions in pleadings.")

(Bolo e-mail: "I talked to my partners at Windsor Aughtry and was told they were not willing to accept the longer route...be back in touch soon.") Windsor Aughtry's representative, Jay Alexander, testified both parties objected to the costs of the Bishop Proposal. (R. p. 858: (p. 24:5-10).) Yet, neither party could actually testify what the costs of the Bishop Proposal actually were. (R. p. 858 (p.23:16-25).) While it is unclear why Appellant abandoned the Bishop Proposal, what is clear is that ReWa provided a viable solution, which Appellant abandoned for reasons wholly unrelated to ReWa.

Bolo also implausibly testified, at this point in time (i.e. August 2007), Mike Dickson, the Executive Director at Metro, informed him about his discussions with ReWa about amending the Sewer Use Regulation. (R. p. 359, lines 1-12.)[20] Indicative of Bolo's credibility, however, ReWa did not even begin considering the Sewer Use Regulation's amendment until the end of November or early December 2007, roughly ninety days *after* when Bolo testified he learned of the same from Mike Dixon. (See R. p. 493, lines 21-24.) By then, the parties had already begun evaluating the River Route, discussed below.

- **Route 3—The River Route: 11/26/07 to date (Indefinite Delay--Never Finalized):**

After abandoning the Bishop Proposal, during early October of 2007, Appellant once again approached ReWa (not *vice versa*) about how to obtain sewer service. (See, e.g., R. p. 805, Ex. 21 (September 30, 2007 e-mail, "I talked to my partners at

[20] This constitutes another fact that Appellant repeatedly cites even though the remaining evidence of Record demonstrates it as untrue. Of course, Appellant never called Dickson to corroborate his implausible testimony.

Windsor Aughtry and was told they were not willing to accept the longer route...be back in touch soon.") ReWa again sat down with Appellant and, over the next few weeks, mapped out another alternative route.[21] The new route allowed Appellant to cross ReWa's Lower Reedy Plant property. This particular route followed the river on ReWa's property and has become known as the River Route. (R. p. 806, Ex. 22) ("As I understand it we are coming up the river now.") As with the Flag Lot Route, the issuance of a Flow Acceptance Permit was: subject to both Metro's and ReWa's final approval of the engineering plans, subject to Appellant filing an application to obtain right of ways, subject to Appellant obtaining an executed agreement by all parties for the ownership of the force mains and pump station, and subject to Appellant otherwise obtaining a Flow Acceptance Permit.

Even though ReWa told Appellant that it could cross its property along the river, just like the Flag Lot Route, Appellant never filed an application for a right of way over ReWa's land. The documentary evidence wholly contradicts Bolo's testimony regarding the River Route. According to Bolo, Appellant never submitted easement applications because ReWa would not approve the route. (R. p. 350, lines 2-4; R. p. 153, lines 20-24 (No encroachment application because plans were not finalized.) However, e-mail correspondence from Ashley Hornung, Bolo's assistant, dated January 9, 2008 states:

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[21] For the Court's benefit, ReWa would note how extraordinary ReWa's efforts were in this regard. ReWa had no duty to continually assist Appellant with its Project. Yet, it did so because Appellant asked. Moreover, Appellant had no obligation to pursue any of ReWa's proposed work-outs of its problems. This is why Appellant's claims are so disingenuous. The documentary evidence shows ReWa went out of its way to help Appellant. Yet, Appellant now mischaracterizes the same as ReWa trying to stymie its project. The documentary evidence belies the entirety of Appellant's case.

> I have attached the proposed route through your properties...Please let me know if this layout is ok so I can get an easement document wrote up and signed by you all. I will then also have to get an encroachment application signed by you to go through the property I suppose.

(R. p. 807, Ex. 23 (emphasis added).) Two days later, on January 11, 2008, Bishop responded, "The route in general looks to be ok." (R. pp. 808-09, Ex. 24.) Yet, Appellant never submitted easement applications to ReWa, even after Bishop's confirmation of the layout. And, according to Bolo, ReWa inexplicably prevented Appellant from doing so.

Appellant also never submitted final engineering plans for the River Route. (R. pp. 663, line 6-666, line 10.) Appellant never obtained an agreement from all parties involved concerning the ownership and maintenance of the pump station and force main. (Id.) As a result, Appellant never obtained a Flow Acceptance Permit, nor was Appellant grandfathered.[22]

Significant delays—again wholly unrelated to ReWa--hampered the River Route for two reasons. First, in January of 2008, Riversway and Rivertrace sprung on ReWa, for the first time, that they intended to build two force mains across ReWa's property instead of one. Bishop replied: "No one has indicated to me that there would be two force mains. This has never been discussed." (R. p. 810, Ex. 25.) According to Gene McCall, Appellant's engineering consultant, the possible need for the second force main resulted because delays placed Windsor Aughtry substantially behind Appellant from an overall engineering standpoint. (R. p. 126, lines 15-24; see also R. p. 624, lines 23-25) (Windsor Aughtry up to a year behind.) And, as discussed below, this

[22] The importance of these facts, as discussed below, relates to the incompleteness of Appellant's application throughout the process.

design issue was never resolved by Appellant and Windsor Aughtry, which was the *real* reason Bolo never applied for an easement from ReWa. (See R. p. 811, Ex. 26) ("[W]e are not sure at this time if we will be using a combined force main...or 2 separate force mains in the same right of way."); R. p. 662, lines 12-25 (recalling the project never resolved the joint or single force main issue and never re-approached ReWa seeking approval one way or another.).) Importantly, ReWa could not issue a Flow Acceptance Permit, even if it were so inclined, until final plans were submitted and a right of way across ReWa land had been executed, neither of which could occur until the issue of force main design resolved.

Second, the River Route was delayed because Metro (not ReWa) raised concerns about Bolo's engineering calculations. (R. pp. 659, line 22-660, line 7); see also R. p. 973 (Unanswered RFA #10 admitting, "Metro expressed concerns about the engineering calculations completed by the InSite Group in relation to the River Route.") Metro (perhaps rightfully so) objected to Bolo's engineering proposal citing concerns that the river basin was too flat and could not be served by a small diameter pipe. (Id.) Metro's objections caused delays in the Spring of 2008, having nothing to do with ReWa. At one point, Metro even instructed Appellant to stop working until they heard back from Metro.

Appellant never finalized its plans for the River Route and correspondingly never submitted final plans for the route to ReWa's Lower Reedy Treatment Plant. In fact, as noted above, the correspondence dated April 14, 2008 reflects that Appellant and Windsor Aughtry still had not even decided basic plans regarding the design of the force main HP sought to build on ReWa's property. (R. p. 811, Ex. 26.) The April 14,

2008 correspondence further confirms the incomplete nature of the plans by noting, "We will review this design and make this final determination as soon as we begin finalizing our design." (Id.) On May 5, 2008, ReWa amended its Sewer Use Regulation in relation to privately-owned pump stations. (R. p. 761-64, Ex. 3.) At this time, and at no time thereafter, had Appellant submitted finalized engineering plans for the River Route (or any route).[23]

At the time of the regulatory amendment in May of 2008 (the point of time for which Appellant claims it possessed vested rights), Appellant had not: obtained executed right of ways, had not finalized an agreement for the ownership of the force mains and pump station, had not submitted finalized plans, and had not obtained a Flow Acceptance Permit. (R. pp. 663, line 6-666, line 10; see also R. p. 973 (Unanswered RFAs ##14, 15, and 18 admitting HP never received a Flow Acceptance Permit and never obtained an executed right of way from ReWa.) Indeed, HP never submitted any of these materials, even though Bishop informed Bolo all were required as early as March of 2006.[24]

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[23] During the hearing Bolo jumped up during the cross-examination of Bishop claiming that certain file materials in the ReWa file constituted missing materials from the proposed River Route force main. When Bishop reviewed the profile, however, it was dated July of 2006. (R. pp. 701, line 7-703, line 25.) As discussed above, the River Route was not even discussed until November of 2007. The reportedly "found" engineering profile appears to be from the subdivision's force mains, not the force main sought on ReWa property, but again, ReWa is not entirely sure what it is because it is unlabeled and has no point of reference to anything allowing ReWa to evaluate it. (Id.) In its brief, Appellant mischaracterized the unlabeled mystery document as "certain required plans and calculations...discovered...sitting on counsel's table." (See App. Brief p. 16.) Thus, once again, Appellant has misstated the evidence in hopes of confusing the Court about the underlying facts so as to color its impressions. (Id.)

[24] In addition to the River Route, Appellant had no less than five other potential options. First, under the Amended Sewer Use Regulation Condor could have owned the

ARGUMENT

I. THE LOWER COURT'S ORDER CONTAINED UNCHALLENGED SUSTAINING GROUNDS CAUSING THIS APPEAL TO FAIL.

Appellant takes its appeal from an Order of the Circuit Court ("Subject Order"), which, in an appellate capacity, affirmed the underlying administrative decision. (See App. Brief, pp. 1-2).) The lower court's order contained several alternative sustaining grounds ("Sustaining Grounds"), which Appellant never challenged before and cannot now challenge for the first time on appeal. (R. pp. 13-14, 11/16/12 Order.) The Sustaining Grounds included:

1. HP failed to follow the adjudicatory process and procedure required by ReWa's Sewer Use Regulation. (Id. at 14.)

2. Only ReWa's Commission could grant to Appellant an interest in land owned by ReWa. Until such time, Appellant could never obtain a vested interest in project plans. Yet, ReWa's Commission never granted such interest and Appellant conceded it had to have an easement across ReWa's land, "no matter which way [it] went." (Id.)

3. By operation of South Carolina's Statute of Frauds, Appellant had no right to cross ReWa's property absent a written conveyance, which it never obtained. (Id.)

4. The doctrine of equitable estoppel has no application under the instant facts. See Berkley Elec. Coop, Inc. v. Town of Mount Pleasant, 308 S.C. 205, 209-11, 417 S.E.2d 579, 582-83 (1992). (Id.)

5. Even if Appellant's arguments were otherwise correct, the pending ordinance doctrine would defeat Appellant's allegations. (Id.)

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collector system, the pump station, and force main, so long as it reached an agreement with Metro. Second, Appellant could have deannexed from Metro and Condor could have owned the collector system, the pump station and force main so long as it reached an agreement with ReWa. Third, Appellant could have deannexed from Metro and ReWa could have owned the collector system, pump station and force main, which ReWa did not desire to do (and rarely does) but relented to accommodate Appellant. Fourth, Appellant could have pursued a package plant. Pages 949 through 952 of the Record contains a more detailed discussion of these options.

When it included the Sustaining Grounds in its Order, the lower court simultaneously found Appellant never meaningfully responded to the same:

> While Respondent [ReWa] raised all such issues in its brief opposing Appellant [HP]'s grounds for appeal, Appellant provided no meaningful response to the same. Accordingly, the Court adopts such grounds as additional sustaining grounds in further support of its affirming the Hearing Officer's decision.

(Id.) Appellant likewise never challenged the Sustaining Grounds after the lower court issued the Subject Order. Yet now, Appellant raises substantive arguments against the Sustaining Grounds.

Appellant filed a motion to reconsider the Subject Order on December 7, 2012. (R. p. 1225, 12/7/2012 Mot. to Recon.) None of the grounds in HP's motion challenged (or even referenced) any of the Sustaining Grounds in the Subject Order. (Id.) Thus, before the lower court issued the Subject Order, Appellant never argued against the Sustaining Grounds *and* after the Subject Order was issued, Appellant still never challenged any of the Sustaining Grounds in the Subject Order. (Compare R. pp. 13-14, 11/16/12 Order (Order finding "no meaningful response") *with* R. p. 1225, 12/7/2012 Mot. to Recons. (Motion failing to contest Alternative Grounds)). While Appellant ignored the grounds (presumably because no response existed), each of the Sustaining Grounds created an independent basis to sustain the Subject Order. (See R. pp. 1117-1178, Resp. Cir. Ct. Br.) Appellant cannot now challenge the grounds for the first time on appeal, as it attempts. (See App. Brief pp. 42-49.)

A. UNLESS RAISED IN THE LOWER COURT, HP CANNOT CHALLENGE THE ALTERNATIVE GROUNDS ON APPEAL.

The Sustaining Grounds have now ripened to finality and Appellant cannot raise them before the Court of Appeals. As noted *supra*, in the Subject Order, the lower court found HP never meaningfully responded to the Alternative Grounds. (R. p. 14, 11/16/12 Order.) In light of the same, only two results can obtain, neither of which preserves the Alternative Grounds for appellate review.

Appellant must either admit or deny failing to respond to the Sustaining Grounds. If Appellant concedes (as it should) that it failed to contest the Sustaining Grounds below, then Appellant cannot now advance new arguments challenging the Sustaining Grounds. Such arguments would necessarily constitute arguments newly minted by Appellant and raised for the first time on appeal, which South Carolina courts expressly disallow. See Hill v. S.C. Dep't of Health and Envtl. Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("[T]o preserve an issue for appellate review, a matter may not be raised for the first time on appeal, but must have been both raised to and ruled upon by the trial court.")[25]

Conversely, if Appellant now contends (the record notwithstanding) that it somehow contested the Sustaining Grounds, then HP never raised such grounds—as

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[25]See also Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 780–81 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled upon by the lower court."); Ro-Lo Enters. v. Hicks Enters., Inc., 294 S.C. 111, 113, 362 S.E.2d 888, 889 (Ct. App. 1987) ("We cannot grant relief on issues argued for the first time on appeal."); Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal."); Duck v. Jenkins, 297 S.C. 136, 139, 375 S.E.2d 178, 179 (Ct. App. 1988) ("An unchallenged finding of fact will not be disturbed . . . on appeal.").

required—in its motion to reconsider. (R. p. 1225, 12/7/2012 Mot. to Recon).) To preserve its arguments in opposition, Appellant had to raise them first in its Rule 59 Motion and secure a ruling about the same by the Circuit Court. Ransom v. SC Water Res. Comm'n, 321 S.C. 211, 219, 467 S.E.2d 463, 467 (Ct. App. 1996) (Declining to address an issue not raised in response to Respondent's summary judgment motion, in the order, or in Appellant's Rule 59 motion). Accordingly, in this latter scenario too, the Sustaining Grounds have ripened to finality, since Appellant never secured a ruling on any basis contesting such grounds. Thus, in either scenario, the Sustaining Grounds found by the lower court in affirming the administrative decision have ripened into a final, binding adjudication.

B. RIPENED TO FINALITY, THE ALTERNATIVE GROUNDS SUSTAIN THE SUBJECT ORDER ON APPEAL.

As Appellant cannot challenge the Sustaining Grounds from the Subject Order, the lower court's decision should be affirmed by the Court of Appeals. [26] (See *supra*.) Where, as here, Appellant failed to raise exceptions to the alternative rulings of the

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[26] See also Columbia (SC) Teachers Fed. Credit Union v. Newsome Chevrolet-Buick, 303 S.C. 162, 164, 399 S.E.2d 444, 446 (Ct. App. 1990) ("An alternative ruling of a trial court not excepted to constitutes a basis for affirming the trial court and is not reviewable on appeal."); Stanley v. B.L. Montague Co., 299 S.C. 51, 57, 382 S.E.2d 246, (Ct. App. 1989) ("An alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal."); Moody v. McLellan, 295 S.C. 157, 162, 367 S.E. 2d 449, 452 (Ct. App. 1988) ("An alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal"); Nichols Motorcycle Supply, Inc. v. Regency Kawasaki, *Inc.*, 295 S.C. 138, 142-143, 367 S.E.2d 438, 441 (Ct. App. 1988) (Unchallenged lower court ruling on alternate grounds constituted basis to affirm lower court); Kolb v. Cook, 284 S.C. 598, 603, 327 S.E.2d 379, (Ct. App. 1985) (holding appellant's failure to challenge the trial judge's alternative finding "constitutes a basis for affirming the trial court.")

lower court, such unappealed, alternative grounds sustain the lower court's ruling. See Portman v. Garbade, 337 S.C. 186, 190, 522 S.E.2d 830, 832 (Ct. App. 1999) ("Because the Attorneys failed to appeal these alternate grounds, they stand as the law of the case.").[27] Accordingly, Appellant failed to challenge any of the Alternative Grounds in the Court below; such alternative grounds now require the dismissal of Appellant's appeal with an order affirming the Subject Order.[28] Moreover, Appellant's purported substantive arguments against the Sustaining Grounds have no merit and are belied by the Record. To the extent the Court allows such untimely responses, ReWa incorporates by reference to the Record its original arguments to the Circuit Court below, to which Appellant never responded before now. (R. pp. 1117-1178 Resp. Cir. Ct. Brief.)

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[27] Moreover, where an unappealed ruling renders the issues challenged on appeal as moot, the law of the case doctrine makes it unnecessary for the Court of Appeals to reach the challenges raised on appeal. See State v. Hough, 319 S.C. 104, 110, 459 S.E.2d 863, 867 (Ct. App. 1996) (holding where reversal of issue would not change the result, the issue is moot, and it is unnecessary for the Court of Appeals to address it); Jernigan v. King, 312 S.C. 331, 335, 440 S.E.2d 379, 381-82 (Ct. App. 1993); Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (Ct. App. 1993) (holding the trial court's ruling became "the law of this case," where the defendant failed to appeal it, and alternative issues were moot as "reversal would not change the result").

[28] Importantly, ReWa raised these issues in a prior Motion to Dismiss but was instructed by the Court to brief them herein. (J. Cureton Order.) In its Return to Respondent's Motion to Dismiss, Appellant never contested any of the following: (1) Respondent raised the Sustaining Grounds to the Circuit Court; (2) Appellant never responded to the Sustaining Grounds in the lower court; (3) Appellant's Motion for Reconsideration never challenged, questioned, or interposed any counter-arguments to any of the Sustaining Grounds; and (4) Each Sustaining Ground independently sustains the Subject Order. (Compare (ReWa Mot. to Dismiss Appeal dated 4/03/2013) *with* (Appellant's Return) *with* (ReWa's Reply.)

II. SUBSTANTIAL EVIDENCE SUPPORTS THE HEARING OFFICER'S FINDINGS OF FACT.

Appellant first challenges the Hearing Officer's factual recitation set forth in the Factual Background of the Administrative Order. Appellant's arguments have no merit.

A. Despite Bearing the Burden To Do So, Appellant Offers No Explanation As To Why Any Of The Background Facts It Challenges Makes A Difference.

Even if true, which it is not, Appellant altogether fails to explain why any of the background facts it now challenges as "unsupported" would change the outcome of the administrative hearing. (See, e.g., App. Brief, pp. 20-23.) Specifically, Appellant challenges: (1) that it knew public sewer service was not available in the area where it purchased property ("Category 1"); (2) whether basin-wide sewer studies had been conducted before Appellant purchased the subject property ("Category 2"); (3) whether Metro declined to own the force main and pump station ("Category 3"); (4) whether Appellant's collaborating with the Riversway development caused delay ("Category 4"); and (5) whether the peculiarities of Appellant's project led to different routes ("Category 5"). (Id.)

While ample evidence supported each of the Hearing Officer's findings, see *infra*, none of the facts disputed by Appellant make any difference to the outcome. Appellant bears the burden on appeal of explaining why the factual findings it challenges change the result. See McCall v. Finley, 294 S.C. 1, 4 (Ct. App. 1987) ("Appellate courts recognize—or at least recognize—an overriding rule of civil procedure which says: whatever doesn't make a difference, doesn't matter."); Gardner

v. Gardner, 253 S.C. 296, 302 (1960) ("The burden was upon the appellant to convince us that there was error which was prejudicial to him...") Here, Appellant cannot explain why the factual findings it challenges, even if in error, would alter the Hearing Officer's findings. They would not.

B. Appellant Did Not "Convincingly" Demonstrate The Hearing Officer's Findings As Unsupported.

The South Carolina Administrative Procedures Act ("APA") provides the correct standard of review for factual determinations in this appeal. ReWa's Sewer Use Regulation expressly incorporates the APA's hearing procedures and guidelines. (See R. p. 1031, ReWa Sewer Use Reg. § 6.1, ¶ 2 ("[U]nder same guidelines applied to State agencies which are set forth in S.C. Code §1-23-380.") The APA constrains a reviewing Court from upsetting an agency's factual determinations, unless they are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." S.C. Code §1-23-380(e).

"Under the APA, [the appellate court cannot] substitute its judgment for that of [ReWa or ReWa's hearing officer] as to the weight of the evidence on questions of fact." Leventis v. South Carolina Dep't of Health & Envtl. Control, 340 S.C. 118, 130, 530 S.E.2d 643, 649-50 (Ct. App. 2000) (quoting Ballenger v. S.C. Dep't of Health and Envtl. Control, 331 S.C. 247, 251, 500 S.E.2d 183, 185 (Ct. App. 1998); S.C. Code §1-23-380(e). As to issues of fact, the Hearing Officer's decision should be affirmed unless clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Id. "The possibility of drawing two inconsistent conclusions from the evidence" will not mean the agency's conclusion was unsupported

or improper. Waters v. South Carolina Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (quoting Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)). "The burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence." Id; see also Tennis v. S.C. Dep't Soc. Servs., 355 S.C. 551, 558 (Ct.App. 2003). When applied to the case at bar, the Hearing Officer's decision must be affirmed.

1. Substantial Evidence Supports the Hearing Officer's Findings Relating to the Availability of Public Sewer in the Subject Basin.

As to Category 1 (see App. Brief, p. 20, ¶1), substantial evidence supports every finding made by the Hearing Officer. The Hearing Officer found that Appellant bought the property although "no public sewer service was available in the basin embracing the land." (R. p. 660, line 8-661, line 8) (Bishop: basin-wide planning is typical especially, when as here, no public sewer is in the basin.) The lack of public sewer embodies the entire case. Because no public sewer existed, Appellant proposed to use a private utility (i.e., Condor, LLC) to pump sewer uphill and across ReWa's treatment plant property. Appellant's questioning of this fact evidences a failure to comprehend the issues in dispute.

Presumably to demonstrate public sewer existed in the basin, Appellant inexplicably cites Exhibit 13, which has nothing to do with the availability of service in the basin. (Compare App. Brief p. 20 *with* R. p. 794, Ex. 13.) Exhibit 13 confirms only that ReWa's Lower Reedy Wastewater Treatment *plant* had capacity (i.e., physical room to accept) to serve the proposed volume of flow from Appellant's project. (R. p.

794, Ex. 13.) Such confirmation of capacity constitutes only the very first (minute) step in the permitting process. (R. p. 595, lines 16-25 ("This is the very beginning...meaning there is there capacity at the treatment plant.")) It does *not* mean public sewer lines exist in the basin, as no gravity mains exist in the subject basin to date, which is an undisputed and undisputable fact. (See R. p. 600, lines 1-23 (How, unlike Appellant, other developers did not pursue developing property because, "Well, currently there's no sewer out there.")

Indicative of its argument's strength, Appellant misstates testimony on page 290 of the Record. Appellant misrepresented that the passage indicates: "The purchase was also after Respondent's chief engineer Brian Bishop told the Appellant that they had met the engineering requirements for connection to the Respondent's trunk line." (App. Brief p. 20.) Untrue. In the actual passage, which refers to Exhibit 13[29], Bolo testified: "Mr. Bishop did tell us that we'd have to meet these requirements. . . " (R. p. 290, 19-25.)[30]

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[29] Of note, Exhibit 13 identifies the requirements Appellant had to satisfy (which it never did); it does not state Appellant met ReWa's engineering requirements. (See R. p. 794, Ex. 13) ("Our willingness to serve this project is contingent upon the property owner complying with all requirements/standards of Western Carolina [n/k/a ReWa])."

[30] Citing the Record at page 281, lines 11-22, Appellant also states: "Metro had approved annexation of the land into the sewer service district." The passage does not reference annexation whatsoever. (See R. p. 281, lines 11-25.) Thereafter, Appellant cites page 418 of the Record for the proposition that Appellant's project falls within ReWa's service area. (See App. Brief, p. 20.) ReWa notes the same because it evidences Appellant's fundamental lack of understanding of the dispute. First, ReWa owns trunk lines and provides, except in rare instances, treatment services. Second, just because a property falls within a service area (of any public entity), does not mean public sewer service is available in that area. In this regard, Appellant's whole premise is errant.

The Record is otherwise clear: Bishop never told Appellant it satisfied the engineering requirements for a Flow Acceptance Permit. (R. p. 901, lines 11-14; R. p. 688, lines 1-4 (Bishop: "I did not have enough information to approve" Appellant's plans.) Accordingly, as to Category 1, Appellant has not "convincingly" proved the Hearing Officer's factual findings are "unsupported by the evidence." Waters, 321 S.C. at 226, 467 S.E.2d at 917.

2. Substantial Evidence Supports the Hearing Officer's Finding About Basin-Wide Studies.

As to Category 2 (see App. Brief, p. 20, ¶2), substantial evidence supports every finding made by the Hearing Officer. The Hearing Officer noted that "no engineering study had previously [as in before Appellant purchased the property in June of 2006] been performed of the basin embracing [Appellant's] land." (R. p. 32.) Citing studies occurring *after* Appellant bought its property, see App. Brief p. 21 (citing various basin studies), Appellant appears to misunderstand the factual finding related to the time period *before* Appellant bought the property.

Appellant, therefore, ignores the testimony of ReWa's Executive Director, Ray Orvin, squarely supporting the finding. (R. 469, lines 4-18) (Indicating when "when the developments came on the table, there wasn't a plan for how that whole area would be handled.")[31] As the Hearing Officer correctly found, when Appellant purchased the property, no study had been completed because growth (i.e., population densities) in

[31] For example, like the other studies cited, Appellant correctly states that ReWa later paid for the engineering firm of Rogers and Calcott to complete a study but that was significantly after Appellant and Riversway purchased their respective properties and began pursuing the subdivisions. (R. p. 713, lines 13-23) (ReWa paid for Rogers & Calcott study in 2008, which was 2 years after Appellant bought the property.)

the subject basin had not yet warranted it. (See e.g., 466, lines 11-18 ("I think a lot will depend on how development occurs in the basin and how it works out, you know, with growth.") Accordingly, as to Category 2, Appellant has not "convincingly" proved the Hearing Officer's factual findings are "unsupported by the evidence." Waters, 321 S.C. at 226, 467 S.E.2d at 917.

3. Substantial Evidence Supports the Hearing Officer's Findings Regarding Metro.

As to Category 3 (see App. Brief, p. 21, ¶3), substantial evidence supports every finding made by the Hearing Officer. Appellant enigmatically questions the Hearing Officer's finding about Metro's refusal to own and maintain the force main and pump station—an undisputable fact. Appellant's own engineering consultant, Gene McCall, testified his company, Condor, LLC created a niche business because subdistricts like Metro will no longer own pump stations. (R. p. 111, lines 4-25) ("[T]he sewer subdistricts said they weren't taking [pump stations] anymore."); (R. p. 132, lines 7-10) (Condor planned to own the pump station and force main because Metro did not want to own them.)

Appellant's property is located within Metro's service area. If Metro had agreed to own the pump station and force main, which it had no obligation to do, there would have never been any need to involve Condor and no dispute would exist.[32] Moreover, Appellant sued both ReWa and Metro for failing to provide service. (R.

[32] Appellant once again suggests ReWa "held-up" Appellant's project. The facts of how the project unfolded are set forth in detail *supra* and incorporated herein by reference. Needless to say, Appellant's allegations have no basis in fact, as the hearing officer so found. Moreover, none of these false allegations have anything to do with the factual finding being challenged.

pp. 42-61.) Accordingly, as to Category 3, Appellant has not "convincingly" proved the hearing officer's factual findings are "unsupported by the evidence." Waters, 321 S.C. at 226, 467 S.E.2d at 917.

4. **Substantial Evidence Proves Appellant's Project Was Delayed Due to Its Collaboration With Riversway and Its Routing Peculiarities.**

As to Categories 4 & 5 (see App. Brief, p. 22, ¶¶4 & 5), substantial evidence supports every finding made by the Hearing Officer relating to project difficulties arising out of: collaboration problems and project peculiarities.[33] To accommodate flows from each project, Appellant and Riversway proposed to utilize a "manifold main."[34]

As Gene McCall admitted, "[The manifold] truly was kind of a unique issue here." (R. p. 118, 10-15.) McCall acknowledged the manifold main presented, "An engineering coordination problem" and "question[s] for the two design engineers for the Windsor/Aughtry Group [Riversway] and [Appellant]." (R. pp. 94, line 24-95, line 16; see also R. p. 543, lines 13-22. Bishop similarly testified:

> Yes, because - you know, I said here for each subdivision, meaning there's two separate submittals, meaning that the way we had described it, they were looking at having a pump station at each one, coming up and manifolding in it. So, I needed to know what each site was doing and what the flow - and what they're asking for, so I needed that information.

(R. pp. 623, line 1-624, line 7 (While Bishop had processed thousands of projects, none had an engineering design like Appellant's); 669, lines 13-17; see also R. p. 795, Ex.

[33] The two sections are treated herein together because some of the project peculiarities arose from the collaboration.

[34] Technically speaking the manifold would be the two pressure pipes from River Trace and Rivers Way that would connect into ReWa's force main line.

14 (Bishop: "In addition, we will need the final plans and profiles for both subdivisions and the force main route along with the flow request in order to provide you with the flow acceptance letter."); R. p. 796, Ex. 15 (Bishop: "I cannot send the flow acceptance letter until we have the final plans for both subdivisions and the force main route along with working out the easement agreement.").

Bishop also testified:

> Well, first of all, we've never approved – or at least since I've been here for sure, I've never approved a site where you had two pump stations wanting to manifold into one line. And so there's some issues of making sure that each one of them were working properly, that they can serve each subdivision when one's running and the other's not running. When both of them are running, there's pressures, there's issues that need to be worked out. So that's the main non-typical thing about this, not to mention the fact that they're wanting to go through our treatment plant.

(R. p. 624, lines 4-16.)[35] And, Bishop confirmed as the Hearing Officer found: "Q. Was Riversway on pace with Rivers Trace? A. No. Q. How far behind were they? A. I'd say probably a year to even get me plans." (R. p. 624, lines 21-25; see also R. pp. 470-71 (Orvin: Discussing different engineering plans discussed between parties and noting Riversway's lag.).)

As noted *supra*, Appellant never identified the proposed Flag Lot Route across ReWa's property until August of 2007, nearly eighteen months after the first meeting on the project. (R. pp. 629, line 1-638, line 12.)[36] Within a few days of Appellant's

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[35] See also R. p. 543, lines 13-22 (Questions existed about the manifold.); R. p. 118, lines 1-8)(Manifolds atypical in Upstate South Carolina.)

[36] See also R. p. 624, lines 14-16; R. p. 875, lines 11-13)("And that's highly unusual for us...I don't know that we've ever done that before.") Addressing the mechanics of

disclosing the route, Bishop walked the proposed route with a surveyor (i.e., Deaton). (R. p. 637, lines 12-19.) But within twenty-four hours of walking the route, Bishop informed Appellant that a slew of problems had been observed. (See R. p. 802, Ex. 20.) Had Appellant timely disclosed the proposed route--as ReWa first requested in March of 2006--the problems would have been identified immediately and no delay would have resulted. (R. p. 637, lines 20-23.)

Riversway, and not ReWa, refused the next route (i.e., the Bishop Proposal) causing even further delay. (See R. p. 805, Ex. 21 (September 30, 2007 Bolo e-mail to ReWa: "I talked to my partners at Windsor Aughtry and was told they were not willing to accept the longer route...be back in touch soon); R. p. 858 (p. 23), lines 2-22); see also R. p. 973 (Unanswered Request for Admission #7 stating: "The owners of the Riversway development objected to the Bishop Proposal due to cost reasons.")

The collaboration efforts with Riversway also delayed the River Route. The River Route came into play in late November of 2007. (See R. p. 806, Ex. 22 ("As I understand it we are coming up the river now.") By January 11 of 2008, Bishop confirmed, "The route in general looks to be OK." (R. p. 808, Ex. 24.) Bishop testified his express instructions were to continue helping Appellant finalize its project file and he, in fact, continued to work on it. (R. p. 696, lines 9-24.) Nonetheless, Appellant still refused to submit the necessary engineering plans and applications to permit ReWa's Board to review the application. (Id. at lines 14-21.) ReWa's Board had to approve the project because it required an easement on plant property, which

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obtaining easements across ReWa's treatment plant posed a set of obstacles never encountered before. Historically, ReWa had never before allowed a party to have an easement across treatment plant property. (R. p. 624, lines 13-16; R. p. 875, lines 6-13.)

only the board could grant. (R. p. 877, lines 3-5) (Boyette: Board approval was necessary to grant "any easement or any right of way across [ReWa] property. . . ")[37]

In further support of the Hearing Officer's finding (R. p. 33), the documentary evidence shows Appellant and RiverTrace struggled with how to design the force main across ReWa's property, which is the real reason why Appellant never finalized its application for a Flow Acceptance Permit. (R. p. 811, Ex. 26) (As of 4/14/08: "We are not sure at this time if we will be using a combined force main from Harrison Bridge Road to the Western Carolina site or 2 separate force mains in the same right-of-way. We will review this design and make this final determination as soon as we begin finalizing our design.")

Substantial evidence, therefore, supported the Hearing Officer's findings as to Categories 4 & 5. Accordingly, as to Categories 4 & 5, Appellant has not "convincingly" proved the Hearing Officer's factual findings are "unsupported by the evidence." Waters, 321 S.C. at 226, 467 S.E.2d at 917.

III. APPELLANT CAUSED THE DELAYS TO ITS PROJECT BY NEVER COMPLETING ITS PERMIT APPLICATION.

Appellant next complains that the Hearing Officer erred by finding Appellant caused the delays to its Project and never filed a complete application for a Flow Acceptance Permit. As with all factual findings, Appellant must convincingly prove the Hearing Officer's findings, in this regard, are "unsupported by the evidence." Id. at 226, 467 S.E.2d at 917. As noted *supra*, the clearly erroneous standard of review

[37] And, unlike any other project ever, Appellant proposed to build a force sewer main across ReWa's treatment plant property. (R. p. 624, lines 14-16; p. 875, lines 10-12) ("And that's highly unusual for us...I don't know that we've ever done that before.")

applies, see S.C. Code §1-23-380(e), and "[the appellate court cannot] substitute its judgment for that of [ReWa or ReWa's hearing officer] as to the weight of the evidence on questions of fact." Leventis, 340 S.C. at 130, 530 S.E.2d at 649-50.

Also, as discussed *supra* and incorporated herein, of the "two year" delay cited by Appellant (see App. Brief, p. 21), the first seventeen months of delay resulted because Appellant failed to provide ReWa with its proposed Flag Lot Route. (See *supra* pp. 5-14.) Bishop instructed Appellant to provide the route before completing substantial engineering work. (See R. p. 794, Ex. 13.) Bishop testified he was trying to help Appellant avoid spending a lot of time and money until the route was approved. (R. p. 606, lines 2-12) Correspondence during the eighteen month period shows Bishop repeatedly requesting information about the location of the Flag Lot Route. (See e.g., R. p. 795, Ex. 14; R. pp. 796-97, Ex. 15; see also *supra.*)

Despite Bishop's requests, Appellant failed to specify the route location until August of 2007, over seventeen months after Bishop first requested the route. (R. p. 629, line 16-630, line 24); R. p. 481, lines 5-8) (Route identified to Bishop in August 2007 timeframe because, "he'd come to me in August about that.") Even then, Appellant never submitted an easement application or the require surveys. (R. p. 617, lines 4-16; R. p. 153, lines 20-24 (No application for ReWa encroachment since no final plans.) Appellant similarly failed to submit engineering plans for the Flag Lot Route. (R. pp. 614, line 18-615, line 1; R. p. 153, lines 8-10)

When Appellant finally disclosed the proposed route to Bishop, he walked the route within only a few days with Appellant's surveyor, Mike Deaton. (R. p. 632, lines 14-23) While walking the route, it was obvious to both Bishop and Deaton the route

was not viable. (R. p. 802, Ex. 20; R. p. 636, lines 2-23.) Bishop notified Appellant of the problems either the same day or next morning. (R. p. 637, lines 2-7; R. p. 802, Ex. 20; R. p. 636, lines 2-23.) Importantly, the problems with the Flag Lot Route could have been detected as early as March of 2006, had Appellant simply followed Bishop's instruction and supplied the requested information. (R. p. 637, lines 22-25.)

As noted *supra*, after the problems with the Flag Lot were learned, ReWa immediately began working with Appellant to identify solutions. The next proposed route was the Bishop Proposal, which resulted in an additional three month delay. Appellant concedes the Bishop Proposal constituted a viable engineering solution. (R. p. 355, lines 19-21) ("Engineering wise, it was [viable]".) Bolo "loved" this proposed route. (Id. at lines 14-18) But, according to Bolo, Metro, not ReWa, queered the route. (Id. at 17-18) ("Metropolitan wouldn't allow us to use their easement."); see also R. p. 973 (Unanswered RFA #9 admitting, "The Bishop Proposal would have worked if [Appellant] could have had access to existing right of ways owned by the Metropolitan Sewer District.")

Finally, in late November of 2007, the Parties began entertaining the River Route. By January 9, 2008, Appellant specified a specific path for the River Route. (R. p. 807, Ex. 23.) Within only two days, Bishop responded, "The route in general looks to be ok." (R. pp. 808-09, Ex. 24.) Of course, ReWa's Board would still have to approve the granting of an easement. But, ReWa preliminarily approved the River Route in January of 2008.

The evidence of Record demonstrates the River Route was delayed for three reasons. First, Metro (not ReWa) raised concerns about Bolo's engineering

calculations. (R. pp. 659, line 22-660, line 7; see also R. p. 973 (Unanswered RFA #10 admitting: "Metro expressed concerns about the engineering calculations completed by the Insite Group in relation to the River Route.")

Second, Appellant began entertaining plans to build two force mains on ReWa's property, not one. This was never disclosed to ReWa, until mid January of 2008. (See R. p. 810, Ex. 25) Third, the evidence of Record demonstrates that River Trace and Riversway never concluded how to design the force main across ReWa's property and, therefore, never completed finalized plans for the same. (See R. p. 811, Ex. 26.)

While Orvin did testify the Board instructed staff not to approve private pump stations without further Board input, the testimony uniformly showed ReWa's personnel were instructed **to continue working** with Appellant to finalize its permit application at all times prior to the Sewer Use Regulation's amendment. (R. p. 667, lines 12-16) (Never instructed to stop work); (R. p. 520, lines 1-8) (Instructed to continue working with Appellant "to get all of their paperwork in" and let Board evaluate.) Of note, had Appellant completed its application, as ReWa had asked it to do, and as ReWa instructed its employees to help in doing, then Appellant would have most probably received grandfathering status, barring some unusual circumstance.

At the time of the regulatory amendment in May of 2008, Appellant had not: finalized its engineering plans for the force main, submitted an application for an easement across ReWa's land, had not finalized an agreement for the ownership of force mains and pump station with the public entities, and had not obtained a Flow Acceptance Permit. (See R. pp. 663, line 6-665, line 22; R. p. 973 (Unanswered RFAs ##14, 15, and 18 admitting Appellant never received a flow acceptance permit

and never obtained an executed right of way from ReWa; see also *supra*.) Simply no evidence supports Appellant's position that ReWa delayed Appellant's Project but ample evidence supports the Hearing Officer's finding that Appellant caused substantial delays and never completed its Flow Acceptance Permit application.

Appellant repeatedly argues ReWa placed a "secret" hold on their Project, which is false, while simultaneously arguing that Appellant did not complete its application because of the "secret" hold. (See App. Brief, pp. 20-23.) Why would Appellant not complete its application if the hold was kept a secret from it? This makes no sense.

By contrast, the documentary evidence of Record demonstrates Appellant did not finalize its filings because it had not completed its engineering plans. (See R. 811, Ex. 26.) Moreover, no testimony indicates ReWa would not approve a private pump station between January and May of 2008. The testimony indicates staff were required to bring such projects to the Board, who remained free to approve the projects and for which no evidence indicates the Board would not.[38] There is simply nothing wrong with ReWa's Board taking an active role in processing permits for projects where policy changes are under consideration.

Many of the remaining arguments Appellant makes in relation to the challenged finding simply make no sense. (App. Brief, pp. 23-26.) The hearing officer cited Exhibits 13, 14, 15, 17, 18, 23, and 26 as documentary evidence that Appellant failed to provide the information needed to obtain a Flow Acceptance Permit as specified by

[38] Bringing applications to the Board for approval during the period of time when amending the Regulation was being considered makes perfect sense. By bringing the completed application back to the Board, ReWa's Board could ensure all applicants with similar projects were treated equally.

Bishop in Exhibit 13 from March of 2006. As noted above, the testimony from Bishop confirms ReWa never received the required information and as of May of 2008, Appellant's project file remained "substantially incomplete." (R. p. 665, lines 1-4.)[39]

Appellant next argues that Exhibits 13 through 26 actually reflect a lack of any responsiveness to Appellants. (App. Brief, p. 26.) ReWa asks the Court to review Exhibits 13 through 26 (R. pp. 794-811), as none of the exhibits reflect a lack of responsiveness on ReWa's part. What they do show is ReWa consistently asking Appellant for the same information. What they further show is Appellant repeatedly promising to send information and then never following through.[40] As a consequence, substantial evidence supported the hearing officer's findings in this regard. Accordingly, Appellant has not "convincingly" proved the hearing officer's factual findings are "unsupported by the evidence." Waters, 321 S.C. at 226, 467 S.E.2d at 917.[41]

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[39] Appellant discusses Exhibit 18 and contends that it does not reflect Bolo acknowledged Appellant's failure to comply with ReWa's required filings. Contrary to Appellant's suggestions, however, the March 21, 2007 e-mail reflects Appellant still had not finalized "WCRSA easement forms" as requested. (R. p. 811, Ex. 18.) Thereafter Appellant still never completed easement forms on *any* route and never submitted finalized engineering plans.

[40] Even if the documents could be read as Appellant suggests, which they cannot, Appellant still would lose. "The possibility of drawing two inconsistent conclusions from the evidence" will not mean the agency's conclusion was unsupported or improper. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

[41] Appellant's Brief references when ReWa offered the River Route to Appellant. The evidence of Record demonstrates the River Route was offered to Appellant in November of 2007, the same month the Committee instructed staff to negotiate a solution with Appellant. (See R. p. 806, Ex. 22.) Moreover, Appellant's Brief references an August of 2007 "hold." There is no evidence demonstrating that any sort of hold existed in August of 2007. The Board did not even begin considering a change of the Regulation, until late November of 2007 or early December.

IV. THE LOWER COURT CORRECTLY CONFIRMED APPELLANT HAD NO VESTED RIGHT TO RECEIVE SEWER SERVICE.

Appellant now contends the lower court erred in finding Appellant had not established a vested right to sewer service in this case. (App. Brief, pp. 26-38.) According to Appellant, the lower court erred because it incorrectly focused on whether evidence existed "to contest the validity of the amended Sewer Use Regulation." (Id.) Appellant argues the lower court should have instead focused on whether Respondent "intentionally stalled the Appellant's application process to prevent the Appellant's application from being considered." (Id.) Appellant's argument fails for three reasons.

A. Appellant Misstates the Hearing Officer's Findings.

Appellant misstates the Hearing Officer's written decision. The Hearing Officer dedicated three (3) pages of his opinion to analyzing vested rights, not just the single—out of context—sentence cited by Appellant. (See R. pp. 38-41.) In connection with Appellant's contention that it should have been grandfathered due to vested rights, the Hearing Officer found:

- "That contention is without merit." (R. p. 39.)
- "Here HP failed to complete its Flow Acceptance Permit application before ReWa amended its sewer use regulation on May 5, 2008." (R. p. 40.)
- "The Testimony showed that ReWa personnel were instructed to continue working with HP to finalize its permit application through the date of the regulation's amendment." (Id.)
- "I find that HP failed to complete and submit the required documents to obtain a Flow Acceptance Permit before May 5, 2008. With a complete application and finalized plans, ReWa's Commission had nothing to confer grandfathered status and HP had no vested rights." (R. p. 40-41.)

Thus, only by misstating the Hearing Officer's ruling can Appellant claim error.[42]

B. Only by Misstating the Status of Its Flow Acceptance Permit Can Appellant Assert Its 'Grand-Fathering' Claim.

According to Appellant, ReWa should have grandfathered its project under the Amendment to the Sewer Use Regulation, altogether allowing Appellant to avoid the Sewer Use Regulation's May 5, 2008 Amendment. (R. p. 90, lines 7–12)("[T]hose of us who have proceeded under one set of rules should be allowed to proceed under those rules and be, if nothing else, grandfathered in to the old policy which would allow us to proceed under our plan...") Stated differently, Appellant contends it had a legal right to be grandfathered under ReWa's Sewer Use Regulation before its amendment. Yet, no legal basis exists for such a request since an incomplete permit application (such as Appellant's), as a matter of law, fails to vest the rights of a would-be permittee.

Appellant has, in troubling fashion, materially misstated the status of its Flow Acceptance Permit Application with ReWa. (See, e.g., App. Brief, p. 27 ("The only document shown to be missing...was the flow acceptance letter." & "[A]ll requirements to complete the process which were within the Appellant's control were completed.") As discussed *supra* at length, the Record establishes the exact opposite. Appellant:

- Never submitted a finalized set of engineering plans for any proposed route;

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[42] Of note, Appellant never pled a theory of relief based upon vested rights before it claimed it should have been grandfathered during the administrative hearing. Even then, Appellant never used the term "vested rights" but simply advanced the unpled grandfathering theory for the first time. (See R. p. 44-61 (Appellant's Complaint).) None of the legal arguments or legal authority raised by Appellant were made at the administrative hearing level but were raised, for the first time, on appeal to the Circuit Court.

- Never even applied for the necessary right of ways across ReWa's Plant property;

- Never executed an agreement with public utilities about the ownership of the proposed private pump station and force mains.

(R. p. 663, line 14-665, line 4)(Appellant never submitted: finalized engineering plans for any proposed route, applications for right of way from ReWa, and never executed final agreement among service providers. Appellant's file was "substantially incomplete.") Indeed, all of the citations furnished by Appellant came from a single witness, Scott Bolo, whose testimony proved both mendacious and contrary to the documentary evidence. (See generally, R. pp. 200-420; see also R. pp. 952-953 (Outlining six instances of how the documentary evidence squarely contradicted Bolo's sworn testimony).)[43] Thus, just as the Hearing Officer found—after hearing testimony for three (3) days--"HP failed to complete its Flow Acceptance Permit application." (R. p. 40.)[44]

C. Ample Legal Authority Supports the Hearing Officer's Findings While Rebutting Appellant's Arguments.

Appellant's failure to submit a complete application, as a matter of law, failed to entitle Appellant to grandfathering status (*i.e.*, vesting of rights). It is axiomatic that

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[43] It is also noteworthy that since much of the delay afflicting Appellant's project resulted from Mr. Bolo's hand, it should come as no surprise that Bolo's testimony would be self-serving inasmuch as to avoid professional liability for the same.

[44] Dating back to March of 2006, ReWa informed Appellant of these prerequisites to obtaining a Flow Acceptance Permit at the onset of the process. (See R. p, 794 (Ex. 13), R. p. 795 (Ex. 14), R. p. 796 (Ex. 15), & R. p. 799 (Ex. 17); R. p. 664, lines 15-19). Indeed, contrary to what Appellant suggests, as early as March of 2006, ReWa expressly told Appellant to "provide [it] with a potential force main route...before...finaliz[ing] [its] design" to avoid spending a lot of money until it was determined what, if any, route would work. (Compare R. p. 606, lines 2-12 *with* R. p. 794, Ex. 13.)

without a complete permit application, a putative permittee's rights do not vest, since it would be impossible to determine *what* rights vested.[45] (See R. pp. 40-41; see also R. pp. 665, line 5-666, line 10)(ReWa had insufficient information from Appellant to know what it was grandfathering.) As the leading local government law treatise notes:

> [A]n application for a permit made before a zoning ordinance becomes effective gives in itself no right to a use excluded by the ordinance. Indeed, generally speaking, no preliminary proceedings to the obtaining of a permit give rise to any vested right to pursue a use in a zoned district.

8 *McQuillin Mun. Corp.* § 25:179.24 (3d ed. 1991). This analysis applies here and forecloses Appellant's grandfathering claims.

Relied upon by the Hearing Officer, see R. p. 40, the decision of In re Ross substantially mirrors the facts of the instant case and confirms both the rulings below and ReWa's analysis. See In re Ross, 151 Vt. 54 (Vt. 1989). In Ross, Raymond Ross ("Ross"), a land developer, filed a permit application with the environmental commission ("Commission") for the town of Dover, Vermont. Simultaneously, Dover was considering amendments to its "town plan."[46] The Commission deemed Ross's application as incomplete requiring its deferral. Id. at 56. Ross appealed the deferral

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[45] The point is driven home by the facts of this case. Subsequent to the enactment of the Amended Sewer Regulation, ReWa held a meeting to address "grandfathering" requests. Requests came "out of the woodwork." People and projects ReWa never even heard of were requesting grandfathering status. (R. p. 515, lines 14-16) (Requests were made in relation to projects "I'd never heard of before.") For this reason, applications would have to be, at the very least, complete so the contours of the rights "vested" could be determined. Of note, Appellant's project was the farthest along and yet remained substantially complete. Thus, when Appellant cites testimony from Joe Willis, it is unsurprising that Appellant fails to inform the Court how far along Mr. Willis's project actually was. Such other projects, all in their infancy, are what Appellant references as "in the pipeline."

[46] The town of Dover did not have a zoning plan but had an overall "town plan" governing development densities.

to the state environmental board. During the appeal, the town amended its plan. Id. at 55.

Like Appellant, Ross contended, unsuccessfully, he had a vested right to have his application considered under the town plan in effect when he first submitted his application, rather than under the amended town plan. Id. at 56. The state board found Ross had not completed his application and the amended town plan would govern further review. On appeal, the Supreme Court of Vermont found Ross did not have a vested right to review under the former plan as he failed to present a complete application. Id. at 57-58.

Also cited by the Hearing Officer, see R. p. 17, in City of Aspen v. Marshall, 912 P.2d 56 (Colo. 1996), Ronnie Marshall ("Marshall"), a landowner in the City of Aspen, initially sought review in the trial court of the city planning and zoning commission's denial of her building permit for a hot tub and deck built before Marshall received appropriate construction approvals. Marshall thereafter did not complete the permit application process before Aspen adopted a new environmental ordinance restricting development in Marshall's neighborhood. The Colorado Supreme Court ruled Marshall failed to obtain vested rights subjecting her project to Aspen's new ordinance because her permit application was incomplete before the ordinance's enactment. Id. at 60-61 (Citing McQuillin, *The Law of Municipal Corporations* § 25:155 (3d ed. 1991).)

This Court's holding in Friarsgate, Inc. v. Town of Irmo likewise accords with the hearing officer's analysis. Friarsgate, Inc. v. Town of Irmo, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). In Friarsgate, a real estate developer sought to enjoin

Irmo from enforcing a new zoning ordinance relating to its property. In 1978 or 1979, the real estate developer (Friarsgate) began preparations to build a condominium project on a tract of land in the Town of Irmo. Id. at 268. The proposed development consisted of fourteen buildings and one hundred eight units. Preparation consisted of completing market research, conducting financial studies, developing drainage, grading, landscaping, sewer and water distribution plans, and platting the tract. Friarsgate also obtained building permits for one building containing five units on March 21, 1980 and thereafter began constructing the foundation of the building. Id.

Less than a month after construction began, on April 15, 1980, Irmo enacted a comprehensive zoning ordinance prohibiting use Friarsgate's tract for condominiums. The Friarsgate Court examined whether the developer had acquired a vested right to build the entire condominium project although building permits only existed for five of the units before the zoning change. Id. at 268-269. The Friarsgate Court ruled the developer had not acquired vested rights for all fourteen buildings because it had not obtained permits for all fourteen buildings before Irmo's enactment of the ordinance. Id. at 272. The developer's failure to obtain building permits for the entire project foreclosed the vesting of rights to build the entire project.

Thus, akin to the facts at bar, the Friarsgate Court further found: "a landowner has no right to insist that his property not be restricted by a zoning regulation absent a showing that he has, prior to the effective date of the regulation, established a nonconforming use." Id. at 273. In the instant case, with regard to Appellant's Flow Acceptance Permit, Appellant cannot prove an "established nonconforming use." This is true for several reasons.

First, until Appellant received a Flow Acceptance Permit and also a DHEC permit, no prior "use" could exist because sewer flow would not be accepted. Second, until Appellant received an executed easement from ReWa, no Flow Acceptance Permit could issue. Regardless of what route Appellant relied upon, the (incomplete) permit applications pursued by Appellant necessitated the construction of a force main across ReWa's treatment plant. (R. p. 284, lines 1-4) ("You're kidding, right? Well, we have to go through the plant to get to the tie-in-point, so we'd have to have an easement no matter which way we went.") Thus, Appellant attempts to argue it obtained vested rights by operation of prior non-conforming use, when Appellant previously never obtained a legal right to discharge into ReWa's system and no use commenced. To hold otherwise would be tantamount to saying Appellant obtained a vested legal right to an easement on ReWa's property, which by statute, can only be granted by ReWa's Board.

Here, Appellant failed to complete its Flow Acceptance Permit application before ReWa amended its Sewer Use Regulation on May 5, 2008. Notably, the testimony uniformly showed ReWa's personnel were instructed to continue working with Appellant to finalize its permit application through the date of the Regulation's amendment. (R. p. 667, lines 12–16) (Never instructed to stop work); (R. p. 520, lines 1–8) (Specifically instructed to continue working with Appellant "to get all of their paperwork in" and then let Board decide how to handle pump station.) Notwithstanding the same, Appellant failed to complete any of the required tasks to obtain a Flow Acceptance Permit before May 5, 2008. (See R. p. 663, line 14-665, line 4; R. p. 794 (Ex. 13), R. p. 795 (Ex. 14), R. p. 796 (Ex. 15), & R. p. 799 (Ex. 17).) Without a

complete application and finalized plans, ReWa had nothing before it to confer grandfathered status and Appellant failed to obtain any vested rights to demand the same.

D. Appellant Cites Inapposite Decisions.

The cases cited by Appellant prove inapposite.

1. The decision of Vulcan Materials does not apply to the facts *sub judice*.

Appellant questions the Hearing Officer's reliance upon Friarsgate while insisting the opinion of Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) controls. (See, e.g., App. Init. Brief, pp. 29-32.) In so arguing, Appellant first contends ReWa conceded Vulcan's analysis controls the case *sub judice*. (See App. Brief, p. 27 ("During the hearing even Respondent admitted that [the Vulcan decision] was controlling in this case.") This is patently untrue. In fact, the Record, cited by Appellant to support this contention, reflects ReWa actually objected when a witness began discussing Vulcan. (See R. p. 150 (Counsel for ReWa: "May I just lodge an objection?")[47]

Second, Vulcan is wholly distinguishable from the instant facts in a variety of ways. In Vulcan, Greenville County sought to impose *post facto* prohibitive zoning *after Vulcan* already commenced a nonconforming use it could pursue as a matter of

[47] The objection (misstated by Appellant as a concession) arose during the testimony of Gene McCall. McCall is both a lawyer and engineer but was called to testify as a fact witness. When McCall's testimony began to embrace his legal opinions (i.e., the province of the Hearing Officer and this Court), ReWa objected. Moreover, this is not the first time Appellant has made the same misleading statement in Court filings. Appellant made a similar misrepresentation to the Circuit Court. (See R. pp. 1179-1224, Annot. Memo.) Indeed, Appellant made so many factual misstatements to the Circuit Court that ReWa had to annotate Appellant's Brief in order to keep Appellant from distorting the Record below. (Id.)

right. Id. at 498. Here, the alleged nonconforming use (i.e., the incomplete plans submitted in Appellant's Flow Acceptance Permit Application) *were* the nonconforming use Appellant sought to commence, but could not, because a Flow Acceptance Permit never issued.

In Vulcan, the Respondent also did not need to obtain a grant of a real property interest (i.e., easement) before it could commence its nonconforming use. Id. Here, Appellant concedes all of its plans for use required ReWa's Board to convey an easement before it could obtain a Flow Acceptance Permit and a DHEC permit to commence its nonconforming use in the first instance. Notably, ReWa had no legal obligation (ever) to grant an easement, across public property, to Appellant.

In Vulcan, the Respondent only needed an operating permit from DHEC before it could commence mining granite on its property. Id. Unlike Appellant, the Vulcan Respondent had fully completed its DHEC application for an operating permit over a year before the County enacted the prohibitive zoning. Id. at 484 & 486. Here, Appellant's project file remained "substantially incomplete" when ReWa amended its Regulation and remains so, to date. (R. p. 665, lines 2-4.)

Moreover, even the Vulcan Court acknowledged the nonconforming use only vests if "already in existence at the time his property is zoned..." Id. at 498. In the instant case, the nonconforming use could not exist in advance of the issuance of an easement and Flow Acceptance Permit. In short, ReWa did not apply its Amended Sewer Use Regulation to Appellant retroactively. Accordingly, the lower court and the hearing officer should be affirmed.

2. The City Ice decision supports the Hearing Officer's holding.

Appellant next cites the decision of City Ice Delivery Co. v. Zoning Board of Adjustment of Charleston, 262 S.C. 161, 203 S.E.2d 381 (1974). (App. Init. Brief, p. 28.) Appellant appears to misread City Ice, which actually supports the Hearing Officer's decision. Unlike the case at bar, in City Ice, the permittee had obtained a building permit. The issue in dispute was whether the building permit embraced a grocery store *and* a gas station or just a grocery store. Id. at 163-164.

The Supreme Court reversed the lower court's decision allowing the gas station and reinstated the Zoning Board of Adjustment's finding that the gas station was not embraced in the building permit and there was no basis to find rights vested as to a non-conforming use for a gas station. Id. at 165-166. For the use where no prior permit existed, then, the Supreme Court found no vested rights existed. Id. Thus, City Ice supports the Hearing Officer's finding in this case.

3. The Whitfield decision does not apply.

The Appellant next cites the decision of Whitfield v. Seabrook, 259 S.C. 66, 190 S.E.2d 743 (1972). Like virtually of the decisions cited by Appellant, the Whitfield decision has no bearing on the instant case for several reasons. First, Appellant has never raised this issue before and cannot do so—for the first time—on appeal. Second, the aggrieved party in Whitfield, Richard Seabrook, had a permit unlike Appellant. Id. at 68. Third, the Whitfield Court nonetheless found Seabrook had no vested rights as he failed to use the permit before the zoning amendment went into effect. Fourth, just like in Whitfield and contrary to Appellant's unsupported assertions, ReWa both had public hearings and public comment lasting approximately

four months before it amended its Sewer Use Regulation. (R. pp. 884, line 25-886, line 17.) Thus, when Appellant represented, "the Respondent gave no notice of the potential change in the regulations," such allegations—once again—proved wholly untrue. (App. Brief p. 29.)

E. Appellant Now Raises 'Estoppel' Arguments For the First Time on Appeal.

Appellant, for the first time, now claims it "is further entitled to a Flow Acceptance Permit based on the additional efforts it made in reliance on the Respondent's representations "subsequent to the learning of the proposed changes in the regulations." (App. Brief p. 30.) Appellant's estoppel claims were never pled nor argued before now. (See, e.g., R. p. 44-61.) Raising such claims on appeal for the first time unfairly prejudices ReWa, as it forecloses ReWa from confronting witnesses and presenting evidence to rebut the claims. Moreover, Appellant's purported showing fails to establish the necessary elements to an estoppel claim. Finally, by virtue of the unchallenged finding from below, it is the law of the case that estoppel does not apply. The balance of Appellant's factual recitation is demonstrated as without merit in light of the factual discussion set forth above.

F. ReWa's Amended Sewer Use Regulation Contains an Effective Date.

Appellant incorrectly contends (on several occasions) that ReWa's Amended Sewer Use Regulation contained no effective date. (See, e.g., App. Brief p. 36.) As an initial matter, this is another argument that Appellant never raised in its pleading or before the Hearing Officer. (See Complaint p. 44-61.) It is improper for Appellant to raise the argument on appeal.

Moreover, Appellant is simply wrong. On its face, the Amended Sewer Use Regulation reflects the effective date of the amendment in question. (See R. at 1028 (Reflecting "May 5, 2008" as effective date).) Accordingly, the argument has no basis whatsoever.

G. Appellant Raised the Takings Clause Issue For the First Time on Appeal.

Appellant argues ReWa's Amended Sewer Use Regulation violates the Takings Clauses of the United States and South Carolina Constitutions. Appellant neither pled nor argued the issue before the Hearing Officer. (R. pp. 44-61.) Thus, Appellant cannot raise the issue for the first time on appeal.

Even if raised below, Appellant's Takings Claim would still lack merit. Appellant's Takings Clause analysis hinges upon the premise that it possessed a vested right to obtain a Flow Acceptance Permit. (See App. Brief pp. 36-38.) As discussed *supra*, Appellant failed to complete its Flow Acceptance Permit Application. And, Appellant's bald accusations that ReWa kept it from submitting materials makes no sense. More importantly, the evidence (except perhaps the false testimony of Scott Bolo) fails to support any of Plaintiff's allegations in this regard. Accordingly, the Hearing Officer correctly found that Appellant did not obtain vested rights.

V. APPELLANT NEVER ALLEGED OR ARGUED THE CONTRACT CLAUSE ISSUES BELOW.

Appellant knowingly misleads the Court about its Contract Clause arguments. According to its brief, "Appellant argued at the hearing that the enactment of the new regulations impaired its contract with Condor and Eastwood, thus violating the Contract Clause of the United States Constitution and South Carolina Constitution." (App.

Brief, p. 39 ("Appellant argued at the hearing that the enactment of the new regulations impaired its [contracts].") Not so.

A. Appellant Never Raised the Contract Clause Issue to the Hearing Officer.

During the administrative hearing, Appellant *never* argued the existence of a Contract Clause violation. Appellant *never* pled the claim. (See R. pp. 44-61.) Appellant *never* raised the issue in a closing statement, which it elected not to file. (See R. passim.) Unsurprisingly, then, the Hearing Officer did not make findings about an issue never pled nor raised. (See R. pp. 30-43.)

Even though this Court previously ordered Harrison Partners to re-file its initial brief to supply over a hundred missing citations to the Record, which it had omitted in its first filing, Appellant still failed to include a citation to the Record evidencing where it actually raised the Contract Clause argument to the hearing officer. (Compare App. Brief, p. 39 with Order, J. Cureton, dated April 15, 2014). No citation was supplied because Appellant never raised the issue to the hearing officer. Appellant instead attempts to raise the issue--for the first time--on appeal. Elam v. S.C. DOT, 361 S.C. 9, 23 (2004).[48]

B. Even If Appellant Had Timely Raised the Same, No Contract Clause Violation Occurred.

Appellant's Contract Clause assertions are baseless. As an initial matter, Appellant seemingly does not even understand what it complains about. For example,

[48] Such tactics prove patently unfair to ReWa because had the issue been timely raised ReWa could have: (1) cross-examined Appellant's principals about the claim; (2) introduced evidence disproving the claim; (3) pled affirmative defenses to the claim; (4) proved affirmative defenses to the claim; and (5) introduced legal explanations in the administrative record why the claim fails.

Appellant refers to ReWa's amendment of its Sewer Use Regulation as a "new policy" that "impaired both contracts and completely abrogated the Condor contract." (App. Brief, p. 40.) Appellant also incorrectly restates the new regulation has "no effective date nor does it state that it applies to existing applications."[49] (Id.) Appellant again furnishes no citations for any of its unsupported assertions. (Id.) And, again, none of its contentions prove accurate.

Despite Appellant's suggestions, the Amended Sewer Use Regulation *allowed* continued use of private utilities ("PU"). (R. p. 763, ¶¶2-3.)[50] The amendment simply required PUs to reach an agreement with public entities regarding what would happen if the PU ever became "insolvent, inoperable, or subject to any regulatory warning for unsafe or unsanitary conditions." (Id. at 3.)[51] The primary difference, altogether

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[49]As noted *supra*, the effective date can be found under Section 11 of the Sewer Use Regulation entitled: "Effective Date." (See R. at 1028 (Reflecting "May 5, 2008" as effective date).)

[50] Appellant also incorrectly contends "[T]he policy clearly did not apply to the applicants within a sewer district." (Compare App. Brief p. 40 *with* R. p. 763, ¶¶2-3.) So, in short, Appellant is now appealing the case at bar—for the second time—when it plainly does not understand the Amended Sewer Use Regulation, which it calls a "policy."

[51] ReWa's Board examined the issue and held public hearings on the content of proposed amendments to the Sewer Use Regulation. Indeed, the proposed amendment went for public comment in January of 2008. (R. p. 884, line 25-885, line 3.) Executive Director, Ray Orvin, met with subdistricts. (R. p. 886, lines 2-17.) Ultimately, ReWa amended its Sewer Use Regulation in a way designed to allow the continued use of privately owned pump stations, so long as a public entity agreed to backstop such ownership in the event problems arose. (R. pp. 761–764, Ex. 3) In amending its regulation, ReWa clearly acted within the authority conferred upon it by its enabling legislation. Moreover, Appellant has never argued otherwise or, at least, specified how this is not true. Accordingly, ReWa's May 5, 2008 amendment to its Sewer Use Regulation was reasonable and necessary and accomplished legitimate purposes. No Contract Clause violation occurred.

misunderstood by Appellant, required PUs to address operating scenarios where the PU went defunct *before* and not *after* a major public health event arose. (Id.)

Nowhere in its brief and especially nowhere at the administrative hearing (since it was never raised) has Appellant ever identified how any term of any contract it executed was substantially impaired due to the language of ReWa's Amended Sewer Use Regulation. Thus, it is untrue when Appellant states: "There was no factual dispute the law, or as in this case the new policy actually impaired both contracts and completely abrogated the Condor contract." (App. Brief pp. 39-40.) If no dispute exists, it is because Appellant never raised the issue at the administrative hearing. And ReWa does not concede the Amended Regulation impairs unspecified provisions of the contracts cited by Appellant.

Moreover, so long as ReWa's Sewer Use Amendment aims to accomplish a "reasonable and necessary...public purpose," then, no constitutional infraction exists, even if everything else Appellant proved true. Hodges v. Rainey, 341 S.C. 79, 93, 533 S.E.2d 578, 585 (2000).

The testimony introduced by ReWa evidences the Amended Sewer Use Regulation as reasonable and necessary and accomplishing legitimate purposes. [52]

[52] Although testimony was elicited purporting to quote Boyette as stating that ReWa should make money off of private pump stations, Boyette emphatically denied ever saying the same. (R. p. 902, lines 15-16)("I absolutely never made that statement." Q. "You're denying having said that?" A. "Absolutely.") Boyette further testified, "We don't want to get into the retail business. We don't want to get into the pump station business. We want to be in the treatment business, the trunk line business, and we will operate our pump stations that are in our systems because that's what we're here to do." (R. p. 920, lines 10-15) Indeed, Orvin confirmed ReWa makes no money off of pump station ownership. (R. p. 478, lines 2-3.) Thus, Appellant has spun an elaborate theory about ReWa wanting more money, see App. Brief, p. 40, when all of the competent evidence of record proves the opposite.

ReWa presented the testimony (via deposition by agreement) of Commission member, John Boyette ("Boyette"). Boyette testified the Commission became aware of problems associated with the private ownership of pump stations in November of 2007, when such pump stations began to proliferate. (R. pp. 881, line 21-882, line 16.)

According to Boyette, after analyzing the issue, ReWa's Board viewed unchecked private ownership of pump stations as presenting: long-term viability risks, environmental risks, and, ultimately, a risk to orderly development. (R. p. 880-881.) Specific concerns also related to the fact that private entities do not last forever meaning that they become undercapitalized or go defunct and then become a threat to the environment and constituents. (R. p. 880-882; see also R. p. 475, line 13-476, line 25 (Orvin discussing Altamonte project where private utility created huge environmental problems on Paris Mountain, abandoned the site, and forced ReWa to take over.) Boyette described the situation as "not a very stable way to do things, to protect the environment and also to protect the customer base." (R. p. 880, lines 20-23; see also R. p. 475, lines 5-8 (Discussing lawsuits that arise from private owners when public service becomes available.) In addition, amending the Sewer Use Regulation furthered DHEC's policies as stated in their guidelines. (R. p. 878, lines 2-8; see also R. p. 139, lines 9-17) (McCall admitting, "And DHEC prefers that, you know, systems be owned and operated by public entities.") Thus, ReWa enacted the amendment to protect the environment, public, orderly planning, and economic development.

Appellant next argues, without basis, that the Court should show ReWa less deference because the Amended Sewer Use Regulation impairs a contract to which it is a party. (See Appellant's Brief, p. 41.) This makes no sense. The Amended Sewer

Use Regulation impairs no contract to which ReWa is a party. No evidence of Record supports such contention, nor could it because it is untrue. The Amended Sewer Regulation likewise implicates no other self-interest of ReWa. In short, Appellant just cites random legal tenets and facts without any basis.

South Carolina Courts are reluctant to find legislative acts unconstitutional, "every presumption is made in favor of...constitutionality." Knotts v. S.C. Dep't of Nat. Resour., 348 S.C. 1, 558 S.E.2d 511 (2002). Indeed, a "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." Joytime Distribs. & Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999); see also Beaufort County v. State, 353 S.C. 240, 242 (2003). Thus, Appellant was required, but did not, prove beyond a reasonable doubt how ReWa's Sewer Use Regulation runs afoul of the State and Federal Contract Clauses. Accordingly, Appellant's Contract Clause arguments have no merit.[53]

CONCLUSION

For the reasons set forth above, the lower court should be affirmed.

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[53] The rest of Appellant's arguments under this section prove factual. All such arguments are incorporated elsewhere herein.

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Edward W. Miller, Circuit Court Judge

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CERTIFICATE OF COUNSEL

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

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondents, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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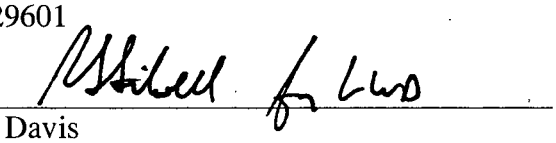

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August 8, 2014