THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Petitioners,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

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L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellant,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE CIRCUIT COURT C.A. No. 2012-CP-40-1560
South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	**ORDER**

RICHLAND COUNTY
FILED
2012 NOV 21 PM 2:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before me on September 19, 2012, on oral argument on the parties cross-motions for summary judgment. Present were James G. Carpenter, Esquire, representing the plaintiffs, Edward D. Sloan, and Beacham O. Brooker, Jr., Esquire, representing the defendants.

Plaintiffs have sued under the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10, *et seq.*, seeking a declaration that the Department's and defendant John V. Walsh's ("Walsh") actions in dispatching a three-man bridge inspection crew to inspect and report on the condition of three privately-owned bridges in the Woodside Plantation subdivision in Aiken at the request of a city councilman was contrary to certain provisions of the South Carolina Constitution requiring that public funds be spent only for public purposes and that the full faith and credit of the State not be pledged for the benefit of a private individual, company, association, or corporation.[1]

The Department's position is that the city's investigation of the bridges was a legitimate exercise of a municipality's delegated police power to insure the health, safety, and welfare of

[1] S.C. Code Ann., Const. art. X, §§5, 11(Rev. 2009).

SCANNED

persons within its boundaries as well as its power to abate public nuisances; and that SCDOT is authorized to assist local governments in these activities within areas of its expertise under its primary enabling statute. S.C. Code Ann., §57-3-110(7) (Rev. 2006).

The exercise of these powers by the governmental entities involved were not arbitrary or unreasonable and should not be interfered with by the courts. S.C. Code, Const., art. VIII, §17 (Rev. 2009); Main v. Thomason, 342 S.C. 79, 535 S.E.2d 918 (2000). Finally, defendants assert that plaintiffs lack standing to pursue their suit.

For the reasons stated below, the Court agrees with defendants that the case should be dismissed.

Background Facts

There does not appear to be any serious dispute between the parties regarding the underlying facts which are contained in the affidavits each have submitted and the attachments thereto.

An Aiken City Councilman, Reggie Ebner, became concerned that the bridges within the Woodside Plantation subdivision, being wooden, were unsafe and posed a potential hazard to the public. Ebner was a resident of Woodside Plantation and presumably represented that district on City Council. His email to State Representative Tom Young, who represented the district that contained the subdivision, requesting assistance, was forwarded by Rep. Young to Walsh, SCDOT's Deputy Secretary for Engineering. Senator Greg Ryberg, who also represents the area, communicated his support for the request. The city code contained no specifications for bridges but referred to State specifications for roads, nor did the city retain a standing bridge inspector or department for that purpose. Therefore, councilman Young, through the State representatives sought the help of SCDOT.

Thereafter, Walsh dispatched a three-man bridge inspection crew based in Orangeburg to inspect the bridges and issue a report that Walsh subsequently forwarded to Ebner, Young, and Ryberg. The cost to the Department, representing the inspectors' time, has been estimated at $1,400.

Discussion

Standing and Mootness.

Defendants argue that plaintiffs lack standing due to the *de minimis* degree of the impact upon them from defendants' actions and the fact that the events complained of have been completed and, therefore, all issues raised are moot. I agree.

Plaintiff Edward D. Sloan, claims standing as a taxpayer and elector in South Carolina. No justification for the standing of the South Carolina Public Interest Foundation is set forth in the Complaint. Both plaintiffs lack standing to bring this suit. A taxpayer is not entitled to sue on that basis alone where he suffers in some indefinite way in common with people generally. Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). A private person may not invoke judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Baird v. Charleston County, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). To establish constitutional standing, plaintiff must first show he has suffered an "injury in fact which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).) An exception is where the issue raised is of such public importance as to its resolution for future guidance. Baird, 728 S.E.2d at 44.

Mr. Sloan is a resident and taxpayer in Greenville County. His suit involves decisions made in Columbia concerning real property in Aiken. His standing as a taxpayer could only be based upon his share of the 16 cents per gallon gas tax that contributed to the $1,400 cost of the Department's employees' wages spent inspecting the bridges and preparing a report. I weigh this infinitesimal amount and interest against the relief he requests which would involve this Court's inserting itself into routine decisions of the State Highway Engineer as to when and where to provide assistance to local governments in areas of the Department's particularized expertise. I find this balance weighs toward declining judicial involvement.

Regarding the public importance exception, plaintiffs have neither alleged nor shown any facts or instances demonstrating any ongoing pattern or practice of the Department to use State resources to improve or benefit private property nor even to provide inspection services to privately-owned bridges. In fact, the affidavit of Mr. Walsh indicates that only one other such instance was an inspection of the bridge to Fripp Island upon the request of the county council that it take the bridge into the State system for maintenance purposes. The Department asserts that it has no interest in using its inspectors to inspect private bridges outside the occasional event that another governmental agency may request its assistance in doing so for a legitimate public purpose. Given the lack of evidence that this is an ongoing problem, this Court is reluctant to insert itself into decisions that the General Assembly has expressly delegated to the Department of Transportation's discretion. S.C. Code Ann., §57-3-110(7) (Rev. 2006).

A related doctrine is that a court should not confer standing where the issue in the suit is moot and thus academic and there remains no actual controversy. Sloan v. Dep't. of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). Exception to the mootness doctrine allow consideration where the issue is raised and is capable of repetition but generally will evade

review, raises questions of manifest urgency, or would affect future events or have collateral consequences for the parties. Id., 379 S.C. at 68. It is plain that this matter is moot. The bridge inspections were made and a report issued in August of 2011. That is the only act complained of and any order of this Court would have no effect in reversing it. The first reason for an exception is rejected for the same reasons set forth in the previous paragraph regarding public importance. There is obviously no urgency because the inspections are over and done. That the inspections could have collateral consequences between plaintiffs and defendants has clearly not been demonstrated.

I find that plaintiffs lack standing to maintain the present suit.

Plaintiffs' constitutional claims.

Although my opinion is that the complaint should be dismissed for the lack of standing of the plaintiffs to pursue it, I discuss the merits of the Complaint in order to make a full record herein.

A. Benefit to a private party.

Plaintiffs' argument is that, because the bridges in Woodside Plantation are owned by the homeowners' association and not a governmental entity, the use of State resources to inspect them was an unconstitutional act under the constitution's prohibitions against using public funds for the benefit of private interests. Defendants argue that plaintiffs are incorrect in directing the Court to focus on the ownership of the bridges. I agree. As set forth in Section B. below, the inspection of the bridges was legitimately within the City's police power and the decision by Walsh to assist it was well within the Department's enumerated powers to assist other governmental entities in areas of its expertise. S.C. Code Ann. §57-3-110.

Addressing plaintiffs' constitutional argument directly, the city's and the Department's actions were not for the "benefit" of the homeowners of Woodside Plantation. Rather, they were in furtherance of the government's responsibilities to insure the health, safety, and welfare of the public at large and to abate a potential public nuisance. The government often enters private property for this purpose. See, S.C. Code Ann. §31-15-20 (Municipalities may enter and demolish unsafe buildings); Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); Main v. Thomason, supra. (Statute authorizing neighboring property owners to enter adjoining property to repair their buildings not unconstitutional.) All municipalities in South Carolina are given the authority to abate nuisances. S.C. Code Ann. §5-7-30 (Rev. 2004). It is difficult to see any "benefit" to the bridge owners flowing from the actions of the two governmental entities involved. The city, upon a finding that the bridges we unsafe and presented a hazard to the travelling public, would be within its powers to close them, condemn them, or cause the homeowners and their association to replace them at their expense.

The foregoing is sufficient to distinguish the factual situation in this case from those underlying the two Attorney General opinions plaintiffs cite in their memoranda. In his Aughtry opinion[2], the Attorney General opined that the constitution would be violated by the use of county funds to scrape private roads or driveways. In the Ramsey opinion[3], the removal or a storm drain to accommodate the construction of a new building by a church implicated the unconstitutional expenditure of public funds for a private benefit. Here, the motivation was the general safety and welfare of the public, not to benefit or improve private property.

[2] C. Dennis Aughtry, Esquire, 190 WL 599297 (June 4, 1990)
[3] The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005)

B. Authority for the governments' actions.

The City of Aiken has adopted a subdivision ordinance pursuant to the South Carolina Local Government Comprehensive Planning Act of 1994. S.C. Code Ann. §§ 6-29-310, *et seq.* The statement of legislative intent for the Land Planning – Land Development article of that enabling Act, § 6-29-1120, cites among the purposes of the regulation (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; and (3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments.

Additionally, Section 5-7-30 of the S.C. Code of Laws contains the general grant of powers to municipalities in South Carolina. The language of that statute authorizes municipalities to exercise powers with in relation to, *inter alia,* roads, streets, and any other subject necessary for the "security, general welfare, and convenience of the municipality or for preserving the health, peace order, and good government in it ..." This broad grant of power to municipalities is only limited by the constitution or general law of the State. Hospitality Ass'n. of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). As mentioned in the foregoing Section, the constitution declares that such laws be liberally construed.[4]

The land development statute and the municipal powers statute are delegations of the State's police power to municipalities to regulate for the health, safety and general welfare of the public. Courts will not interfere with the enforcement of regulations designed for the protection of health, welfare and safety of citizens unless they are determined to be unreasonable. Main v.

[4] The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution. S.C. Code Ann., Const., art. VIII, §17 (Rev. 2009).

Thomason, supra. Moreover, the municipal powers act enables cities and towns to abate nuisances. A dangerous bridge certainly qualifies for that category. Even in the absence of such express delegation, some governmental entity--if only the General Assembly itself--would be able to abate the public nuisance of an unsafe private bridge. Morison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940).

Regarding the Department, the General Assembly has included among the statutory powers and duties conferred on the Department of Transportation:

> (7) instruct, assist, and cooperate with the agencies and departments, and bodies politic, and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

S.C. Code Ann. § 57-3-110. Through the forgoing statute, the legislature has conferred discretion upon the Department as to when it will assist local governments. Absent a clear abuse of discretion, the courts should defer to those decisions. Gamble v. Williamsburg Co. Sch. Dist., 305 S.C. 288, 290, 408 S.E.2d 217, 218 (1991). Many governmental functions in the State are centralized. That is the reason for the existence of the State Department of Education. S.C. Code Ann. §59-5-10 (Rev. 2004). It would make little sense for each of the 278 municipalities in South Carolina to each retain its own bridge inspection crew. Here, the Department properly responded to a request from City of Aiken officials and representatives for assistance in an area of the Department's expertise. The City had authority to make the request and the Department had authority to respond to it.

Conclusion

I find that plaintiffs lack standing under the Declaratory Judgments Act to maintain a suit the subject matter of which they lack any direct personal interest. The exceptions to our rules of

taxpayer standing and to the doctrine of mootness have not been demonstrated by plaintiffs. In any event, I find that the actions of the defendants were not ultra vires or unconstitutional under those proscriptions against using public funds for private benefit but were with the delegated powers of both the Department and the City of Aiken. Plaintiffs' motion for summary judgment is denied. Defendants' cross-motion is granted. The complaint herein shall be dismissed.

AND IT IS SO ORDERED.

L. Casey Manning, Judge

Columbia, S.C.
~~October 4, 2012~~
November 1, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	IN THE CIRCUIT COURT C.A. NO. 2012-CP-40-_____ **COMPLAINT FOR DECLARATORY JUDGMENT**

RICHLAND COUNTY
FILED
2012 FEB 24 PM 1:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

NOW COME the Plaintiffs, by their undersigned attorney, and as a cause of action against the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution.

2. Plaintiff Edward D. Sloan, Jr., is a citizen, resident, taxpayer, and registered elector of the State of South Carolina. He has paid taxes that fund the Department of Transportation. He brings this action individually on his behalf and on behalf of all others similarly situated.

3. Defendant South Carolina Department of Transportation ("SCDOT") is a Department of the State.

4. Defendant John V. Walsh, is Deputy Secretary of Transportation for Engineering in the SCDOT, and is named as Defendant in his official capacity.

5. This Court possesses jurisdiction under the South Carolina Constitution Article X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

6. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes.

7. Article X, Section 11 of the State Constitution provides that:

> (t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

8. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).

9. The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).

10. An individual member of City Council of Aiken—not the City itself—requested that the SCDOT expend public funds to inspect privately built, privately owned bridges, in a private, gated community.

11. In addition, a single state representative and a single state senator—not the entire General Assembly—endorsed the request.

12. Defendants SCDOT and Walsh ordered SCDOT inspectors to inspect three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution. Plaintiffs attach to this Complaint a copy of the SCDOT reports of these inspections.

13. Although federal law may require states to inspect "all highway bridges on ***public*** roads" (23 USC § 151; 23 CFR § 650.307 emphasis added), federal law does not require such inspections of ***private*** bridges on private property, nor does South Carolina law authorize such inspections.

14. Defendants are reported and quoted in the news media as asserting as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose.

15. Upon information and belief, based upon the approved bus routes, published on the official website for the School District of Aiken County, no public school busses on any official routes traverse the three private bridges at issue.

16. Furthermore, even if public school busses did traverse the bridges, the inspection of these private bridges would not serve a public purpose, sufficient to justify the use of public funds to perform services on private property.

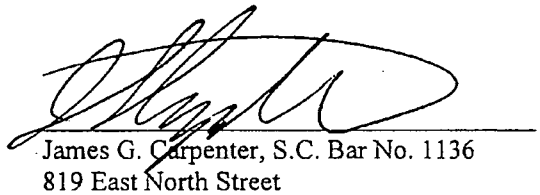
WHEREFORE, Plaintiffs pray the Court:

1. To declare that the SCDOT's inspection of three privately built, privately owned bridges on private property in a private, gated community violates Article X, §§ 5 and 11 of the South Carolina Constitution;

2. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and

3. To grant such other and further relief as the Court deems just and proper.

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



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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE CIRCUIT COURT C.A. No. 2012-CP-40-1560
South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	**ANSWER**

Come now the defendants, the South Carolina Department of Transportation and John V. Walsh and, for their answer to the complaint, admit, deny, and aver as follows:

1. They are without information sufficient to form a belief concerning the truth of the allegations in paragraphs 1 and 2 of the complaint. Accordingly, they deny the same.
2. Admit the allegations contained in paragraphs 3 and 4 of the complaint.
3. The allegations contained in paragraphs 5, 6, 7, 8, and 9 constitute conclusions of law and are therefore denied.
4. Deny the allegations contained in paragraph 10 of the complaint.
5. Admit the allegations contained in paragraph 11 of the complaint.
6. The allegations contained in paragraphs 12 and 13 of the complaint constitute conclusions of law and are therefore denied.
7. They are without information sufficient to form a belief concerning the truth of the allegations in paragraph 14 and 15 of the complaint. Accordingly, they deny the same.
8. Deny the allegations contained in paragraph 16 of the complaint.

9. Deny that plaintiffs are entitled to the relief demanded in their WHEREFORE clause or any relief arising from the allegations of the complaint.

WHEREFORE, defendants pray that the complaint be dismissed and that they be awarded their costs of defending this action.

SOUTH CAROLINA DEPARTMENT OF TRANSORTATION

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Columbia, S.C.
March 16, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE CIRCUIT COURT C.A. No. 2012-CP-40-1560
South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	**CERTIFICATE OF SERVICE**

I certify that I have caused a copy of the below-mentioned documents to be served upon the following parties by depositing same in the United States mail, with postage prepaid and affixed thereto, addressed as follows, this 16th day of March, 2012.

Pleadings Served:

ANSWER

Parties Served:

James G. Carpenter, Esquire
Jennifer J. Miller, Esquire
819 E. North Street
Greenville, SC 29601

ATTORNEYS FOR PLAINTIFFS

Janet M. Tucker, Paralegal

SWORN TO BEFORE ME
this16th day of March, 2012

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/16/2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	IN THE CIRCUIT COURT C.A. NO. 2012-CP-40-1560 **Motion for Summary Judgment**

RICHLAND COUNTY
FILED
2012 AUG 21 AM 11:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

NOW COME the Plaintiffs, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., by their undersigned attorney, and move the Court pursuant to SCRCP 56 for Summary Judgment, and in support of the Motion would show to the Court that there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law. A Memorandum of Law accompanies this Motion.

August 14, 2012

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

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STATE OF SOUTH CAROLINA	IN THE CIRCUIT COURT
COUNTY OF RICHLAND	C.A. NO. 2012-CP-40-1560
South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	**Certificate of Service**

RICHLAND COUNTY
FILED
2012 AUG 21 AM
JEANETTE W. McBRIDE
C.C.P. & G.S.

The undersigned attorney hereby certifies that he has served a copy of the foregoing Plaintiffs' Motion to for Summary Judgment and Memorandum of Law on counsel for Defendants by first class mail postage prepaid this Tuesday, August 14, 2012, addressed as follows

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	IN THE CIRCUIT COURT C.A. NO. 2012-CP-40-1560 **Memorandum of Law in Support of Motion for Summary Judgment**

RICHLAND COUNTY
FILED
2012 AUG 21 AM 11:53
JEANETTE W. McBRIDE
C.P. & G.S.

NOW COME the Plaintiffs, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., by their undersigned attorney, and submit this Memorandum of Law in Support of their Motion for Summary Judgment. In support of the Motion, Plaintiffs would show to the Court that there is no genuine issue of material fact, and Plaintiffs are entitled to judgment as a matter of law.

STATEMENT OF THE CASE

Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of the State of South Carolina. He has paid taxes that fund the Department of Transportation. He brings this action individually on his behalf and on behalf of all others similarly situated.

Defendant South Carolina Department of Transportation ("SCDOT") is a Department of the State. Defendant John V. Walsh is Deputy Secretary of Transportation for Engineering in the SCDOT.

This Court possesses jurisdiction under the South Carolina Constitution Article X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

STATEMENT OF FACTS

From the documents provided by the South Carolina Department of Transportation, the following facts emerge. For "several years, a number of citizens in [Woodside Plantation, a private gated community in Aiken, South Carolina] have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success" (**Exhibit A**, E-mail letter from Reggie Ebner, to John Walsh and Representative Tom Young dated July 13, 2011 ("July 13 email")).

Mr. Ebner states that he is the City of Aiken Councilman for District 4, lives in Woodside Plantation, and is a Professional Engineer licensed in the State of Texas. *Id.* Apparently, Ebner had found some old drawings for Woodside Plantation, Phase III that called for metal culverts where streams went under the roads. However, the Developer had substituted wooden bridges for the metal culverts (**Exhibit A**, Attachment D-1). Ebner concluded that the wooden bridges failed to comply with the design and violated State requirements (**Exhibit A**, Attachment E-1).

Ebner wrote to the Aiken city officials requesting information related to the streets in Woodside Plantation and a copy of the letter relating to or approving the design change from metal culverts to wooden bridges (**Exhibit A**, Attachments C-1 and C-2). He was also concerned about a concrete bridge and a roadway that formed a dam for a lake in Woodside Plantation. *Id.*

City officials told Ebner that they did not have engineers to certify any of the structures but did produce some e-mails related to the change from metal culverts to bridges (**Exhibit A**, Attachment C-4).

When he failed to get satisfaction or help from the City of Aiken, Ebner then enlisted the support of his State Representative. Ebner asked, "Who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges" (**Exhibit A**, Attachment B-1). Ebner forecast "future legal proceedings."

City officials replied to Ebner that Woodside Plantation Property Owners Association, Inc. was the responsible party (**Exhibit A**, Attachment C-1). Ebner stated, "It is my personal understanding that the City of Aiken is responsible for infrastructure installation in Woodside Plantation" (July 13, 2011, email, par. I. 9). Ebner believed that the

wooden bridges needed either to be inspected and declared safe or to be replaced with metal culverts, as called for in the original plans.

Instead of engaging a structural engineer, Ebner decided to enlist the help of his Representative and Senator to pressure the SCDOT into inspect the wooden bridges, even though they are on private property and in a gated community. Ebner requested, "If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts" (**Exhibit A**, July 13, 2011 email). He further requested, "If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements." *Id.*

Finally, as to a concrete bridge in Woodside Plantation, Ebner requested, "SCDOT will need to determine if concrete bridge can be certified for use. If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification." *Id.*

He further requested, "Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties." *Id.*

In summary, Ebner was asking the public to pay for the inspection and evaluation of these privately owned bridges. *Id.* If they failed the publicly financed inspection, he planned to use legal or political pressure to require the Developer or the City to replace the wooden bridges with metal culverts and to repair the concrete bridge and its approaches (**Exhibit A**, July 13, 2011 email). His Representative and Senator endorsed his request to the SCDOT for the publicly financed inspection, generated the false justifica-

tion that school buses passed over these bridges, and put political pressure on the SCDOT to inspect these privately owned bridges, at public expense. Plaintiffs attach an affidavit of Edward D. Sloan, Jr. and a copy of the SCDOT reports of these inspections (Sloan Affidavit and **Exhibit B**, Bridge Inspection Report).

Defendants' Office of the Chief Internal Auditor ("OCIA") issued an Aiken Bridge Inspection Investigation Report dated October 12, 2011 ("Bridge Inspection Report") (**Exhibit B**, Bridge Inspection Report). The investigation stemmed from concerns of employees who warned Chief Engineer for Operations Clem Watson that the inspection of these bridges in a private gated community was wrong. The Department acknowledged that "these bridges were not on the state's system. Inspection staff also had to create fake bridge ID numbers because the bridges were off system" (**Exhibit B**, Bridge Inspection Report).

OCIA researched the law and confirmed with SCDOT's Chief Legal Counsel "that SCDOT has no obligation to inspect bridges on private property" (**Exhibit B**, Bridge Inspection Report). OCIA interviewed various personnel under the Chief Engineer for operations. "Without any reservation, all personnel were certain the activity was wrong, stated that they expressed reluctance to their supervisor, and knew it would later resurface because it was against established policy" (**Exhibit B**, Bridge Inspection Report). Nevertheless, the Defendants ordered the investigation to proceed. The report concludes that Defendants decided to go forward with the inspection because school buses used the roads (**Exhibit B**, Bridge Inspection Report).

OCIA determined that the request for inspection "came from a city councilman but not from the City of Aiken. Furthermore, [OCIA] found that the councilman [Ebner]

is a resident of Woodside Plantation" (**Exhibit B,** Bridge Inspection Report). OCIA also determined that "no bus driver or citizen had complained to the school district about the bridges" (**Exhibit B,** Bridge Inspection Report). OCIA further determined that the Defendants did not seek SCDOT legal department's clarification on the issue (**Exhibit B,** Bridge Inspection Report). Finally, OCIA stated, "There is also the possibility that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners Association decides to sue the developer of the private gated community" (**Exhibit B,** Bridge Inspection Report).

Essentially, this inspection at public expense arose out of a dispute among certain homeowners in a private gated community and the property owners association and the developer of the community. Plaintiffs contend that such inspections were illegal and an improper use of public resources with complete disregard for the public interest.

LEGAL DISCUSSION

The South Carolina Constitution Article X, § 5 requires that taxes (public funds) be spent for public purposes. Article X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). S.C. Constitution, Article X, § 11 provides:

> (t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, ***company, association, corporation***, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

Id. (emphasis added). The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).

"[A]ll legislative action ***must serve a public*** rather than a private ***purpose.***" *State ex rel McLeod v. Riley* 276 S. C. 323, 328, 278 S.E. 2d 612, 615 (1981) (emphasis added).

The South Carolina Attorney General has issued two opinions that such expenditures for primarily private purposes are illegal. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990); The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005). In the Aughtry opinion, the issue was whether the Richland County Council could expend public monies for the scraping of private roads or driveways, where such scraping is primarily for private purposes. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990). The Attorney General concluded that such use would be illegal pursuant to South Carolina Constitution in Article X, § 5 and various State Supreme Court opinions. *Id.*

In the Ramsey opinion, the issue was whether the City of Gaffney could move a storm drain that was located on church property, and which drained only the church property. The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005). The church wanted the drain moved to build a new building. Again, the Attorney General issued an opinion that such an expenditure must be primarily for public use, and in those circumstances, the expenditure would be primarily for private benefit. *Id.* Thus, the Attorney General concluded that the expenditure would be unconstitutional. Accordingly, the critical inquiry in determining constitutionality under Art. X, § 5 is whether an expenditure primarily serves a ***public purpose.***

A legislative determination of a public purpose is entitled to some deference. A court will not overrule that judgment absent the clearest of evidence. In this case, there is no legislative determination that the inspection of private bridges fulfills a public purpose. This inspection contravened the standard practices of the DOT, which presumably

fulfill the legislative intent. Absent some legislative determination, the language of the Constitution would control: "The credit of . . . the State . . . shall [not] be pledged . . . for the benefit of any . . . association." S.C. Constitution, Art. X, § 11. Similarly, Art. X, § 5 states that any tax "shall distinctly state the ***public*** purpose."

The factual record establishes that the bridge inspections in the case at bar were ***not for a public purpose***, even though the public might have benefited incidentally. Art. X, § 5 requires that the main benefit be public, rather than for some private entity. An individual member of City Council of Aiken (who lived in the private gated community)—not the City itself—requested that the SCDOT spend public funds to inspect privately built, privately owned bridges, in his own private, gated community (**Exhibit A**). In addition, only a single State Representative and a single State Senator—not the entire General Assembly—endorsed the request.

In response to this political pressure, Defendants SCDOT and Walsh ordered SCDOT inspectors to inspect three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution (**Exhibit B**).

Defendants asserted as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose. Upon information and belief, based upon the approved bus routes published on the official website for the School District of Aiken County, no public school busses on any official routes traverse the three private bridges at issue (Affidavit of Edward D. Sloan Jr.; **Exhibit C**, Published Bus Routes).

Although federal law may require states to inspect "all highway bridges on ***public*** roads" (23 USC § 151; 23 CFR § 650.307 emphasis added), federal law does not require such inspections of ***private*** bridges on private property, nor does South Carolina law authorize such inspections.

Because the inspection of these private bridges did not serve a public purpose, sufficient to justify the use of public funds to perform services on private property, the inspection and expenditures were illegal and unconstitutional.

WHEREFORE, Plaintiffs pray the Court:

1. To declare that the SCDOT's inspection of three privately built, privately owned bridges on private property in a private, gated community violates South Carolina Constitution Article X, §§ 5 and 11;
2. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
3. To grant such other and further relief as the Court deems just and proper.

August 14, 2012

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

James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Petitioners,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Respondents.

AFFIDAVIT OF EDWARD D. SLOAN, JR.
IN SUPPORT OF THE
PETITION FOR ORIGINAL JURISDICTION

Petitioners submit this Affidavit in support of their Petition for this Court to take original jurisdiction of the matters alleged in the attached Complaint.

January 10, 2012

THE CARPENTER LAW FIRM, PC

James G. Carpenter, Esq.
S.C. Bar No. 1136

819 East North Street
Greenville, South Carolina 29601
(864) 235-1269 Tel.
(864) 331-3083 Fax.

Attorneys for Petitioners

The undersigned, being first duly sworn on oath, deposes and states as follows:

1. My name is Edward D. Sloan, Jr. I am a citizen, resident, taxpayer, and registered elector of the State of South Carolina. For many years, I have paid South Carolina income taxes, property taxes, and Motor Fuel User Fees that fund the Department of Transportation, and I believe I possess standing on that basis.
2. I am a Petitioner in this action, and I petition the Court to take this action in its original jurisdiction. I submit this affidavit pursuant to Rule 245 of the South Carolina Rules of Appellate Practice.
3. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes. Likewise, Article X, Section 11 of the State Constitution provides that:

> (t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

4. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).
5. The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).
6. Respondents SCDOT and Walsh ordered the inspection—at public expense—of three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution.

7. Petitioners attach to this Affidavit a copy of the SCDOT reports of these inspections, received in response to a FOIA request of the undersigned affiant.
8. Defendants are reported and quoted in the news media as asserting as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose.
9. The undersigned performed a study of the approved bus routes for the School District of Aiken County published on the official website for the School District of Aiken County. Upon information and belief, based upon the approved published bus routes, no public school busses on any official routes traverse the three private bridges at issue.
10. Furthermore, even if public school busses did traverse the bridges, the inspection of these private bridges would not serve a public purpose, sufficient to justify the use of public funds to perform services on private property.
11. The taxpayers, citizens, and electors of South Carolina are entitled to have their government abide by the South Carolina Constitution.
12. If this matter were heard in the Circuit Court, the normal time of the trial process would likely extend for several years, including appeals, during which time ongoing and additional Constitutional violation would likely occur.
13. The South Carolina Department of Transportation expends millions of dollars of public funds annually.
14. During the course of a normal trial and appeal, much or all of the public funds will be expended and difficult or impossible to recoup.
15. I anticipate that Respondents will not dispute these allegations, nor the authenticity of the attachments to this affidavit.

16. I anticipate that this case will raise no factual issues, but will simply require the interpretation and application of the South Carolina Constitution to the activities and expenditures in question.

17. I respectfully submit that this case involves strong public interest and presents special grounds of emergency, and that the Supreme Court should exercise its original jurisdiction.

Further the Affiant saith naught.

Edward D. Sloan, Jr., Petitioner

Subscribed and sworn to before me
this 11th day of January, 2012.

Notary Public, State of South Carolina
My commission expires _____.

EXHIBIT A

JULY 13, 2011 E-MAIL

Watson, Clem

From: Walsh, John
Sent: Tuesday, July 19, 2011 5:17 PM
To: Watson, Clem (WatsonJC@dot.state.sc.us)
Subject: FW: Woodside Road Issues-Bridges
Attachments: WS Road Issue-Bridges 7-12-11.pdf

Follow Up Flag: Follow up
Due By: Wednesday, July 20, 2011 8:30 AM
Flag Status: Completed

Please discuss this with me. I need to get some bridges reviewed for safety /loading purposes.

Thanks

John Walsh, PE
Deputy Secretary for Engineering
SCDOT

Telephone 803.737.7900
Fax 803.737.5053
walshjv@scdot.org

From: Tom Young [mailto:tyoung@tomyounglaw.com]
Sent: Wednesday, July 13, 2011 11:56 AM
To: Walsh, John
Cc: reggieebner@bellsouth.net
Subject: FW: Woodside Road Issues-Bridges

John:

My constituent Reggie Ebner tried to send this and thinks it came back. He asked me to forward. Thank you.

Tom Young

From: Reggie Ebner
To: Tom Young Jr.
Sent: Wed Jul 13 08:36:01 2011
Subject: Fw: Woodside Road Issues-Bridges
Tom,

Please forward to John Walsh. I get a failed delivery message.

Reggie

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:19 AM
To: Walsh John
Subject: Fw: Woodside Road Issues-Bridges

Resend due to delivery failure

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:03 AM
To: Walsh John
Cc: Young Tom
Subject: Woodside Road Issues-Bridges

Mr. John Walsh,

As you are aware, Representative Tom Young and I have been working together to resolve road issues in Woodside Plantation Development in Aiken SC. Woodside Plantation currently has approximately 4000 residents and will grow to approximately 8000 residents. Over the last several years, a number of citizens in this community have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success.

The following information is for SCDOT to review and advise a path forward for bridges located in this development.

Attachments A, B, C, D and E are attached for background information.

I. Wooden Bridges

1. Attachment A-2, item A- states the developer/contractor is responsible to the City for infrastructure.
2. Attachment B-2, item 1-states that SCDOT is wholly responsible for bridges in the state system. (Note that bridges are in the City and the City does not have a bridge department nor standards for bridges)
3. Attachment D-1 requires culverts vs. wooden bridges.
4. Attachment B-4 states-REG 49-207(C)(4) states "Additions, deletions, or other revisions to sealed documents shall not be made unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions are made." (Note that proper documentation has not be brought forth for the change from culverts to wooden bridges.)
5. Attachment E-1 is a picture of one of the wooden bridges and culverts installed in the roads.
6. Attachment C-1 item A and C-3 item A state that "We could find no documents for compaction". Wooden bridges are located on Steeplechase and Grassy Creek lane. Attachment E-2 shows a typical road cross section over a sewer line. Compaction test were not performed on bridge approaches nor any road ways since the late 1990's.
7. Attachment A-2, item C implies that the property owners association are required to follow city ordinances and state statues.
8. Infrastructure in Woodside is use by all government agencies to provide services to citizens.
9. It is my personal understanding the City of Aiken and is responsible for infrastructure installation in Woodside Plantation.
10. Path forward:

- If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts.
- If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements.

II. Concrete Bridge

1. Concrete bridge installed on Spaulding Bridge Road in Woodside phase III, section 8, Crescent Point as shown on site drawings.
2. Design for bridge is on drawings S-1 thru S-5, by Moore and Associates, dated 7/7/06, M&A Job 060045.
3. No approvals from any government agency on these construction drawings
4. Personal request to review quality report, pile driving test reports, concrete test and compaction reports for installation have not been granted.
5. Path Forward:

? SCDOT will need to determine if concrete bridge can be certified for use.
? If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.

Please contact me if you need more information or to set up a meeting.

Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.

Thanks in advance for your assistance,

Reggie Ebner
PE TX#36726

City of Aiken Councilman for District 4
165 Foxhound Run
Aiken, SC 29803
803-642-6787
reggieebner@bellsouth.net

ATT. A-1

September 8, 2010

To: Roger LeDuc

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

Subject: Woodside Road Issues-SC Freedom of Information Request #2

Dear Roger,

This is a SC Freedom of Information Request in relation to infrastructure installed in Woodside.

A. What government entity is the Developer contractor responsible to for infrastructure installation with the exception of common areas?

B. What government entity is responsible for the installation of dams and repair of dams?

C. What government entity is the Woodside Property Owners Association responsible to for the well being of citizens?

Sincerely,
Reggie Ebner
Reggie Ebner

Reggie Ebner

From: "Roger LeDuc" <RLeDuc@CityofAikenSC.gov>
To: "'Reggie Ebner'" <reggieebner@bellsouth.net>
Sent: Thursday, September 23, 2010 8:45 AM
Subject: FW: Reggie Ebner FOIA Request

Reggie,

In response to your request of September 8,2010.

A. The developer/contractor is responsible to the City for infrastructure installation such as water, sewer and storm drainage.
B. The State of South Carolina is responsible for dam approval and inspection.
C. See below

Roger

From: Ben Moore
Sent: Wednesday, September 22, 2010 5:21 PM
To: Roger LeDuc
Cc: Gary Smith; Richard Pearce; Larry Morris
Subject: FW: Reggie Ebner FOIA Request

Roger,

Below for your review is my proposed answer to question C of Reggie Ebner's FOIA request. The question was "What government entity is the Woodside Property Owner's Association responsible to for the well being of citizens." My response is based on my research and Gary's suggested response.

Let me know your thoughts. I can send this separately or we can send along with our answers to A and B. My understanding is that we already knew what our response would to the first two questions.

Thanks,

Ben

Dear Mr. Ebner,

According to the below link from the South Carolina Secretary of State, Woodside Plantation Property Owners' Association, Inc. is a South Carolina nonprofit corporation. Typically, a nonprofit corporation is responsible to its shareholders, not to a governmental entity. A nonprofit corporation may be subject to regulation by state agencies if it engages in certain activities. The Official Comment to §33-31-301 states, "Many nonprofit corporations are subject to regulation as a result of the nature of their activities. Hospitals, colleges, secondary schools and health maintenance organizations, for example, are subject to extensive regulation."

You or your attorney should request an opportunity to review a copy of this corporation's Bylaws in order to better understand the organizational structure of this corporation. The City of Aiken does not have any authority to review the actions taken by this corporation unless there is a violation of city ordinance or a state statute that the city is authorized to enforce.

9/27/2010

A-3

Thank you for your request and we hope this adequately answers your question.

http://www.sesos.com/index.asp?n=18&p=4&s=18&corporateid=9852

Thank you.

[illegible] message [illegible] is accessed and [illegible] distribution or copying of this [illegible] delete by reply email and delete [illegible]

9/27/2010

Reggie Ebner

From: "Reggie Ebner" <reggieebner@bellsouth.net>
To: "Young, Tom" <tyoung@attorneyssc.com>
Sent: Monday, September 06, 2010 11:38 PM
Subject: Woodside Infrastructure Issues-Bridges

Tom,

Need some guidance on how to find out who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges in the City of Aiken.

The City has advised me in writing they are not responsible for bridges since they do not have an approved inspector; however they have allowed three wooden bridges and one concrete bridge to be installed in Woodside. It appears that the Developer got the Woodside Property Owners Association to agree to install the wooden bridges

Key questions are

1 What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?

2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?

3.Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

Please advise what is the proper procedure to get technical answers to these questions that will could be used in future legal proceedings?

I will be glad to send a SC Freedom of Information letter if needed

It would be helpful to have the answers in hand by September 14th if possible

Thanks,

Reggie

9/27/2010

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "'Reggie Ebner'" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 8:19 AM
Subject: your questions -- follow up

Here is what I received last night from SCDOT in response to your questions. I am attempting to contact someone at LLR this morning for number 3:

1. What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?

For bridges on the state highway system, SCDOT would be wholly responsible, however, in this instance, the bridges in question are NOT on the state system. We believe these streets in the subdivision belong to the City of Aiken. SCDOT does inspect locally owned bridges 20-ft. or greater in length but the Department is not responsible for maintaining these structures.

2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?

For bridges located on the state highway system, SCDOT's current practice does not permit new highway bridges to be constructed using timber. SCDOT does however have bridges in the existing state highway system inventory that contain timber components. Locally owned bridges such as these could be timber depending on the requirements of the City.

3.Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

We recommend that this question be directed to the South Carolina Department of Labor, Licensing and Regulation.

See Last Page

Representative Tom Young
South Carolina House District 81
Aiken County
P.O. Box 651
Aiken, South Carolina 29802
Tel: (803) 649-0000
Fax: (803) 649-7005
www.reptomyoung.com
**** See Tom's website for weekly legislative updates ****

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9/27/2010

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9/27/2010

B-4

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "'Reggie Ebner'" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 10:35 AM
Subject: answer to number 3 of your questions

Reggie:

I.I.R sent me the below as an answer to number 3:

I believe the following Regulation applies to the situation outlined by Mr. Young:

Reg. 49-207(C)(4): "Additions, deletions, or other revisions to sealed documents shall not be made, unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions were made."

Representative Tom Young
South Carolina House District 81
Aiken County
P.O. Box 651
Aiken, South Carolina 29802
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www.reptomyoung.com
**** See Tom's website for weekly legislative updates ****

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9/27/2010

C-1

July 26, 2010

To: Roger Leduc
City Manager
City of Aiken

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

Subject: Woodside Road Issues-SC Freedom of Information Request

Dear Roger.

This is a SC Freedom of Information Request for infrastructure installed in Woodside. All information is in the public domain and required to meet specifications. Request is for either review of documents at the appropriate City Office or a copy for the following:

A. Documents for review required for compaction by City of Aiken Design Specifications: #7.36, 7.37, 9.33, 9.34, 20.2 and 26.3 for the infrastructure on the following streets:
   1. West Pleasant Colony
   2. Steeplechase
   3. Grassy Creek Lane
   4. Sea Grass Lane
   5. Pink Dogwood Circle
   6. Three Runs Creek Way
   7. Highland Reserve Court
   8. Foxhound Run
   9. Spaulding Bridge Road
   10. Common Wealth Way
   11. Mockernut Circle

B. Copy of letter verifying change of design from culverts to wooden bridges on Grassy Creek Lane and Steeplechase. If have been approved, provide for review all testing documents for piles, abutments and bridge certification of use.

C. Copy of letter verifying design for repair of "Big Dig" on Foxhound Run was approved by appropriate government entity. Provide for review compaction documents as required by City of Aiken Design Standards as listed in "A". Also provide for review documentation for embankment construction in the roadway per section 19 of design specification.

C-2

D. Copy of letter verifying approval of concrete bridge on Spaulding Bridge Road. If have approved, provide for review all documents for testing of piles, abutments and bridge certification of use.

E. Provide statement of certification that asphalt used on the streets named in "A" meet or exceed state specifications.

F. Provide statement of certification that the lake formed by the roadway dam located at the intersection of Plantation and West Pleasant Colony was approved for installation and dam is constructed per appropriate engineering standards.

G. Provide statement verifying what entity is responsible for installation and inspection of code and ordinances per city, state and federal codes and specifications in common areas.

H. Provide statement verifying what entity is responsible for installation and inspection of American Disabilities Act in relation to walkways/pathways.

Sincerely,

Reggie Ebner

C-3 Received 8-30-10

Memorandum—City of Aiken

To: Roger LeDuc

From: Larry G. Morris, Public Works Director

Date: August 27, 2010

Re: Ebner FOIA Request Woodside Roads

Due to the voluminous files on the Woodside Projects, it has required several days to go through all of the files listed in the letter dated 7-26-2010. The following are our findings:

A) We could find no documents for compaction.

B) An email to AL then president of the WPPOA, and Melanie, director of the WPPOA, was sent on 12/14/2006 stating that I had no problem with the use of wooden bridges however recommending that the WPPOA have their engineer certify the weight limit on the bridge. A copy of the email is attached.

C) The City did not certify the Fox Hound Run repair. The Woodside Development Company was instructed to obtain the services of an engineer to design and certify the repair. The City did not inspect the repair but again instructed the Development Company to obtain the services of an Engineer for the project.

D) The City of Aiken does not have the engineering expertise to certify any type of structure. It is the responsibility of the Development Company to have their structural engineer inspect and certify any bridge construction.

E) Asphalt tests are no in the file. No certification can be provided.

F) The lake referenced was shown on the development plans. The City again does not have the expertise to inspect or certify structures such as dams.

G) Work in the common areas does not fall under public works observation.

H) Work on walkways on private roads does not fall under public works observation.

C-4 Ted's File

Larry Morris

From: Larry Morris
Sent: Thursday, December 14, 2006 5:15 PM
To: 'Maine99@aol.com'; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: RE: Wooden Bridges

Good Afternoon Al

I have no problem with their use. They will look better than concrete. The one on a slant will be an interesting design and installation. They do need to be designed for the concrete truck weight as we discussed earlier this week. My recommendation to the POA is require Woodside to have their engineer certify the weight limit so there are no problems with concrete trucks or moving vans in the future.

Larry

From: Maine99@aol.com [mailto:Maine99@aol.com]
Sent: Thursday, December 14, 2006 9:51 AM
To: Larry Morris; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: Wooden Bridges

Larry,
Good morning,Kent Baldwin would like to move forward on placing contracts for the 3 bridges that we discussed.Knowing you will be leaving to visit your parents shortly for the holidays I would like to know if,at this time,you recommend the use of these wooden bridges or hold off?
Thanks,
Al

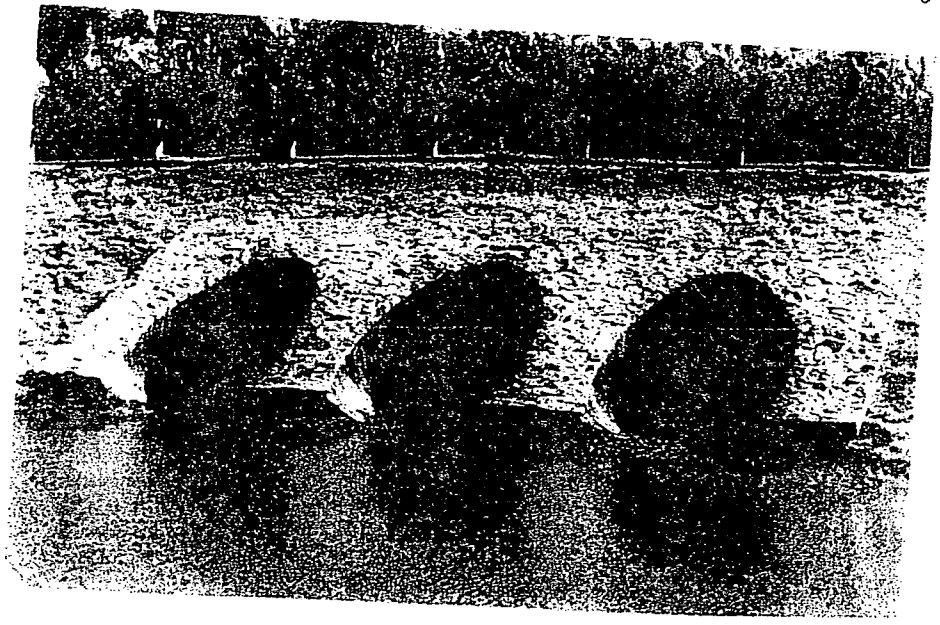
12/16/2006

LINE #
B1–FES
B2–B1
B3–B1
B4–B3
Copied From:
Woodside Plantation
Phase III
Sheet #4
J.P. No 22867
June 6, 2005
Drawn & Stamped
By Southern
Partners, Augusta, GA
Approved
By City
1-16-07
STR# A3 DWT
TOP = 372.38
INV = 367.38
OUT = 365.00
STR# B4 WI
TOR = 376.55
WEIR = 375.55
INV = 369.30
STR# B3 SWT
TOP = 348.14
INV = 343.14
STR# B2 SWT
TOP = 353.02
INV = 348.02
STR# B1 SWT
TOP = 345.34
INV = 340.34
STR# C2A DWT
TOP = 338.87
INV = 332.30
STR# C2 DWT
TOP = 338.57
INV = 332.00
STR# E3 DWT
TOP = 347.44
INV = 342.94
STR# E7 WI
TOP = 379.77
WEIR = 378.77
INV = 374.77
STR# E1 JB
TOP = 349.68
INV = 341.90
STR# E2 DWT
TOP = 347.44
INV = 342.44
STR# E5 SWT
TOP = 354.50
INV = 350.00
STR# E8 WI
TOP = 378.
WEIR = 378.
INV = 369.
18" FES
INV = 384.00
24" FES
INV 340.14
18" FES
INV = 330.00
24" FES
INV 341.74
18'-2" X 6'-9"
OPEN BOTTOM ALUM. ARCH CULVERT
BY CONTECH OR APPROVED EQUAL
T.B.M. - TOP OF
EX. SAN. M.H.
ELEV. = 376.83
Existing Storm
System (Typ)
Sand
SYSTEM A
SYSTEM B
SYSTEM E
OFFROAD STORM LINE A
OFFROAD STORM LINE E1
OFFROAD STORM LINE E2
18" CONC
IN
372.07
D-1

Att
4-23-10
E-1

WOODEN BRIDGES NOT PER DESIGN
AND NOT ALLOWED PER STATE

SHOULD BE CULVERTS AS PER DESIGN



ATTACH:

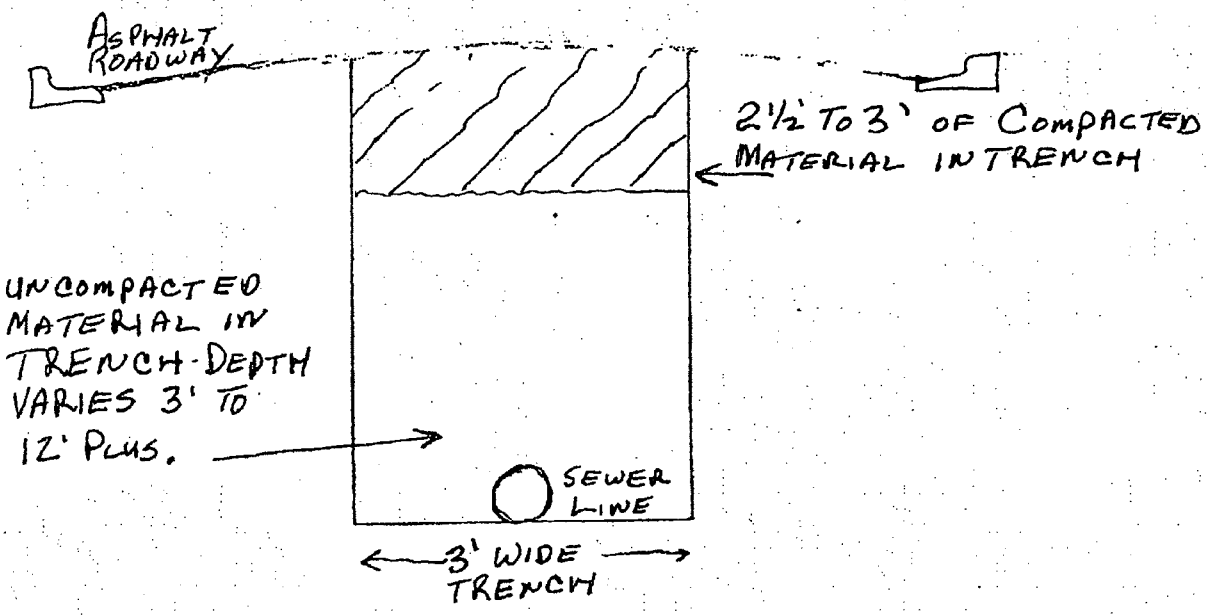
E-2

WOODSIDE ROAD ISSUES

TYPICAL ROAD SKETCH
ON
FOXHOUND RUN

THIS SKETCH BASED ON SOIL BORING AND COMPACTION TEST MADE ON FOXHOUND RUN IN 2007 AFTER ROAD FAILURE OVER SEWER.

NOTE: BY OBSERVING OTHER STREETS CONSTRUCTED IN WOODSIDE, BEGINNING IN 1999/2000, THIS TYPICAL ROAD SKETCH MAY APPLY TO THE BASE AND SUBASE OF THESE ROADS.



End of document
March 5, 2008
RDE

EXHIBIT B

SCDOT
South Carolina
Department of Transportation

September 13, 2011

The Honorable Greg W. Ryberg
The Honorable Thomas R. Young, Jr.
Post Office Box 142
Columbia, South Carolina 29202

Re: Woodside Plantation Bridge Inspection in Aiken County

Dear Senator Ryberg and Representative Young:

As a follow up to our discussions, I have requested that our bridge inspection crews inspect the wooden bridge structures inside the Woodside Plantation. Enclosed is a summary and result of their inspection. The report is the format that SCDOT uses to inspect all of our bridges and utilizes the reporting criteria established by FHWA.

The bridges are all timber and are in good condition with just some minor problems noted in the reports. Timber is a very decorative and resilient material under controlled environmental and loading conditions. However, the ability to absorb impact from overweight vehicles which exceed the design loading will diminish this property as the loading cycles continue. Our staff did not identify any weight restrictions signs for the bridges. If the bridges have not been load rated, it is recommended that the appropriate owner of the bridges have them rated and post appropriate signage for vehicles using the bridges.

It should also be noted that the safety rails in place are essentially decorative and provide no significant ability to redirect traffic from a collision or to provide protection to pedestrians.

I hope that you find the enclosed material beneficial for your constituents.

Sincerely,

John V. Walsh

John V. Walsh, P.E.
Deputy Secretary for Engineering

JVW:mbw
Enclosure
ec: J. C. Watson, Chief Engineer for Operations
Jim Feda, Director of Maintenance
Jo Ann Woodrum, District Engineering Administrator
File: DSE/JCW

Woodside Plantation Bridge Inspection Summary

and

Critical Coding Legend

Summary

The bridges are all timber and are in good condition with just some minor problems noted in the reports. Timber is a very decorative and resilient material under controlled environmental and loading conditions. However, the ability to absorb impact from overweight vehicles which exceed the design loading will diminish this property as the loading cycles continue. No plans, foundation data or specifications are currently available.

It should be noted that the safety rails in place are essentially decorative and provide no significant ability to redirect traffic from a collision or to provide protection to pedestrians.

General Data

This report is what SCDOT uses to inspect all of our bridges and utilizes the reporting criteria established by FHWA. To further define the information provided in the **General Data** section of the report, the following can be used as a reference:

- Superstructure Mat'l: 7 – indicates this portion of the bridge is made of wood.
- Superstructure Des.: 2 – indicates the design is of beam type.
- Substructure Mat'l: 7 – indicates this portion of the bridge is made of wood
- Historical: 5 – indicates the structure is not eligible for the national historical register.
- Type Service On: 1 – indicates highway traffic uses the bridge
- Type Service Under: 5 – indicates the crossing is water

Conditional, Appraisal, and Rating Data

The most critical coding for the **Condition Coding Legend** for the **Deck, Superstructure, Substructure and Culvert** comes from the **FHWA Coding Guide** of which a portion is shown below. These codes are shown in the bottom of the first page of each bridge report. The **Appraisal Codes** are as explained.

SCDOT
South Carolina
Department of Transportation

August 24, 2011

To: J.H. Woodrum, District 7 Engineer Administrator,

From: G.W. Bonnette, District 7 Bridge Inspector

Subject: Woodside Plantation Bridges

Please see the attached bridge inspection reports, maps of location, pictures and sketch of the Bridges located in the Private Subdivision of Woodside Plantation.

G.W. Bonnette

File: JHW, GB

RECEIVED
AUG 25 2011
CHIEF ENGINEER FOR OPERATIONS

Received in interoffice mail from JoAnn.
MW

Orangeburg Construction
Post Office Box 1086
Orangeburg, South Carolina 29116-1086

Phone (803) 531-5677
Fax (803) 531-6951

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

Code	Description
N	NOT APPLICABLE
9	EXCELLENT CONDITION
8	VERY GOOD CONDITION - no problems noted.
7	GOOD CONDITION - some minor problems.
6	SATISFACTORY CONDITION - structural elements show some minor deterioration.
5	FAIR CONDITION - all primary structural elements are sound but may have minor section loss, cracking, spalling or scour.
4	POOR CONDITION - advanced section loss, deterioration, spalling or scour.
3	SERIOUS CONDITION - loss of section, deterioration, spalling or scour have seriously affected primary structural components. Local failures are possible. Fatigue cracks in steel or shear cracks in concrete may be present.
2	CRITICAL CONDITION - advanced deterioration of primary structural elements. Fatigue cracks in steel or shear cracks in concrete may be present or scour may have removed substructure support. Unless closely monitored it may be necessary to close the bridge until corrective action is taken.
1	"IMMINENT" FAILURE CONDITION - major deterioration or section loss present in critical structural components or obvious vertical or horizontal movement affecting structure stability. Bridge is closed to traffic but corrective action may put back in light service.
0	FAILED CONDITION - out of service - beyond corrective action.

Appraisal Codes

Channel Code of 5: means "bank protection is being eroded and that trees and brush restrict the flow".

Waterway Adequacy Code of 6: means "bridge deck above roadway approaches with occasional overtopping possible of roadway with insignificant traffic delays".

Approach Roadway Alignment of 7: means "alignment is satisfactory for the road and speed".

Underclearance Appraisal does not apply.

Appraisal Codes for Structure Evaluation and Deck Geometry: requires an ADT check but should be rated good.

Safety Features

Railing Codes of 0's: indicate that they do not meet current highway standards.

National Bridge Inspection Data

Bridge ID: 02-9-00001-0-01-00

23 Aug-2011

General Data

	Original Main	Original Approach	Deck Construction
Year Built:	Superstructure Mat'l: 7	Superstructure Mat'l:	Type: 8
Design Load:	Superstructure Des: 02	Superstructure Des:	Surface: 7 M'brane: 0
Year Rebuilt:	Substructure Mat'l: 7	Substructure Mat'l:	Protect: 0

	Reconstructed Main	Reconstructed Approach	Railings and Medians
Historical: 5	Superstructure Mat'l:	Superstructure Mat'l:	Railing: 0
Type Service On: 1	Superstructure Des:	Superstructure Des:	Transition: 0
Type Service Under: 5	Substructure Mat'l:	Substructure Mat'l:	Approach Railing: 0
Traffic Status: A	No. Main Spans: 2	No. Appr. Spans: 0	Approach Ends: 0
	Max. Span Length: 9	Appr. Span Length: 0	Bridge Median: 0

Geometric Data

General	Horizontal Clearances On Inv. Route	Vertical Clearances On Inv. Route	Navigational Data
Appr. Rd'way Width: 23	Roadway Width: 25.7	Greatest Minmum: 99 99	Nav. Control: 0
Lanes On: 02	Horizontal: 25.7	Minimum: 99 99	Nav. Vert. Clr.: 0
Lanes Under: 00	Deck Width: 27.0		Nav. Hor. Clr.: 0
Right Curb/Sidewalk: 0			Pier Protection:
Left Curb/Sidewalk: 10.0			
Structure Flared: 0			
Skew: 0			
Length: 18			

	Lateral Underclearances	Vertical Underclearances
	Total Right: 0	Greatest Minimum Right: 99 99
	Total Left: 0	Greatest Minimum Left: 99 99
	Control Reference: N	Control Reference: N
	Right (shoulder): 99.9	Minimum: 99 99
	Left (median): 99.9	

Condition , Appraisal, and Rating Data

Deck: 7	Structure Evaluation:	Operating Truck Type:
Superstructure: 7	Deck Geometry:	Operating Load (Tons):
Substructure: 7	Underclearances:	Inventory Truck Type:
Culvert: N	Waterway Adequacy: 6	Inventory Load (Tons):
Channel: 5	Approach Alignment: 7	Restriction Level:

Bridge Element Group Textual Data

Bridge ID: 02-9-00001-0-01-00

23 Aug-2011

Abutments and/or Headwalls:

/T BULKHEAD BOARDS / GOOD

Bents and/or Piers:

/: 5 TT PILES PER BENT SPACED AT 9' WITH 12"X12" TT CAP /

Bearings:

N/A

Girders/Floor Beams/Stringers and/or Beams:

/: 6"X12" TT BEAMS SPACED AT 12"; 27 BEAMS ON SPANS 1; 26 BEAMS ON SPAN 2 /

Truss Members:

N/A

Expansion Joints:

N/A

Decks and/or Slabs:

7: 4"X12" TT DECK WITH 0" SPACING; 3"X8" TT WEARING SURFACE /

Curbs:

8"X8" TT CURB ACROSS BRIDGE ON BOTH SIDES; SIDEWALK AREA NOT ATTACHED TO BRIDGE LEFT C/L, ALL TT STRUCTURE: 2"X6"X10' WIDE (8.5' CURB TO CURB) 6- 3"X12" BEAMS SPACED AT 20" RESTING ON 8"X8" CAPS SUPPORTED BY 2 PILES SPACED AT 6'; 2 UTILITIES UNDER SIDEWALK LEFT OF C/L /

Bridge Railing/Parapets and/or Median Barriers:

5- 8"X8" TT POSTS SPACED AT 43" WITH 6"X8" TT TOP RAILING 38" HIGH ON BOTH SIDES/ GOOD

Paint System(s):

N/A

Waterway and Scour:

5: FAIR / DUE TO TREES AND DEBRIS IN STREAM

Fender System:

N/A

Roadway Alignment:

GOOD

Traffic Signs:

NONE

Encroachments:

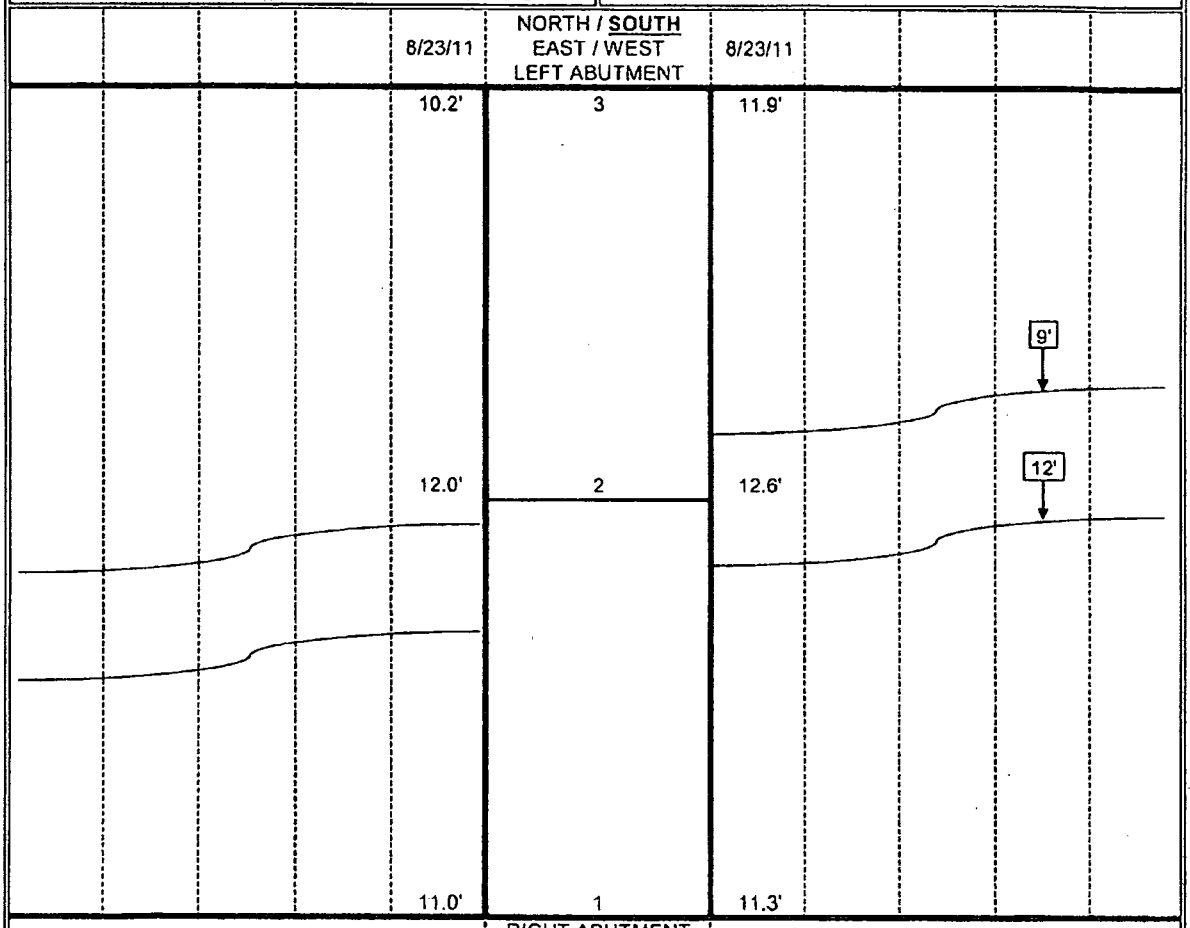
1 UTILITY 12" PIPE UNDER BRIDGE RIGHT OF C/L

Miscellaneous Notes:

LAT: N 33 28'51.50
LONG: W 81 44'39.06

THIS BRIDGE IS LOCATED IN A PRIVATE GATED SUBDIVISION NAMED WOODSIDE PLANTAION.

BRIDGE INSPECTION STREAM / GROUND PROFILE	BRIDGE NUMBER: 02-9-00001-0-01-00
	ROAD NUMBER: STEEPLECHASE RD
	CROSSING: TRIB. TO BURDENS DEEP POND
COMMENTS:	TOP OF WATER TO TOP OF RAIL
BRIDGE LOCATED IN WOODSIDE PLANTATION. A	HORIZONTAL BLOCKAGE (%) TO
PRIVATE GATED SUBDIVISION	VERTICAL BLOCKAGE (%)
TOP OF WATER = 12.8' BETWEEN BENTS # 1 & 2	



G.B. & D.V. & R.J.	8/23/2011	9:00
MEASUREMENT BY	DATE MEASURED	TIME

MEASUREMENTS ARE FROM TOP OF RAIL TO GROUND LINE

02-9-00001-0-02-00
02-9-00002-0-01-00
02-9-00001-0-01-00
Google

BRIDGE

02-9-00001-0-01-00

08/23/2011 10:12

64

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67

66

68

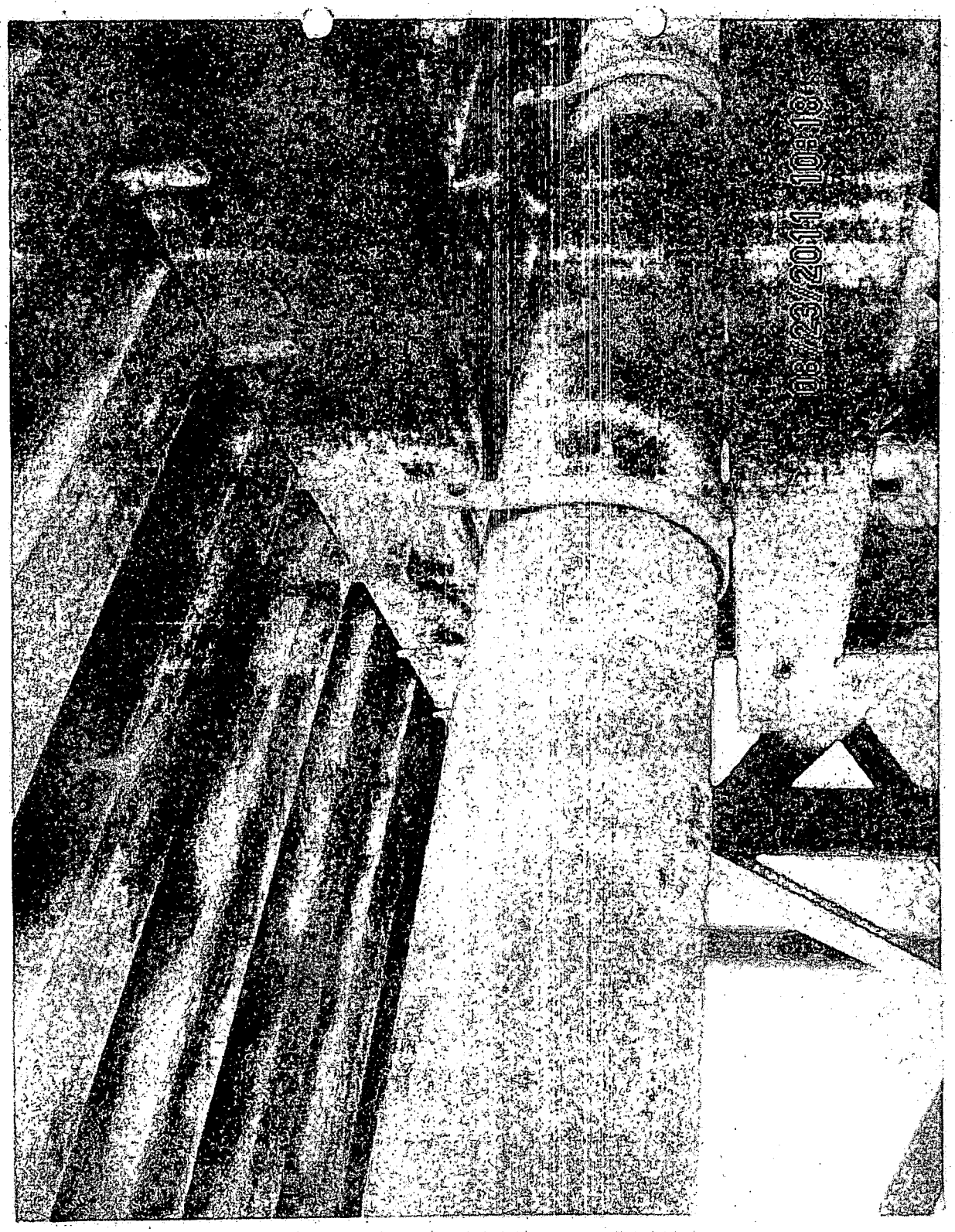
67

08/23/2011 10:17

70

69

08/23/2011 10:17



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72

SIDEWALK

02-9-00001-0-01-00

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National Bridge Inspection Data

Bridge ID: 02-9-00001-0-02-00

23 Aug-2011

General Data

	Original Main	Original Approach	Deck Construction
Year Built:	Superstructure Mat'l: 7	Superstructure Mat'l:	Type: 8
Design Load:	Superstructure Des: 02	Superstructure Des:	Surface: 7 M'brane: 0
Year Rebuilt:	Substructure Mat'l: 7	Substructure Mat'l:	Protect: 0
	Reconstructed Main	**Reconstructed Approach**	**Railings and Medians**
Historical: 5	Superstructure Mat'l:	Superstructure Mat'l:	Railing: 0
Type Service On: 1	Superstructure Des:	Superstructure Des:	Transition: 0
Type Service Under: 5	Substructure Mat'l:	Substructure Mat'l:	Approach Railing: 0
Traffic Status: A	No. Main Spans: 6	No. Appr. Spans: 0	Approach Ends: 0
	Max. Span Length: 9	Appr. Span Length: 0	Bridge Median: 0

Geometric Data

General	Horizontal Clearances On Inv. Route	Vertical Clearances On Inv. Route	Navigational Data
Appr. Rd'way Width: 23	Roadway Width: 25.1	Greatest Minmum: 99 99	Nav. Control: 0
Lanes On: 02	Horizontal: 25.1	Minimum: 99 99	Nav. Vert. Clr.: 0
Lanes Under: 00	Deck Width: 26.3		Nav. Hor. Clr.: 0
Right Curb/Sidewalk: 0			Pier Protection:
Left Curb/Sidewalk: 6.0	**Lateral Underclearances**	**Vertical Underclearances**	
Structure Flared: 0			
Skew: 0	Total Right: 0	Greatest Minimum Right: 99 99	
Length: 54	Total Left: 0	Greatest Minimum Left: 99 99	
	Control Reference: N	Control Reference: N	
	Right (shoulder): 99.9	Mininum: 99 99	
	Left (median): 0		

Condition , Appraisal, and Rating Data

Deck: 7	Structure Evaluation:	Operating Truck Type:
Superstructure: 7	Deck Geometry:	Operating Load (Tons):
Substructure: 7	Underclearances:	Inventory Truck Type:
Culvert: N	Waterway Adequacy: 6	Inventory Load (Tons):
Channel: 5	Approach Alignment: 7	Restriction Level:

Bridge Element Group Textual Data

Bridge ID: 02-9-00001-0-02-00

23 Aug-2011

Abutments and/or Headwalls:

TT BULKHEAD BOARDS / GOOD

Bents and/or Piers:

7: 5 TT PILES PER BENT SPACED AT 5'6" WITH 12"X12" TT CAPS /

Bearings:

N/A

Girders/Floor Beams/Stringers and/or Beams:

7: 6"X12" TT BEAMS PER BENT SPACED AT 12"; 27 BEAMS ON SPANS #2,3,4 & 6 AND 28 BEAMS ON SPANS #1 & 5/

Truss Members:

N/A

Expansion Joints:

N/A

Decks and/or Slabs:

7: 4"X12" TT DECK WITH 0" SPACING; 3"X8" TT WEARING SURFACE /

Curbs:

8"X8" TT CURB ACROSS BRIDGE ON BOTH SIDES; SIDEWALK LEFT OF C/L NOT ATTACHED TO BRIDGE. ALL TT STRUCTURE: 2"X6"X6' DECK WITH 4-2"X12" BOARDS SPACED AT 16" RESTING ON 8"X8" TT CAPS WITH 2 TT PILES SPACED 2.3'

Bridge Railing/Parapets and/or Median Barriers:

12- 8"X8" TT POSTS SPACED AT 59" WITH A 6"X8" TT TOP RAILING 38" HIGH / GOOD

Paint System(s):

N/A

Waterway and Scour:

6:FAIR / DUE TO TREES AND DEBRIS IN STREAM

Fender System:

N/A

Roadway Alignment:

GOOD

Traffic Signs:

NONE

Encroachments:

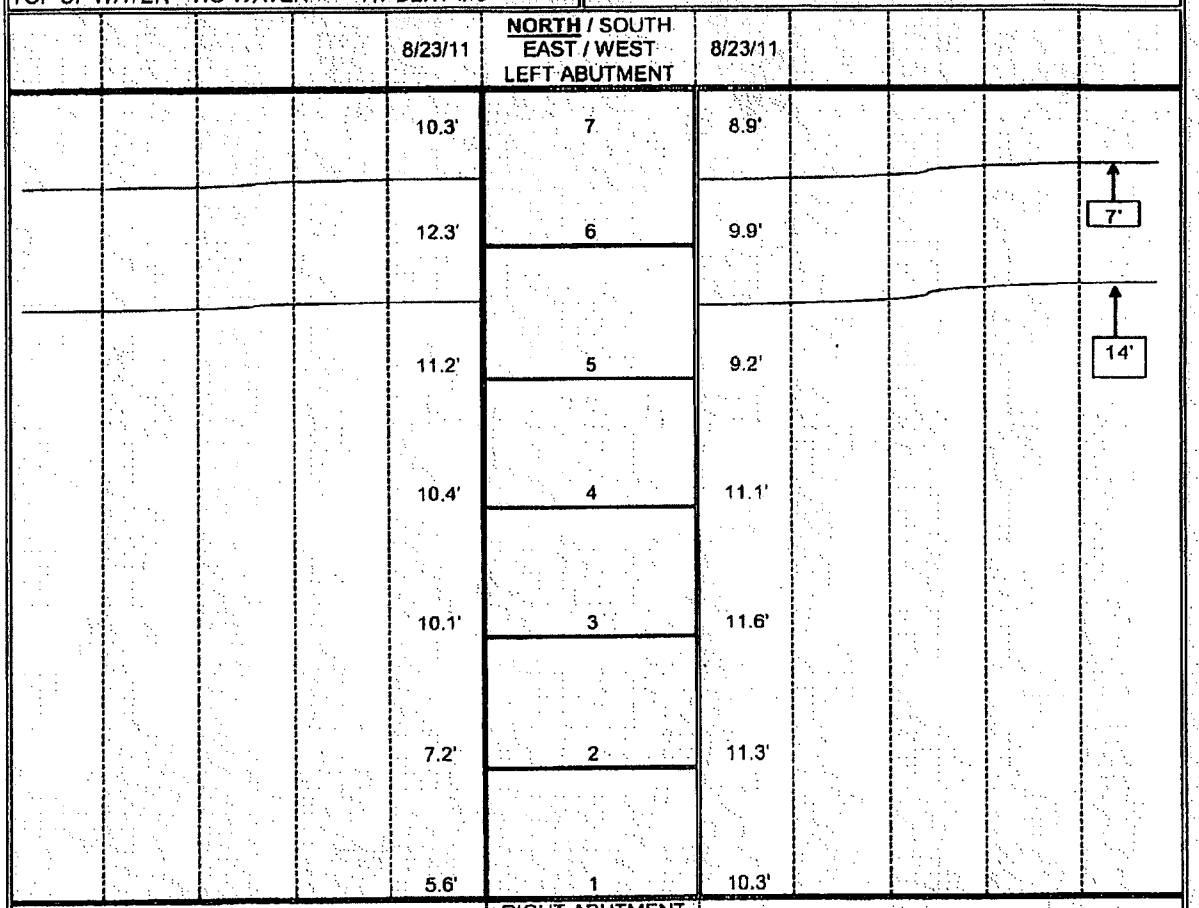
1 UTILITY 12" PIPE UNDER BRIDGE RIGHT OF C/L

Miscellaneous Notes:

LAT: N 33 28' 57.95
LONG: W 81 44' 33.11

THIS BRIDGE IS LOCATED IN A PRIVATE GATED SUBDIVISION NAMED WOODSIDE PLANTATION.

BRIDGE INSPECTION STREAM / GROUND PROFILE	BRIDGE NUMBER: 02-9-00001-0-02-00
	ROAD NUMBER: STEEPLECHASE RD
	CROSSING: GRASSY CREEK
COMMENTS:	TOP OF WATER TO TOP OF RAIL
BRIDGE LOCATED IN WOODSIDE PLANTATION, A	HORIZONTAL BLOCKAGE (%) TO
PRIVATE GATED SUBDIVISION	VERTICAL BLOCKAGE (%)
TOP OF WATER = NO WATER AT BENT # 6	



G.B. & D.V. & R.J.	8/23/2011	8:00
MEASUREMENT BY	DATE MEASURED	TIME

MEASUREMENTS ARE FROM TOP OF RAIL TO GROUND LINE

02-9-00001-0-02-00
02-9-00002-0-01-00
02-9-00001-0-01-00
Eutopia Deep Pond
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BRIDGE
02-9-00001-0-02-00
08/23/2011 09:08

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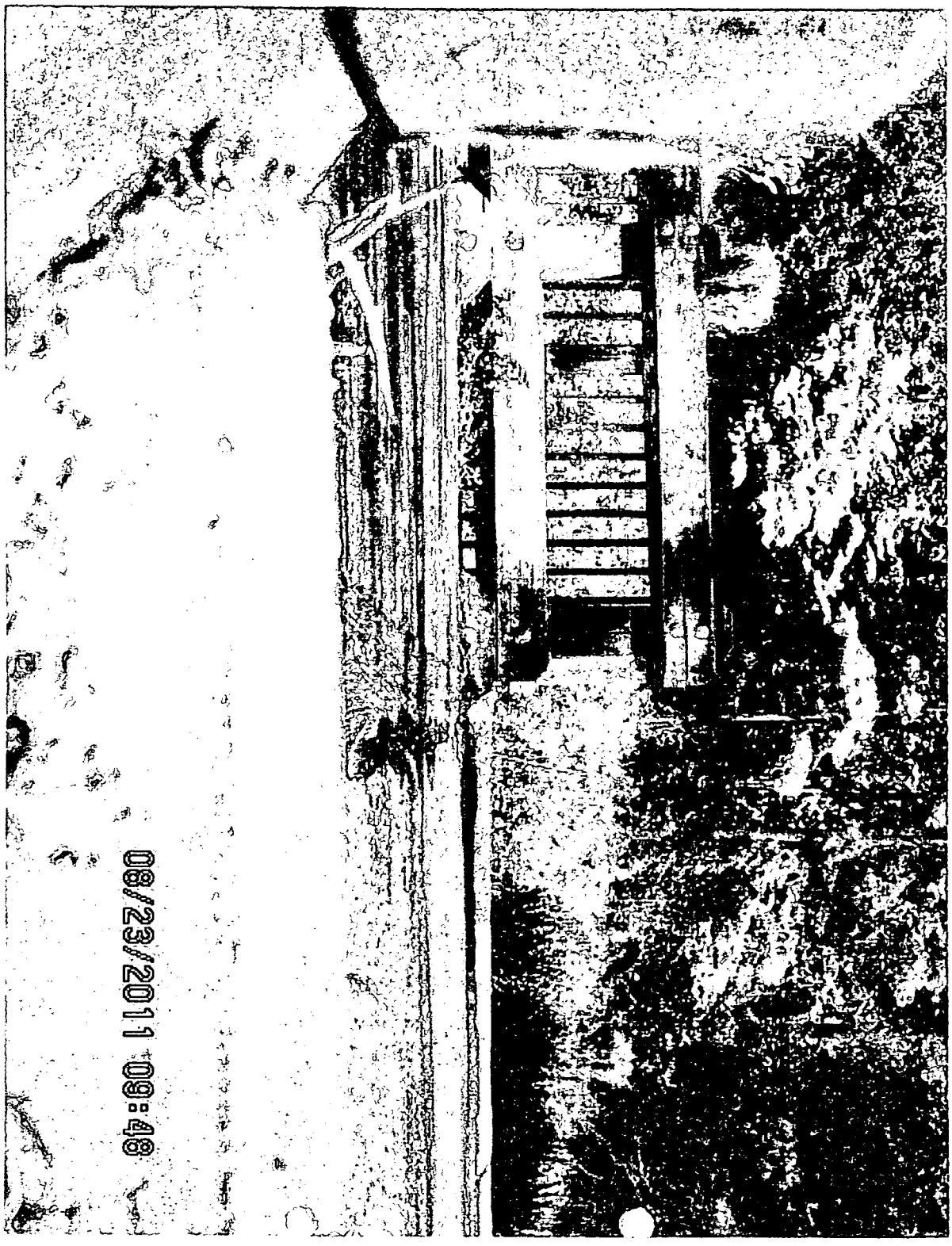

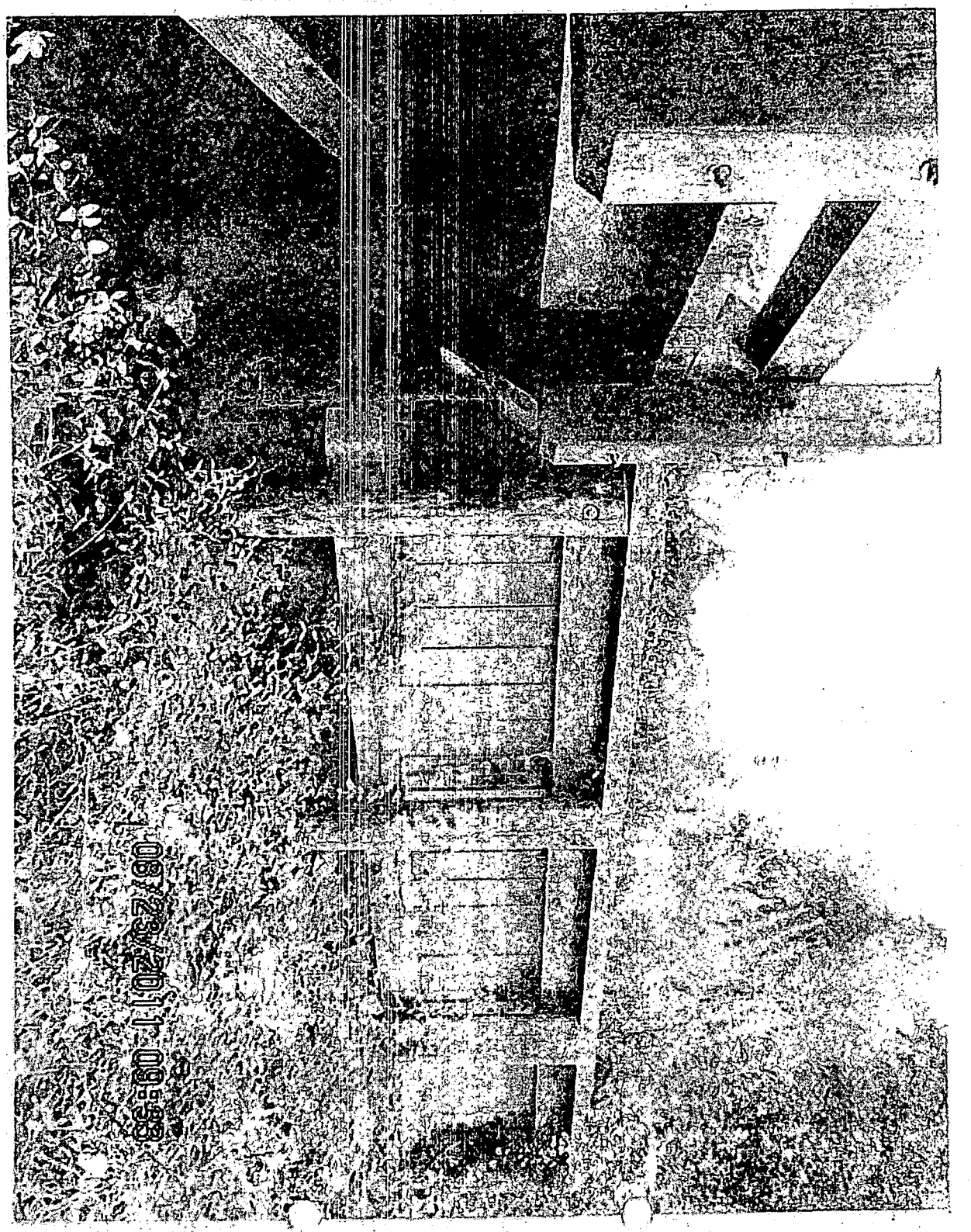

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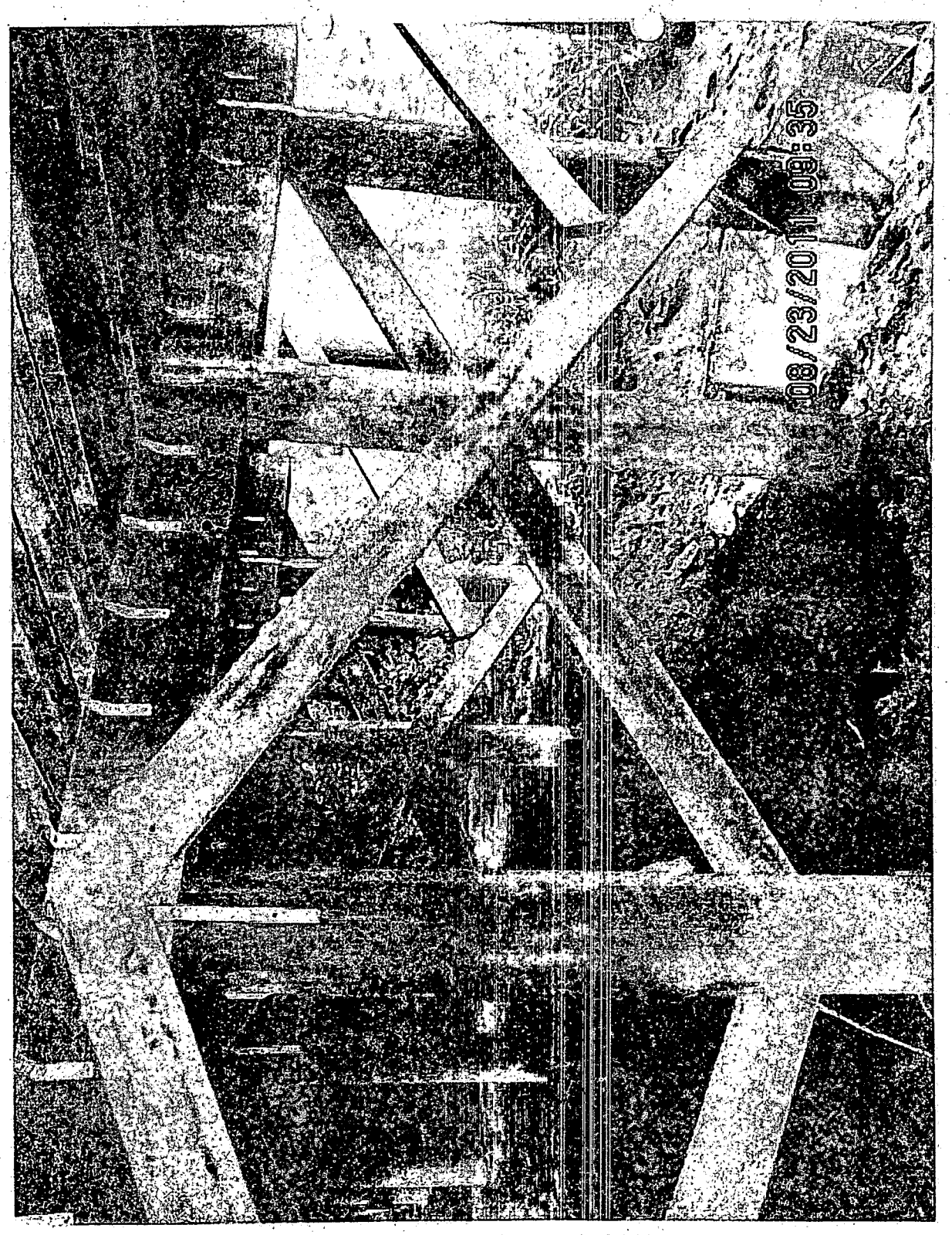

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SIDEWALK
SUPERSTRUCTURE
& SUBSTRUCTURE

National Bridge Inspection Data

Bridge ID: 02-9-00002-0-01-00

23 Aug-2011

General Data

	Original Main	Original Approach	Deck Construction
Year Built:	Superstructure Mat'l: 7	Superstructure Mat'l:	Type: 8
Design Load:	Superstructure Des: 02	Superstructure Des:	Surface: 7 M'brane: 0
Year Rebuilt:	Substructure Mat'l: 7	Substructure Mat'l:	Protect: 0
	Reconstructed Main	**Reconstructed Approach**	**Railings and Medians**
Historical: 5	Superstructure Mat'l:	Superstructure Mat'l:	Railing: 0
Type Service On: 1	Superstructure Des:	Superstructure Des:	Transition: 0
Type Service Under: 5	Substructure Mat'l:	Substructure Mat'l:	Approach Railing: 0
Traffic Status: A	No. Main Spans: 2	No. Appr. Spans:	Approach Ends: 0
	Max. Span Length: 9	Appr. Span Length:	Bridge Median: 0

Geometric Data

General	Horizontal Clearances On Inv. Route	Vertical Clearances On Inv. Route	Navigational Data
Appr. Rd'way Width: 21	Roadway Width: 22.8	Greatest Minmum: 99 99	Nav. Control: 0
Lanes On: 02	Horizontal: 22.8	Minimum: 99 99	Nav. Vert. Clr.: 0
Lanes Under: 00	Deck Width: 24.0		Nav. Hor. Clr.: 0
Right Curb/Sidewalk: 0			Pier Protection:
Left Curb/Sidewalk: 0			
Structure Flared: 0			
Skew: 0	Lateral Underclearances	Vertical Underclearances	
Length: 18	Total Right: 0	Greatest Minimum Right: 99 99	
	Total Left: 0	Greatest Minimum Left: 99 99	
	Control Reference: N	Control Reference: N	
	Right (shoulder): 99	Minimum: 99 99	
	Left (median): 99		

Condition , Appraisal, and Rating Data

Deck: 7	Structure Evaluation:	Operating Truck Type:
Superstructure: 7	Deck Geometry:	Operating Load (Tons):
Substructure: 7	Underclearances:	Inventory Truck Type:
Culvert: N	Waterway Adequacy: 6	Inventory Load (Tons):
Channel: 5	Approach Alignment: 7	Restriction Level:

Bridge Element Group Textual Data

Bridge ID: 02-9-00002-0-01-00

23 Aug-2011

Abutments and/or Headwalls:

TT BULKHEAD BOARDS / GOOD

Bents and/or Piers:

7: 5-TT PILES PER BENT SPACED AT 5' WITH 12"X12" TT CAPS /

Bearings:

N/A

Girders/Floor Beams/Stringers and/or Beams:

7: 24- 6"X12" TT BEAMS PER SPAN SPACED AT 12" /

Truss Members:

N/A

Expansion Joints:

N/A

Decks and/or Slabs:

7: 4"X12" TT DECK BOARD WITH 0" SPACING; 3"X8" TT WEARING SURFACE; 2 SPANS AT 9' /

Curbs:

8"X8" TT CURB ACROSS BRIDGE ON BOTH SIDES / GOOD

Bridge Railing/Parapets and/or Median Barriers:

5- 8"X8" TT POSTS SPACED AT 43" WITH A 6"X8" TT TOP RAILING 38" HIGH ON BOTH SIDES / GOOD

Paint System(s):

N/A

Waterway and Scour:

5: FAIR/ DUE TO TREES AND DEBRIS IN STREAM

Fender System:

N/A

Roadway Alignment:

GOOD

Traffic Signs:

N/A

Encroachments:

NONE

Miscellaneous Notes:

LAT: N 33 28'52.35
LONG: W 81 44'32.95

THIS BRIDGE IS LOCATED IN A PRIVATE GATED SUBDIVISION NAMED WOODSIDE PLANTATION.

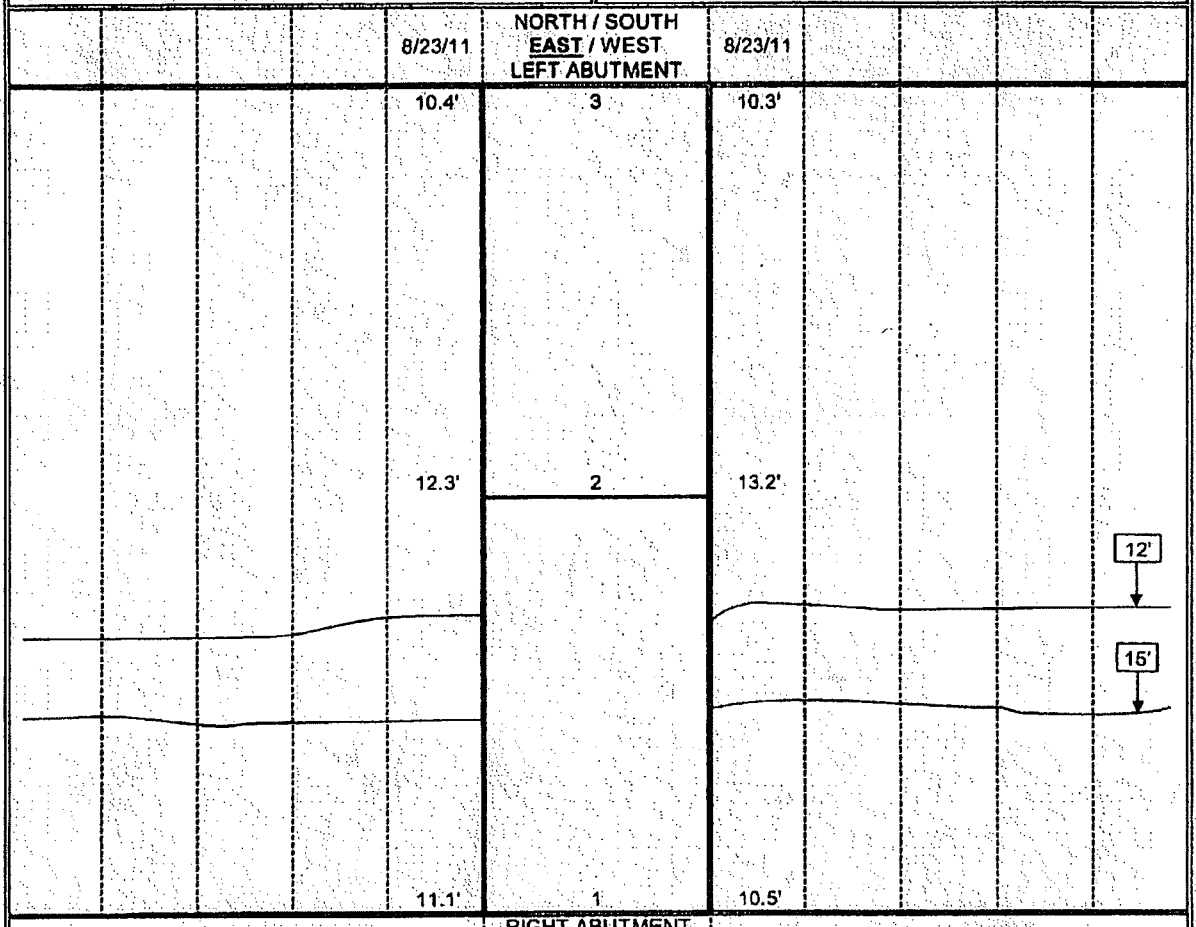
BRIDGE INSPECTION STREAM / GROUND PROFILE

BRIDGE NUMBER:	02-9-00002-0-01-00
ROAD NUMBER:	GRASSY CREEK LANE
CROSSING:	GRASSY CREEK
TOP OF WATER TO TOP OF RAIL	
HORIZONTAL BLOCKAGE (%)	TO
VERTICAL BLOCKAGE (%)	

COMMENTS:

BRIDGE LOCATED IN WOODSIDE PLANTATION, A PRIVATE GATED SUBDIVISION

TOP OF WATER = 12.0' BETWEEN BENTS # 1 & 2



G.B. & D.V. & R.J.	8/23/2011	10:00
MEASUREMENT BY	DATE MEASURED	TIME

MEASUREMENTS ARE FROM TOP OF RAIL TO GROUND LINE

02-9-00001-0-02-00
02-9-00002-0-01-00
02-9-00001-0-01-00
Strandchase
Ginny Gold Ln
Hurdons Deep Pond
White Gold
Google
© 2011 Google
Imagery Date: 10/9/2010

104

105

BRIDGE

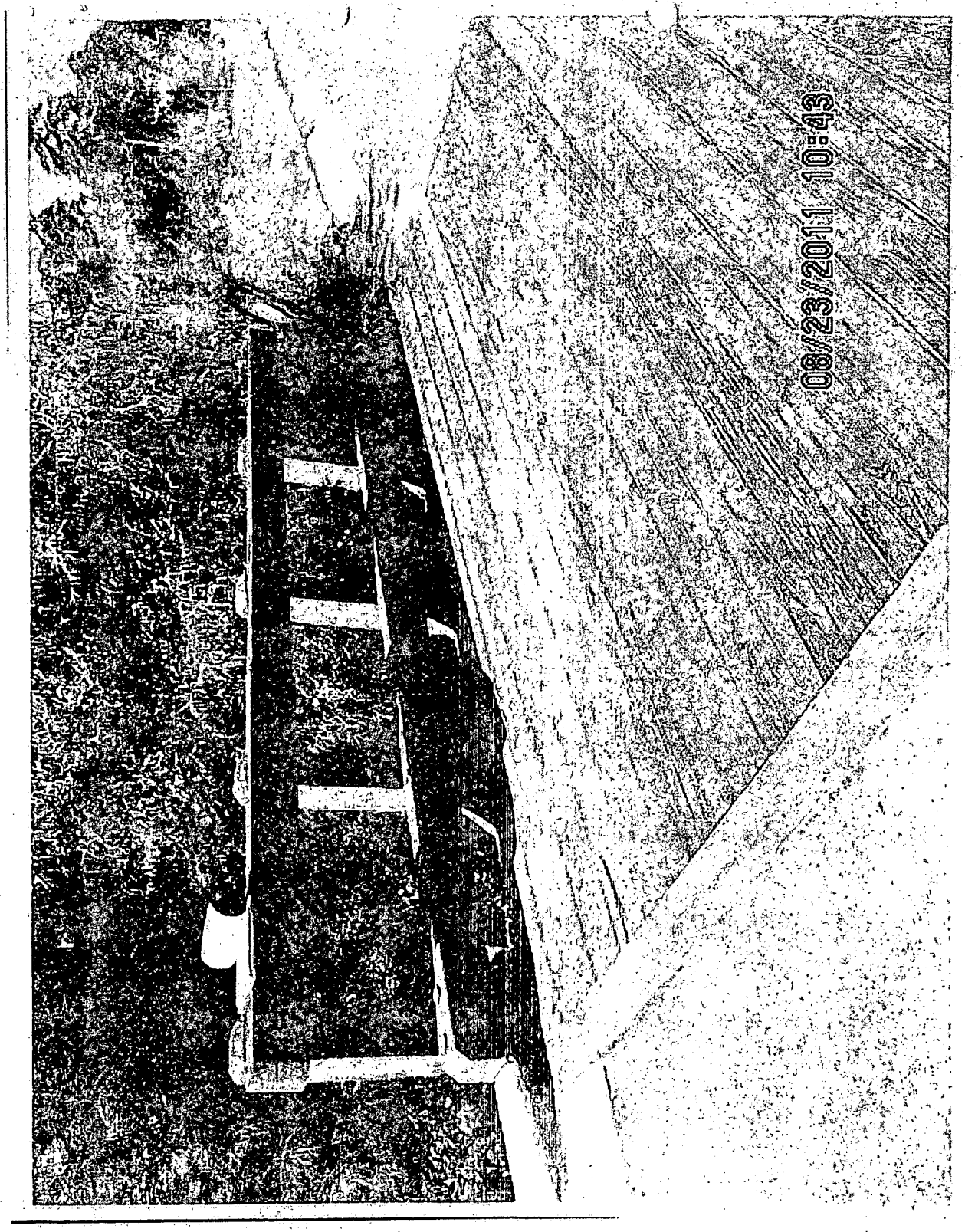
02-9-00002-001-00

105

106

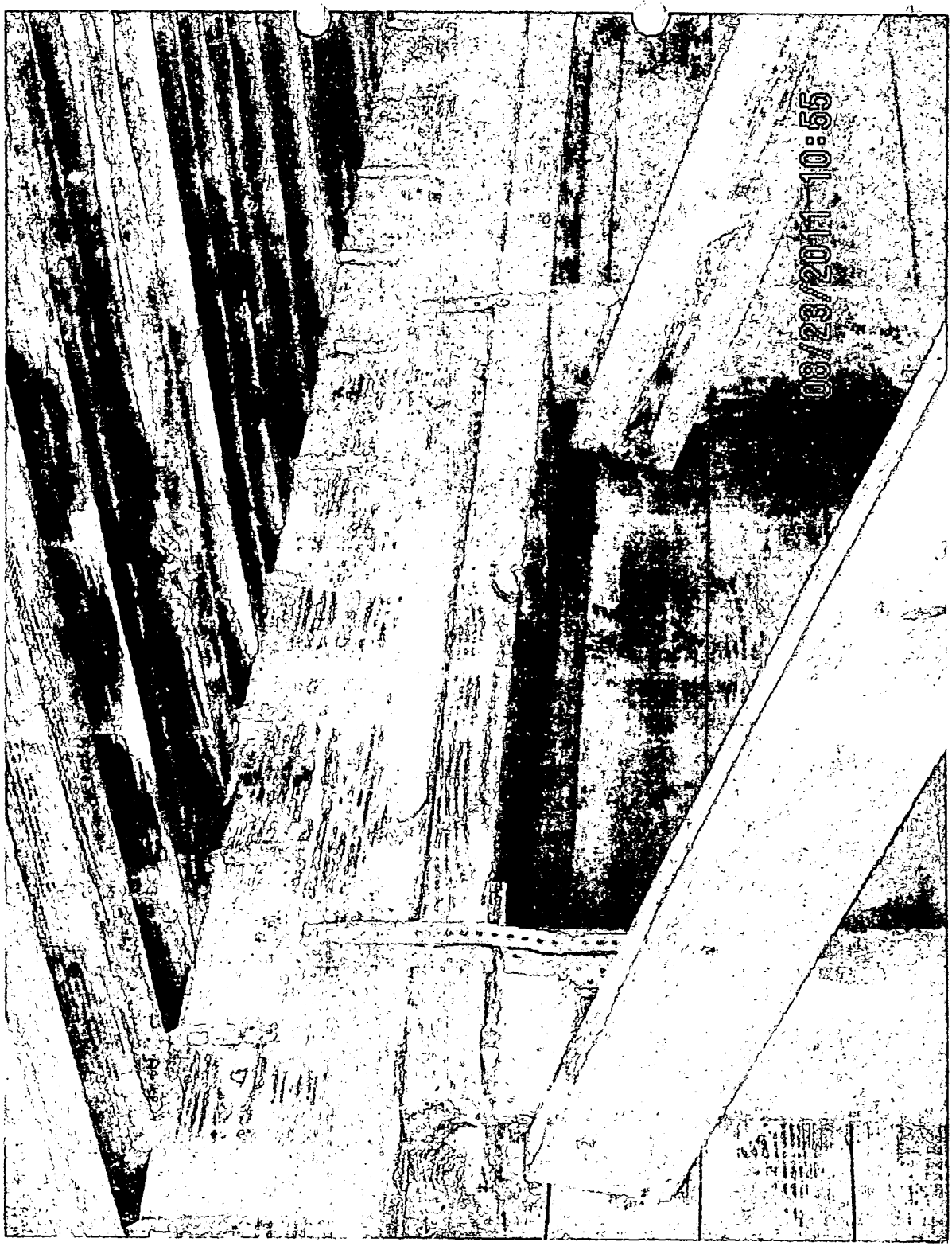
106

107



107

108



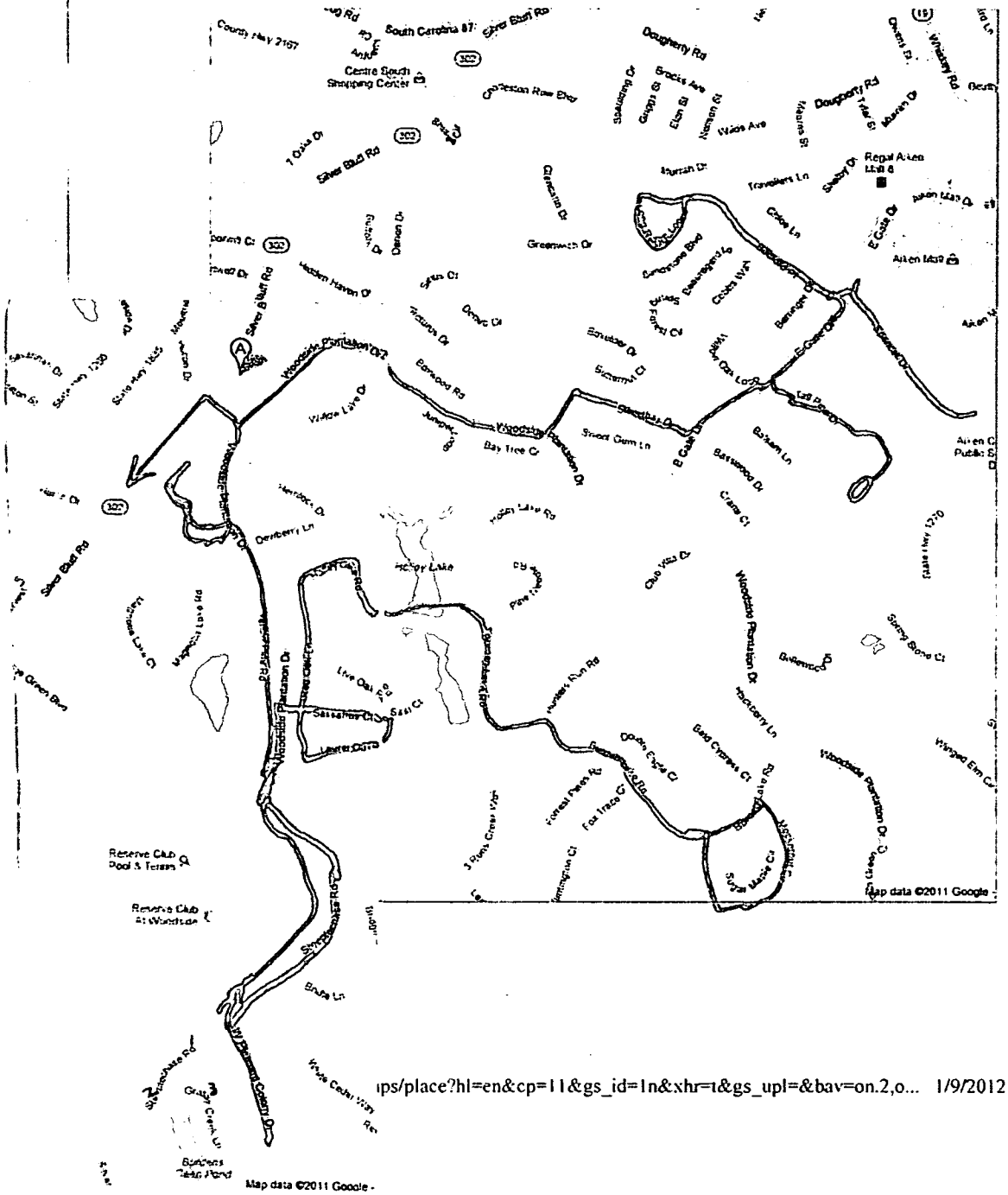
108

109

EXHIBIT C

Google Pt. 24

To see all the details that are visible on the screen, use the "Print" link next to the map.



Rt 25
Google Maps
Woodside Plantation Dr
Balsam Ln
Cabin Ct
Hackberry Ln
Spring Slope Ct
Steeple Ridge Rd
Aiken County Public School District
Burton Lake Rd
Live Oak Rd
Yellow Pine Rd
Magnolia Lake Rd
Magnolia Lake Ct
Laurel Cir
Sassafras Ct
Red Oak Ln
Hickory Lake Rd
Pine Needle Rd
Juniper Loop
Bay Tree Ct
Sweetbay Dr
Sweet Gum Ln
Club View Ct
Burton Lake Rd
Forest Pines Rd
Forest Blvd
Lady Banks Rd
Sea Grass Ln
Crescent Point
Bridge Crest Ct
Foxhound
Greenhouse Rd
Emdie Ln
White Cedar Wa
Reserve Club Dr
Pool & Tennis
Reserve Club Dr
At Woodside
Chukker Creek Rd
Woodside Plantation Dr
Rocky Ridge Rd
River Birch Rd
Birch Tree Ct
Sugar Maple Ct
Mockernut Cir
Burdan Ln
Longmeadow Creek
Glen Haven Cir
Wingfoot Elm Cir
Steeple Ridge Rd
Acorn Dr
Bloomhaven Dr
Bloomhaven Ct
Barnsley Dr
Oak Brook
Oak Leaf Dr
Beechwood Dr
Cabin Ct
Balsam Ln
Bellewood Dr
Burton Ln
Sweetbay Dr
Sweet Gum Ln
Club View Ct
Burton Lake Rd
Dancing Eagle Ct
Forest Pines Rd
Forest Blvd
Huntington Ct
Sailing Lake Cir

Route # 24 Tommy Holloway KMS/ SAHS

Route Starts @ AHS, Turn (Rt) On Dupont Dr, Turn (Lt) On Teague St, Straight On Chesterfield St, Straight On Whiskey Rd, Turn (Rt) On Brookhaven Dr, Turn (Rt) On Spencer Dr, Turn (Rt) On East Gate Dr, Turn (Rt) On Bedford Pl, Turn (Lt) On Longridge Loop, Straight On Bedford Pl, Turn (Rt) On East Gate Dr, Turn (Lt) Tall Pine Dr, Turnabout In Cul-De-Sac, Turn (Lt) On East Gate, Turn (Rt) On Sweetbay, Turn (Lt) On Cypress, Turn (Lt) On Woodside Plantation Dr, Turn (Rt) On Holley Lake Cir, Turn (Lt) On Burden Lake, Turnabout @ Mockernut Cir, Turn (Lt) On Holley Lake, Turn (Lt) On Red Oak, Turn (Lt) On Laurel Oak Turn (Lt) On Live Oak, Turn (Lt) On Sassafras Rd, **Turn (Lt) On Woodside Plantation Dr, Turn (Lt) On Steeplechase, Turn (Lt) On Foxhound Run, Turnabout In Cul-De-Sac, Turn (Lt) On Steeplechase, Turn (Lt) On West Pleasant Collen, Turnabout In Cul-De- Sac, Turn (Rt) On Steeplechase, Turn (Rt) On Woodside Plantation Dr, Turn (Lt) On Magnolia Lake Ln, Turn (Rt) On Magnolia Lake Rd, Turnabout In Cul-De-Sac, Turn (Lt) On Magnolia Lake Ln, Turn (Lt) On Woodside Plantation Dr, Turn (Lt) On Main Gate, Turn (Lt) On Silver Bluff Rd,** Turn (Rt) On Savannah Dr, Turn (Rt) On Moultrie Dr, Turn (Lt) On Huron Dr, Turn (Rt) On Moultrie Dr, Turn (Lt) On Lakeside Dr, Turn (Lt) On Hartwell Dr, Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Hidden Haven Dr, Turnabout @ Arcturus Dr, Turn (Rt) On Silver Bluff Rd, Turn (Lt) On Town Creek Rd, Turn (Lt) On Plantation Dr, Turn (Lt) On Huckleberry Dr, Turn (Lt) On Town Creek Rd, Turn (Lt) On Partridge Rd, Turn (Rt) On Casaba, Turn (Rt) On Alpine Dr, Turn (Rt) On Central South, Turn (Rt) On Silver Bluff Rd, Turn (Rt) On Darien Dr, Turn (Lt) On Suffolk Dr, Turn (Rt) On Greenwich Dr, Turn (Rt) On Greenwich Dr Again, Turn (Lt) On Darien Dr, Turn (Rt) On Silver Bluff Rd, Turn (Rt) On East Pine Log Rd, Turn (Rt) On South Aiken Blvd, Turn (Rt) Into Kms, Turn (Rt) On South Aiken Blvd Into South Aiken High, Turn (Rt) On East Pine Log Rd, Straight On Rudy Mason Pkwy, Straight On Rutland Dr, Turn (Lt) On Dupont Dr, Turn (Rt) Into AHS!!

* CORNER OF SPENCER DR & HILLSBORO DR	6:50
* CORNER OF SPENCER DR & DOUBLE TREE	6:53
* CORNER OF BEDFORD PL & TRAVELLERS PL	7:00
* CORNER OF LONGRIDGE RD & BEDFORD PL	7:02
* CORNER OF BEDFORD PL & BERRINGER PL	7:04
* 157 TALL PINE RD	7:06
* CORNER OF EAST GATE DR & SWEETBAY CT	7:09
* CORNER OF CYPRESS ST & SWEET GUM LN	7:11
* 771 BURDEN LAKE RD	7:13
* CORNER OF BURDEN LAKE RD & MOCKERNUT CT	7:15
* CORNER OF HOLLEY LAKE RD &	7:17
* 204 RED OAK DR	7:19
* 109 LAUREL OAK DR	7:22
* 22 SASSAFRAS RD	7:24
* 187 FOXHOUND RUN	7:30
* 131 WEST PLEASANT	7:37
* 209 MAGNOLIA LAKE RD	7:40

* CORNER OF WOODSIDE	7:42
* CORNER OF SAVANNAH DR &	7:44
* 1177 MOULTRIE DR	7:46
* CORNER OF HIDDEN HAVEN DR &	7:48
* CORNER OF HUCKLEBERRY DR &	7:50
* 1631 PARTRIDGE RD	7:52
* 1759 PARTRIDGE RD	7:54
* 1820 ALPINE DR	7:56
* CORNER OF GREENWICH DR &	8:00
* 58 SUFFOLK DR	8:02

ROUTE #25 ADDIE NEWKIRKCHUKKER CREEK ELEMENTARY

ROUTE STARTS @ AHS, Turn (Rt) On Dupont Dr, Turn (Lt) On Columbia Ave, Turn (Rt) On York St, Turn (Rt) On Richland Ave, Turn (Lt) On Chesterfield St, Straight Onto Whiskey Rd, Turn (Rt) On Pine Log Rd, Straight Onto Silver Bluff Rd, Turn (Lt) On Hidden Haven Dr, Turnabout @ Arcturus Dr, Turn (Lt) On Silver Bluff Rd, Turn (Lt) On Adams Rd, Turnabout @ Bransome Blvd, Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Good Hope Farms Rd, Turnabout @ 319 Good Hope Farms, Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Anderson Pond Rd, Turnabout, Turn (Rt) On Silver Bluff Rd, Turn (Rt) On Woodside Plantation Dr, Turn Magnolia Lake Ln, Turn (Rt) On Magnolia Lake Rd, Turnabout @ Magnolia Lake Ct, Turn (Lt) On Magnolia Lake Ln, Turn (Lt) On Woodside Plantation Dr, Turn (Lt) On East Gate Dr, Turn (Rt) On Tall Pine Dr, Turnabout In Cul-De-Sac, Turn (Lt) On East Gate Dr, Turn (Lt) On Basswood Dr, Turn (Lt) On Woodside Plantation Dr, Turn (Rt) On Burden Lake Rd, Turnabout @ Bald Cypress Ct, Turn (Rt) On Burden Lake Rd, Turn (Rt) On Woodside Plantation Dr, Turn (Lt) On South Gate Dr, Turn (Lt) On Chukker Creek Rd, Turn (Lt) Into Chukker Creek School!!

* CORNER OF HIDDEN HAVEN DR &	6:15
* 396 ADAMS RD	6:20
* CORNER OF ADAMS RD & EVE ST	6:25
* 319 GOOD HOPE FARMS RD	6:34
* CORNER OF MAGNOLIA LAKE RD &	6:38
* CORNER OF WOODSIDE DR &	6:40
* 157 TALL PINE DR	6:45
* CORNER OF BASSWOOD DR &	6:50
* CORNER OF BURDEN LAKE RD &	6:55

AREA 1 BUS ROUTES
2011-2012

Transportation Supervisor: Sharon Harris 641-2507
Routing Coordinator: Dottie Reames 593-7202

SCHOOLS SERVED…

ELEMENTARY SCHOOLS

Aiken Elementary
East Aiken Elementary
Millbrooke Elementary
Oakwood Windsor Elementary
Chukker Creek Elementary
J D Lever Elementary
North Aiken Elementary

MIDDLE SCHOOL & HIGH SCHOOLS

Aiken Middle
Kennedy Middle
Schofield Middle
Aiken High
South Aiken High

Routes and times are subject to change!!

AIKEN ELEMENTARY

ROUTE # 10 TAMMY BLAKELY AIKEN ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (RT) ON TEAGUE ST, STRAIGHT ON CHESTERFIELD ST, STRAIGHT ON WHISKEY RD, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON HITCHCOCK PKWY, TURN (RT) ON HICKORY RIDGE RD, TURN (RT) ON ABERDEEN RD, TURN (LT) ON HICKORY RIDGE RD, STRAIGHT ON ORIOLE ST, TURN (RT) ON CARDINAL DR, TURN (LT) ON WINGED FOOT, TURN (RT) ON PINE LOG RD, TURN (LT) ON ALPHA DR, TURN (RT) ON ALPINE DR, TURN (RT) ON HIGHLAND FOREST DR, TURN (LT) ON PINE LOG RD, TURN (LT) ON TOWN CREEK RD, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON HARTWELL DR, TURN (LT) ON MOULTRIE DR, TURN (RT) ON SAVANNAH DR, TURN (LT) ON LAKESIDE DR, TURNABOUT @ HILTON ST, TURN (RT) ON SAVANNAH DR, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON RICHARDSON'S LAKE RD, TURN (RT) ON WOODLAKE RD, TURNABOUT IN CUL-DE-SAC, TURN (RT) ON RICHARDSON'S LAKE RD, TURN (RT) ON TRAIL POINT, TURNABOUT IN CUL-DE-SAC, TURN (RT) ON RICHARDSON'S LAKE RD, TURN (RT) ON PINE LOG RD, TURN (LT) ON HUNTSMAN DR, TURN (LT) ON DEERWOOD DR INTO AIKEN ELEM, TURN (LT) ON HUNTSMAN DR, TURN (RT) ON HITCHCOCK PKWY, TURN (LT) ON HICKORY RIDGE RD, TURN (RT) ON ABERDEEN DR, TURN (RT) ON HICKORY RIDGE RD, TURN (RT) ON NORTHWOOD DR, TURN (RT) ON WOODBINE DR, TURN (RT) ON BRIDLEWOOD DR, TURN (LT) ON GLENN PL, TURN (RT) ON LONGWOOD, TURN (RT) ON WILLIAMS DR, TURN (RT) ON ROSEMARY DR, TURN (LT) ON JANET DR, TURN (RT) ON ROSLYN CIR, TURN (LT) ON MAGNOLIA DR, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON THOMAS ST, TURN (LT) ON TAYLOR ST, TURN (LT) ON SMALL RIDGE RD, TURN (RT) ON GYLES RD, TURN (RT) ON HITCHCOCK PKWY, STRAIGHT ON UNIVERSITY PKWY, STRAIGHT ON KING GRANT DR, TURN (LT) ON COLONY PKWY, TURN (RT) ON WHISKEY RD, TURN (RT) ON BRANDY RD, TURN (LT) ON TWO NOTCH RD, TURN (LT) ON BARNARD ST, TURN (RT) ON MAGNOLIA ST, TURN (LT) ON KNOX AVE, TURN (RT) ON WHISKEY RD, TURN (RT) ON PARK AVE, TURN (LT) ON HORRY ST INTO SMS, TURN (RT) ON BARNWELL AVE, CROSS YORK ST, TURN (RT) ON COLUMBIA AVE, TURN (RT) ON TEAGUE ST, TURN (RT) ON DUPONT DR, TURN (LT) INTO AHS!!

* 3103 WESTMONT DR	6:23
* CORNER OF WESTMONT DR & ROSEMONT DR	6:25
* 3422 WESTMONT DR	6:27
* CORNER OF WESTMONT DR & GREGG AVE	6:28
* 3519 TROLLEY LINE RD	6:30
* CORNER OF TROLLEY LINE RD & FRANKEL ST	6:31
* 3013 VAUCLUSE RD	6:34
* CORNER OF VICTORIA DR & LEANN CT	6:38
* 15 IROQUOIS ST	6:43
* 120 KENMONT ST	6:45
* 4104 TROLLEY LINE RD	6:48
* 102 HUDSON RD	6:49
* SUMMIT DR	6:53
* 1707 RIDGECREST AVE	6:56

CHUKKER CREEK ELEMENTARY

ROUTE # 22 CONSTANCE PAULING CHUKKER CREEK ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON TEAGUE ST, STRAIGHT ON CHESTERFIELD AVE, TURN (RT) ON HAMPTON AVE, TURN (LT) ON GREENVILLE AVE, STRAIGHT ON ABBEVILLE AVE, TURN (RT) ON LAURENS ST, TURN (RT) ON RICHLAND AVE, TURN (RT) ON GREENVILLE AVE, TURN (RT) ON EDGEFIELD AVE, TURN (LT) ON NEWBERRY AVE, TURN (RT) ON ABBEVILLE AVE, STRAIGHT ON FAIRFIELD AVE, TURN (LT) ON BARNWELL AVE, TURN (LT) ON SUMTER AVE, TURN (LT) ON BARNWELL AVE, TURN (RT) ON KERSHAW ST, TURN (RT) ON ABBEVILLE AVE, TURN (RT) ON WILLIAMSBURG AVE, TURN (LT) ON SOUTH BOUNDARY AVE, TURN (RT) ON MARLBORO ST, STRAIGHT ON GRACE AVE, TURN (RT) ON TWO NOTCH RD, TURN (RT) ON BOARDMAN RD, TURN (LT) ON WHISKEY RD, TURN (LT) ON COLONY PL, TURN (RT) ON PRICE, TURN (LT) ON WHISKEY RD, TURN (RT) ON EAST GATE, TURN (RT) ON BEDFORD PL, TURN (LT) ON LONG RIDGE PL, TURN (RT) ON BEDFORD PL, TURN (RT) ON EAST GATE, ROUNDABOUT, TURN (RT) ON WHISKEY RD, TURN (RT) ON CHUKKER CREEK RD, TURN (RT) INTO CHUKKER CREEK ELEM!!!

* CORNER OF GREENVILLE AVE & ABBEVILLE AVE	5:58
* 130 GREENVILLE AVE	6:01
* CORNER OF EDGEFIELD AVE & PENDLETON AVE	6:03
* CORNER OF NEWBERRY AVE & ABBEVILLE AVE	6:06
* CORNER OF ABBEVILLE AVE & YORK ST	6:08
* CORNER OF ABBEVILLE AVE & FAIRFIELD AVE	6:10
* CORNER OF FAIRFIELD AVE & BARNWELL AVE	6:12
* CORNER OF BARNWELL AVE & UNION ST	6:14
* CORNER OF BARNWELL AVE & SUMTER ST	6:16
* CORNER OF KERSHAW ST & ABBEVILLE AVE	6:20
* CORNER OF ABBEVILLE AVE & HORRY ST	6:22
* 219 WILLIAMSBURG ST	6:24
* 604 PARK AVE	6:27
* CORNER OF WILLIAMSBURG ST & COLLETON ST	6:29
* CORNER OF MARION ST & MEAD AVE	6:31
* CORNER OF MARLBORO ST & GAYLE AVE	6:32
* COLONY PL @ SOUTH PARK	6:37
* CORNER OF BEDFORD PL & TRAVELLERS PL	6:47
* CORNER OF BEDFORD PL & BERRINGER PL	6:50

ROUTE # 23 GERALDINE BRYANT CHUKKER CREEK ELEMENTAR

ROUTE STARTS @ AHS, TURN (LT) ON DUPONT DR, TURN (RT) ON RUTLAND DR, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON E. PINE LOG RD, TURN (LT) ON BANKS MILL RD, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON CROSSROAD PARK DR, TURN (LT) ON BREWSTERS WAY, TURN (RT) ON CROSSROAD PARK DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON CINNAMON DR, TURN (RT) ON LAVENDER LN, TURN (LT) ON CINNAMON DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON BRASHUM DR, TURN (RT) ON SYCAMORE DR, TURN (LT) ON PINE HOLLOW DR, TURN (LT) ON BRASHUM DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON WHISKEY RD, TURN (LT) ON DOMINION DR, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON WHISKEY RD, TURN (RT) ON SOUTH MEADOWS DR, TURN (LT) ON LONG CREEK RD, TURN (LT) ON SOUTH MEADOWS DR, TURN (RT) ON BAINBRIDGE DR, TURN (RT) ON HUNTER'S GLEN DR, TURN (RT) ON OLD DOMINION DR, TURN (LT) ON SHAKERAG RD, TURN (RT) ON ROLLING ROCK RD, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON CHELTENHAM DR, TURN (LT) ON CITADEL DR, TURN (LT) ON RAMBLEWOOD DR, TURN (RT) ON DEEP RUN RD, TURN (LT) ON OLD

DOMINION RD, TURN (RT) ON HUNTER'S GLEN RD, STRAIGHT ONTO CHUKKER CREEK RD, TURN (RT) INTO CHUKKER CREEK ELEM, TURN (LT) ON CHUKKER CREEK RD, TURN (LT) ON WHISKEY RD, TURN (RT) ON E. PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STARIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* 515 TALATHA CHURCH RD	6:05
* 157 BREWSTER'S WAY	6:20
* 250 BREWSTER'S WAY	6:22
* 764 CROSSROAD PARK DR	6:25
* 653 CROSSROAD PARK DR	6:30
* 324 TALATHA CHURCH RD	6:33
* CORNER OF CINNAMON DR & LAVENDER LN	6:34
* 2075 LAVENDER LN	6:36
* 1120 CINNAMON DR	6:40
* 1070 BRASHUM DR	6:43
* CORNER OF TALATHA CHURCH RD & VINE DR	6:44
* 171 DOMINION DR	6:45
* CORNER OF SOUTH MEADOWS BLVD & BERYL DR	6:47
* CORNER OF LONG CREEK RD & FLOWER BREAK RD	6:49
* CORNER OF SOUTH MEADOWS & EMERALD RIDGE RD	6:51
* CORNER OF BAINBRIDGE DR & WEYANOKE DR	6:52
* CORNER OF BAINBRIDGE DR & SUSSEX CT	6:55
* 322 SHAKERAGE DR	7:00
* 170 ROLLING ROCK RD	7:03
* 111 ROLLING ROCK RD	7:06
* CORNER OF OLD DOMINION RD & DEEP RUN RD	7:10

ROUTE # 25 ADDIE NEWKIRK CHUKKER CREEK ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON COLUMBIA AVE, TURN (RT) ON YORK ST, TURN (RT) ON RICHLAND AVE, TURN (LT) ON CHESTERFIELD ST, STRAIGHT ONTO WHISKEY RD, TURN (RT) ON PINE LOG RD, STRAIGHT ONTO SILVER BLUFF RD, TURN (LT) ON HIDDEN HAVEN DR, TURNABOUT @ ARCTURUS DR, TURN (LT) ON SILVER BLUFF RD, TURN (LT) ON ADAMS RD, TURNABOUT @ BRANSOME BLVD, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON GOOD HOPE FARMS RD, TURNABOUT @ 319 GOOD HOPE FARMS, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON ANDERSON POND RD, TURNABOUT, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON WOODSIDE PLANTATION DR, TURN MAGNOLIA LAKE LN, TURN (RT) ON MAGNOLIA LAKE RD, TURNABOUT @ MAGNOLIA LAKE CT, TURN (LT) ON MAGNOLIA LAKE LN, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (LT) ON EAST GATE DR, TURN (RT) ON TALL PINE DR, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON EAST GATE DR, TURN (LT) ON BASSWOOD DR, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (RT) ON BURDEN LAKE RD, TURNABOUT @ BALD CYPRESS CT, TURN (RT) ON BURDEN LAKE RD, TURN (RT) ON WOODSIDE PLANTATION DR, TURN (LT) ON SOUTH GATE DR, TURN (LT) ON CHUKKER CREEK RD, TURN (LT) INTO CHUKKER CREEK SCHOOL!!

* CORNER OF HIDDEN HAVEN DR & ARCTURUS DR	6:15
* 396 ADAMS RD	6:20
* CORNER OF ADAMS RD & EVE ST	6:25
* 319 GOOD HOPE FARMS RD	6:34
* CORNER OF MAGNOLIA LAKE RD & MAGNOLIA LAKE CT	6:38
* CORNER OF WOODSIDE DR & JUNIPER LN	6:40
* 157 TALL PINE DR	6:45
* CORNER OF BASSWOOD DR & BALSAM LN	6:50
* CORNER OF BURDEN LAKE RD & CYPRESS CT	6:55

EAST AIKEN ELEMENTARY

ROUTE # 26 CARRIE RICHARDSON EAST AIKEN ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON TEAGUE ST, TURN (LT) ON COLUMBIA AVE, TURN (LT) ON YORK ST, TURN (RT) ON RUTLAND DR, STRAIGHT ONTO EAST PINE LOG RD, TURN (LT) ON POWDERHOUSE RD, TURN (LT) ON WHISKEY RD, TURN (LT) ON CITADEL DR, TURN (LT) ON CLEMSON DR, TURN (LT) ON FURMAN DR, TURN (LT) ON POWDERHOUSE RD, TURN (RT) ON WHISKEY RD, TURN (RT) ON OAK GROVE RD, TURNABOUT @ ATHOL AVE, TURN (RT) ON WHISKEY RD, STRAIGHT ONTO CHESTERFIELD ST, TURN (LT) ON COLUMBIA AVE, TURN (RT) ON LAURENS ST, TURN (LT) ON PLUNKETT AVE, TURN (LT) ON HAMPTON AVE, STRAIGHT ONTO CAMELLIA ST, STRAIGHT ONTO WIRE RD, TURN (RT) ON RUDY MASON PKWY, TURN (LT) ON MOSELEY RD, TURN (LT) INTO EAST AIKEN ELEMENTARY!!

TURN (RT) ON SOUTH MEADOWS DR, TURN (LT) ON LONG CREEK RD, TURN (LT) ON SOUTH MEADOWS DR, TURN (RT) ON BAINBRIDGE DR, TURN (RT) ON HUNTER'S GLEN DR, TURN (RT) ON OLD DOMINION DR, TURN (LT) ON SHAKERAG RD, TURN (RT) ON ROLLING ROCK RD, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON CHELTENHAM DR, TURN (LT) ON CITADEL DR, TURN (LT) ON RAMBLEWOOD DR, TURN (RT) ON DEEP RUN RD, TURN (LT) ON OLD DOMINION RD, TURN (RT) ON HUNTER'S GLEN RD, STRAIGHT ONTO CHUKKER CREEK RD, TURN (RT) INTO CHUKKER CREEK ELEM, TURN (LT) ON CHUKKER CREEK RD, TURN (LT) ON WHISKEY RD, TURN (RT) ON E. PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STARIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* 515 TALATHA CHURCH RD	6:05
* 157 BREWSTER'S WAY	6:20
* 250 BREWSTER'S WAY	6:22
* 764 CROSSROAD PARK DR	6:25
* 653 CROSSROAD PARK DR	6:30
* 324 TALATHA CHURCH RD	6:33
* CORNER OF CINNAMON DR & LAVENDER LN	6:34
* 2075 LAVENDER LN	6:36
* 1120 CINNAMON DR	6:40
* 1070 BRASHUM DR	6:43
* CORNER OF TALATHA CHURCH RD & VINE DR	6:44
* 171 DOMINION DR	6:45
* CORNER OF SOUTH MEADOWS BLVD & BERYL DR	6:47
* CORNER OF LONG CREEK RD & FLOWER BREAK RD	6:49
* CORNER OF SOUTH MEADOWS & EMERALD RIDGE RD	6:51
* CORNER OF BAINBRIDGE DR & WEYANOKE DR	6:52
* CORNER OF BAINBRIDGE DR & SUSSEX CT	6:55
* 322 SHAKERAGE DR	7:00
* 170 ROLLING ROCK RD	7:03
* 111 ROLLING ROCK RD	7:06
* CORNER OF OLD DOMINION RD & DEEP RUN RD	7:10

ROUTE # 24 TOMMY HOLLOWAY KMS/ SAHS

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON TEAGUE ST, STRAIGHT ON CHESTERFIELD ST, STRAIGHT ON WHISKEY RD, TURN (RT) ON BROOKHAVEN DR, TURN (RT) ON SPENCER DR, TURN (RT) ON EAST GATE DR, TURN (RT) ON BEDFORD PL, TURN (LT) ON LONGRIDGE LOOP, STRAIGHT ON BEDFORD PL, TURN (RT) ON EAST GATE DR, TURN (LT) TALL PINE DR, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON EAST GATE, TURN (RT) ON SWEETBAY, TURN (LT) ON CYPRESS, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (RT) ON HOLLEY LAKE CIR, TURN (LT) ON BURDEN LAKE, TURNABOUT @ MOCKERNUT CIR, TURN (LT) ON HOLLEY LAKE, TURN (LT) ON RED OAK, TURN (LT) ON LAUREL OAK TURN (LT) ON LIVE OAK, TURN (LT) ON SASSAFRAS RD, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (LT) ON STEEPLECHASE, TURN (LT) ON FOXHOUND RUN, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON STEEPLECHASE, TURN (LT) ON WEST PLEASANT COLLEN, TURNABOUT IN CUL-DE-SAC, TURN (RT) ON STEEPLECHASE, TURN (RT) ON WOODSIDE PLANTATION DR, TURN (LT) ON MAGNOLIA LAKE LN, TURN (RT) ON MAGNOLIA LAKE RD, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON MAGNOLIA LAKE LN, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (LT) ON MAIN GATE, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON SAVANNAH DR, TURN (RT) ON MOULTRIE DR, TURN (LT) ON HURON DR, TURN (RT) ON MOULTRIE DR, TURN (LT) ON LAKESIDE DR, TURN (LT) ON HARTWELL DR, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON HIDDEN HAVEN DR, TURNABOUT @ ARCTURUS DR, TURN (RT) ON SILVER BLUFF RD, TURN (LT) ON TOWN CREEK RD, TURN (LT) ON PLANTATION DR, TURN (LT) ON HUCKLEBERRY DR, TURN (LT) ON TOWN CREEK RD, TURN (LT) ON PARTRIDGE RD, TURN (RT) ON CASABA, TURN (RT) ON ALPINE DR, TURN (RT) ON CENTRAL SOUTH, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON DARIEN DR, TURN (LT) ON SUFFOLK DR, TURN (RT) ON GREENWICH DR, TURN (RT) ON GREENWICH DR AGAIN, TURN (LT) ON DARIEN DR, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON EAST PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SOUTH AIKEN HIGH, TURN (RT) ON EAST PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* CORNER OF SPENCER DR & HILLSBORO DR	6:50
* CORNER OF SPENCER DR & DOUBLE TREE	6:53
* CORNER OF BEDFORD PL & TRAVELLERS PL	7:00
* CORNER OF LONGRIDGE RD & BEDFORD PL	7:02
* CORNER OF BEDFORD PL & BERRINGER PL	7:04
* 157 TALL PINE RD	7:06
* CORNER OF EAST GATE DR & SWEETBAY CT	7:09
* CORNER OF CYPRESS ST & SWEET GUM LN	7:11
* 771 BURDEN LAKE RD	7:13
* CORNER OF BURDEN LAKE RD & MOCKERNUT CT	7:15

* CORNER OF HOLLBY LAKE RD & HEMLOCK DR	7:17
* 204 RED OAK DR	7:19
* 109 LAUREL OAK DR	7:22
* 22 SASSAFRAS RD	7:24
* 187 FOXHOUND RUN	7:30
* 131 WEST PLEASANT	7:37
* 209 MAGNOLIA LAKE RD	7:40
* CORNER OF WOODSIDE PLANTATION DR & HEMLOCK DR	7:42
* CORNER OF SAVANNAH DR & MOULTRIE DR	7:44
* 1177 MOULTRIE DR	7:46
* CORNER OF HIDDEN HAVEN DR & ARCTURUS DR	7:48
* CORNER OF HUCKLEBERRY DR & BRANCHWATER RD	7:50
* 1631 PARTRIDGE RD	7:52
* 1759 PARTRIDGE RD	7:54
* 1820 ALPINE DR	7:56
* CORNER OF GREENWICH DR & GREENWICH DR	8:00
* 58 SUFFOLK DR	8:02

ROUTE # 25 ADDIE NEWKIRK KMS/ SAHS

ROUTE STARTS @ CCE, TURN (RT) ON CHUKKER CREEK DR, TURN (RT) ON EQUINOX LOOP, TURN (RT) ON BIRD IN HAND, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON EQUINOX LOOP, TURN (LT) ON CHUKKER CREEK RD, TURN (RT) ON WHISKEY RD, TURN (RT) ON DOMINION DR, CIRCLE AROUND, TURN (RT) ON MIDWAY CIR, TURN (RT) ON WHISKEY RD, TURN (LT) ON CROSBY RD, TURN (LT) ON TALATHA CHURCH RD, TURN (RT) ON CROSSROAD PARK DR, TURN (LT) ON BREWSTERS WAY, TURN (RT) ON CROSSROAD PARK DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON CINNAMON DR, TURN (RT) ON LAVENDER LN, TURN (LT) ON WATSONIA DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON BRASHUM DR, TURN (RT) ON SYCAMORE DR, STRAIGHT ONTO PINE HOLLOW DR, TURN (LT) ON BRASHUM DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON WHISKEY RD, TURN (RT) ON EAST PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ONTO RUDY MASON PKWY, STRAIGHT ONTO RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!

* CORNER OF CHUKKER CREEK RD & ASHEPOO DR (1ST)	7:09
* CORNER OF CHUKKER CREEK RD & ASHEPOO DR (2ND)	7:10
* 116 BIRD IN HAND	7:12
* 1941A CHUKKER CREEK RD	7:14
* 171 DOMINION DR	7:16
* 168 MIDWAY CIR	7:18
* 128 MIDWAY CIR	7:20
* 383 TALATHA CHURCH RD	7:23
* 144 BRUSTER WAY	7:26
* 246 BRUSTER WAY	7:28
* 787 CROSSROADS DR	7:30
* 654 CROSSROADS DR	7:32
* CORNER OF CINNAMON DR & TALATHA CHURCH RD	7:36
* CORNER OF LAVENDER DR & CAMELLIE D	7:38
* CORNER OF LAVENDER DR & WATSONIA DR	7:40
* 1242 WATSONIA DR	7:42
* CORNER OF BRASHUM DR & WESSON DR	7:45
* 1070 WESSON DR	7:48
* CORNER OF TALATHA CURCH RD & VINE ST	7:50

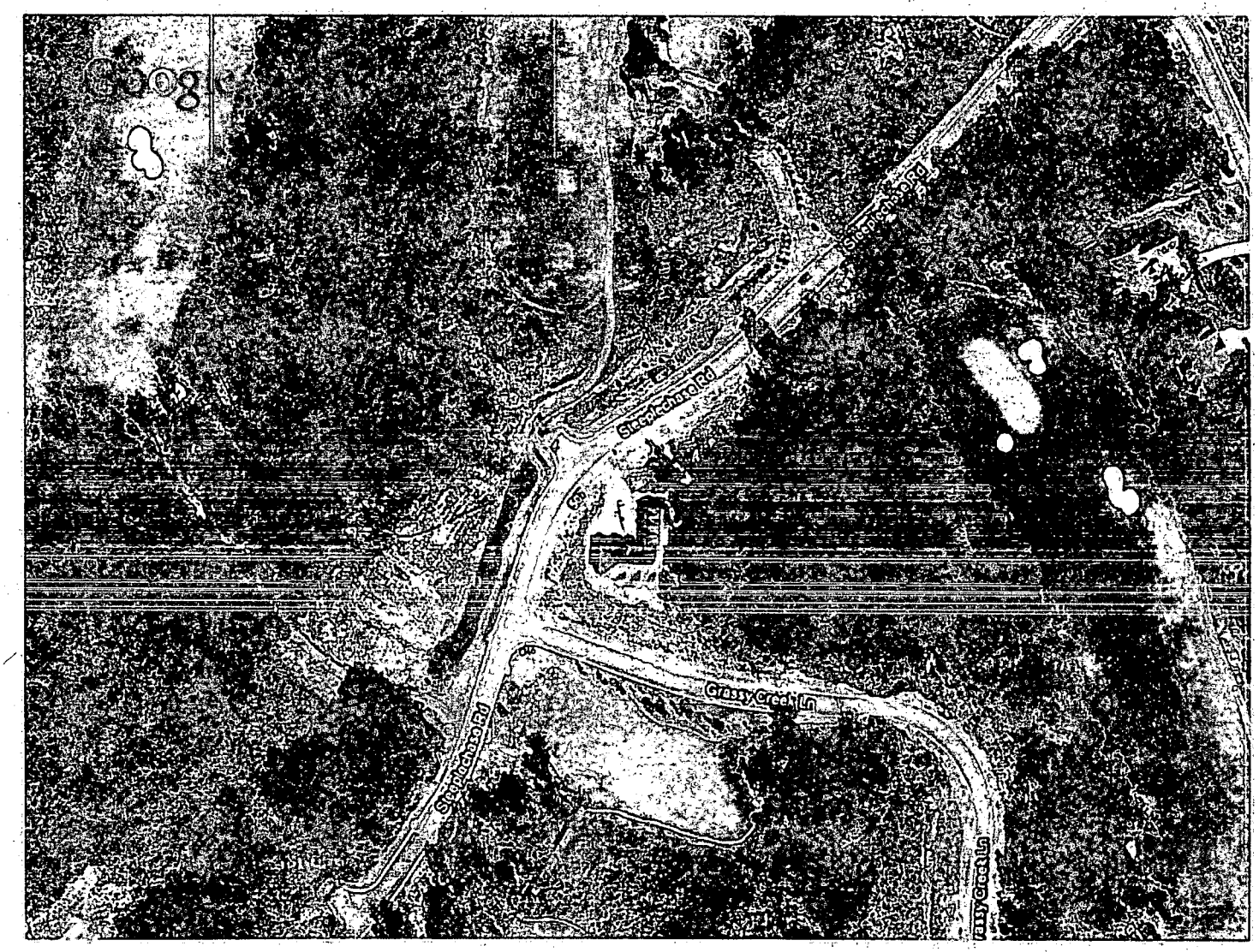
ROUTE # 27 STEVEN LYNN KMS/ SAHS

ROUTE STARTS @ EAE, TURN (RT) ON MOSELY RD, TURN (LT) ON OLD WAGENER RD, TURN (RT) ON REDDS BRANCH RD, TURN (LT) ON WAGENER RD, TURN (LT) ON MAIN DR, TURN (RT) ON KINTE AVE, TURN (RT) ON PINE, TURN (LT) ON MAIN DR, TURN (RT) ON WAGENER RD, STRAIGHT ON RICHLAND AVE, TURN (RT) ON YORK ST, TURN (LT) ON HAMPTON AVE, TURN (LT) ON NORTH CAROLINA AVE, TURN (LT) ON VAUCLUSE RD, TURN (LT) ON BARNWELL AVE, TURN (RT) ON MORGAN ST, TURN (LT) ON RICHLAND AVE, TURN (RT) ON CHESTERFIELD ST, STRAIGHT ON WHISKEY RD, TURN (LT) ON E. PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* CORNER OF MAIN DR & NICHOLSON DR	7:10
* CORNER OF MAIN DR & KINTE AVE	7:12
* CORNER OF HAMPTON AVE & ALLISON ST	7:25

120

121


Google
Steeplechase Rd
Steeplechase Rd
Steeplechase Rd
Grassy Creek Ln
Highway

121

122

Steeplechase Rd
Steeplechase Rd
Steeplechase Rd
Grassy Creek Ln

122

123

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE CIRCUIT COURT C.A. No. 2012-CP-40-1560
South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	**DEFENDANT'S RETURN TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendant, the South Carolina Department of Transportation ("SCDOT" or the "Department") respectfully submits this Return to Plaintiffs' Motion for Summary Judgment and moves the Court, pursuant to Rule 56, SCRCP, for judgment in its favor dismissing the Complaint.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

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Columbia, S.C.
August 31, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE CIRCUIT COURT C.A. No. 2012-CP-40-1560
South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	**MEMORANDUM IN SUPPORT OF DEFENDANT'S RETURN TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendant, the South Carolina Department of Transportation ("SCDOT" or the "Department") respectfully submits this memorandum in support of its return to plaintiffs' motion for summary judgment and in support of its cross-motion for summary judgment seeking dismissal of the complaint for failure to state facts constituting a cause of action. In support of its return and motion, defendant relies on the documents attached to plaintiffs' memorandum, the attached affidavit of John V. Walsh, and this brief.

NATURE OF THE CASE

Plaintiffs' have sued under the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10, *et seq.*, for a determination that the Department's and defendant John V. Walsh's ("Walsh") actions in dispatching a three-man bridge inspection crew to inspect and report on the condition of three privately-owned bridges in the Woodside Plantation subdivision in Aiken at the request of a city councilman was contrary to certain provisions of the South Carolina Constitution requiring that public funds be spent only for public purposes and that the full faith

and credit of the State not be pledged for the benefit of a private individual, company, association, or corporation.[1]

The Department's position is that the city's investigation of the bridges was a legitimate exercise of a municipality's plenary police power to insure the health, safety, and welfare of persons within its boundaries as well as its power to abate public nuisances; and that SCDOT is authorized to assist local governments in these activities within areas of its expertise under its primary enabling statute.[2] The exercise of these powers by the governmental entities involved were not arbitrary or unreasonable and should not be interfered with by the courts. S.C. Code, Const., art. VIII, §17 (Rev. 2009); Main v. Thomason, 342 S.C. 79, 535 S.E.2d 918 (2000).

Plaintiffs petitioned the Supreme Court for original jurisdiction in this case on the grounds that the matter was of great public importance and that early resolution was urgent to prevent the Department from continuing to expend public funds for private purposes during the pendency of a trial and appeals. The Supreme Court denied the petition on February 8, 2012. Thereafter the complaint was refiled in this Court.

STATEMENT OF FACTS

Defendant has no objection to plaintiffs' exposition of the background facts in this matter except to state that much of it is irrelevant and unnecessary to support a proper application of the governing law herein.

An Aiken City Councilman, Reggie Ebner, became concerned that the bridges within the Woodside Plantation subdivision, being wooden, were unsafe and posed a potential hazard to the public. (Exhibit A to plaintiffs' memorandum.) His email to Representative Tom Young, who

[1] S.C. Code Ann., Const. art. X, §§5, 11(Rev. 2009).
[2] S.C. Code Ann., §57-3-110(7) (Rev. 2006)

represented the district that contained the subdivision, requesting assistance, was forwarded by Rep. Young to Walsh, SCDOT's Deputy Secretary for Engineering. (Id.) Senator Greg Ryberg, who also represents the area, communicated his support for the request. The city code contained no specifications for bridges but referred to State specifications for roads, nor did the city retain a standing bridge inspector or department for that purpose. Therefore, councilman Young, through the State representatives sought the help of SCDOT.

Thereafter, Walsh dispatched a three-man bridge inspection crew based in Orangeburg to inspect the bridges and issue a report that Walsh subsequently forwarded to Ebner, Young, and Ryberg. (Plaintiffs' Exhibit B.) The cost to the Department, representing the inspectors' time, has been estimated at $1,400.

ARGUMENT

I. Plaintiffs lack standing.

Plainitiff, Edward D. Sloan, claims standing as a taxpayer and elector in South Carolina. No justification for the standing of the South Carolina Public Interest Foundation is set forth. Both plaintiffs lack standing to bring this suit. A taxpayer is not entitled to sue on that basis alone where he suffers in some indefinite way in common with people generally. Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). A private person may not invoke judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Baird v. Charleston County, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). An exception is where the issue raised is of such public importance as to its resolution for future guidance. Id., 728 S.E.2d at 44. Moreover, a court should not confer standing where the issue in the suit is moot and thus academic and there remains no actual controversy. Sloan v. Dep't. of Transp., 379 S.C. 160, 167, 666 S.E.2d 236,

240 (2008). An exception to the mootness doctrine allows consideration where the issue is raised and is capable of repetition but generally will evade review. Id., 379 S.C. at 68.

Here, Mr. Sloan's interest as a taxpayer with regard to the $1,400 in wages of SCDOT's bridge crew is *de minimis*. See, Walsh affidavit, ¶ 4. He, nor the Foundation, have shown any personal prejudice. Moreover, plaintiffs have set forth no facts that the Department routinely expends public resources to benefit or improve private land. The Department has no interest or motivation in doing so, having minimal resources available to manage its own system. As stated by Mr. Walsh in his affidavit, only two inspections of non-publicly-owned bridges have occurred in the past 10 years. Both were at the request of local government officials. Walsh affidavit, ¶ 6. As set forth in our arguments in the ensuing sections, there is no statutory or constitutional infirmity in assisting local governments and responding to legitimate requests. If, in the future, SCDOT makes a decision to directly benefit a private landowner with public resources, such action may be enjoined at that time by a taxpayer suit or otherwise. The present issue is moot and academic and, in any event, presents no illegal act capable of repetition.

Finally, identical arguments of public importance and urgency were made to the Supreme Court in plaintiffs' petition for original jurisdiction. The Court's rejection of that petition indicates its disagreement with these arguments. See, SCACR Rule 245(a).

II. Plaintiffs' summary judgment motion should be denied because neither the Department nor Walsh engaged in any ultra vires act.

Plaintiffs' argument is that, because the bridges in Woodside Plantation are owned by the homeowners' association and not a governmental entity, the use of State resources to inspect them was an unconstitutional act under the constitution's prohibitions against using public funds for the benefit of private interests. Plaintiffs are incorrect in directing the Court to focus on the ownership of the bridges. Rather, as set forth in Section II. below, the inspection of the bridges

was legitimately within the City's police power and the decision by Walsh to assist it was well within the Department's enumerated powers to assist other governmental entities in areas of its expertise. S.C. Code Ann. §57-3-110.

Addressing plaintiffs' constitutional argument directly, the city's and the Department's actions were not for the "benefit" of the homeowners of Woodside Plantation. Rather, they were in furtherance of the government's responsibilities to insure the health, safety, and welfare of the public at large and to abate a potential public nuisance. The government often enters private property for this purpose. See, S.C. Code Ann. §31-15-20 (Municipalities may enter and demolish unsafe buildings); Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); Main v. Thomason, supra. (Statute authorizing neighboring property owners to enter adjoining property to repair their buildings not unconstitutional.) All municipalities in South Carolina are given the authority to abate nuisances. S.C. Code Ann. §5-7-30 (Rev. 2004). It is difficult to see any "benefit" to the bridge owners flowing from the actions of the two governmental entities involved. The city, upon a finding that the bridges we unsafe and presented a hazard to the travelling public, would be within its powers to close them, condemn them, or cause the homeowners and their association to replace them at their expense.

The foregoing is sufficient to distinguish the factual situation in this case from those underlying the two Attorney General opinions plaintiffs cite in their memorandum. In his Aughtry opinion[3], the Attorney General opined that the constitution would be violated by the use of county funds to scrape private roads or driveways. In the Ramsey opinion[4], the removal or a storm drain to accommodate the construction of a new building by a church implicated the

[3] C. Dennis Aughtry, Esquire, 190 WL 599297 (June 4, 1990)
[4] The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005)

unconstitutional expenditure of public funds for a private benefit. Here, the motivation was the general safety and welfare of the public, not to benefit or improve private property.

III. The complaint should be dismissed because the actions of the City and of the Department were within the confines of their respective enabling statutes and neither abused its discretion.

The City of Aiken has adopted a subdivision ordinance pursuant to the South Carolina Local Government Comprehensive Planning Act of 1994. S.C. Code Ann. §§ 6-29-310, *et seq.* The statement of legislative intent for the Land Planning – Land Development article of that enabling Act, § 6-29-1120, cites among the purposes of the regulation (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; and (3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments.

Additionally, Section 5-7-30 of the S.C. Code of Laws contains the general grant of powers to municipalities in South Carolina. The language of that statute authorizes municipalities to exercise powers with in relation to, *inter alia,* roads, streets, and any other subject necessary for the "security, general welfare, and convenience of the municipality or for preserving the health, peace order, and good government in it ..." This broad grant of power to municipalities is only limited by the constitution or general law of the State. Hospitality Ass'n. of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). As mentioned in the foregoing Section, the constitution declares that such laws be liberally construed.[5]

[5] The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution. S.C. Code Ann., Const., art. VIII, §17 (Rev. 2009).

The land development statute and the municipal powers statute are delegations of the State's police power to municipalities to regulate for the health, safety and general welfare of the public. Courts will not interfere with the enforcement of regulations designed for the protection of health, welfare and safety of citizens unless they are determined to be unreasonable. Main v. Thomason, supra. Moreover, the municipal powers act enables cities and towns to abate nuisances. A dangerous bridge certainly qualifies for that category. Even in the absence of such express delegation, some governmental entity--if only the General Assembly itself--would be able to abate a public nuisance. Morison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940).

Regarding the Department, the General Assembly has included among the statutory powers and duties conferred on the Department of Transportation:

> (7) instruct, assist, and cooperate with the agencies and departments, and bodies politic, and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

S.C. Code Ann. § 57-3-110. Through the forgoing statute, the legislature has conferred discretion upon the Department as to when it will assist local governments. Absent a clear abuse of discretion, the courts should defer to those decisions. Gamble v. Williamsburg Co. Sch. Dist., 305 S.C. 288, 290, 408 S.E.2d 217, 218 (1991). Many governmental functions in the State are centralized. That is the reason for the existence of the State Department of Education. S.C. Code Ann. §59-5-10 (Rev. 2004). It would make little sense for each of the 278 municipalities in South Carolina to each retain its own bridge inspection crew. Here, the Department properly responded to a request from City of Aiken officials and representatives for assistance in an area of the Department's expertise. The City had authority to make the request and the Department had authority to respond to it.

CONCLUSION

The Court should deny plaintiffs standing to sue because neither have a particularized interest in the subject matter. The acts of both the City and the Department were pursuant to their duly delegated powers. They were taken for a legitimate public purpose and did not represent the expenditure of public funds for the benefit of a private person or entity. Absent a capricious or arbitrary exercise of the discretionary power by the Department (which plaintiffs' have not shown), the Court should not interfere with the exercise of discretion in a non-judicial field by an appropriate government agency. Cole v. Manning, 240 S.C. 260, 125 S.E.2d 621 (1962). The Court should deny plaintiffs' motion for summary judgment, grant the Department's motion for the same and dismiss the complaint.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

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Columbia, S.C.
August 31, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Petitioners,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Respondents.

Case No.

AFFIDAVIT OF JOHN V. WALSH

John V. Walsh, being first duly sworn, deposes and states as follows:

1. I am the Deputy Secretary for Engineering for the South Carolina Department of Transportation.
2. On July 13, 2011, Representative Tom Young forwarded me an email from Reggie Ebner, City of Aiken Council, wherein Mr. Ebner requested the Department's assistance in reviewing certain bridges in the Woodside Plantation Development in Aiken. Exhibit 1. Mr. Ebner noted that the bridges are in the City and that the City did not have a bridge department nor standards for bridges.
3. Thereafter, at my instruction, the bridge inspection crew from the Department's District 7 which encompasses Aiken County conducted an inspection and issued a report on three bridges in the subdivision on the Department's standard form. I forwarded copies of the inspectors' report to Messrs. Ebner and Young as well as to Senator Greg Ryberg who had also expressed an interest in the matter. Exhibit 2 and Exhibit to the Affidavit of Edward D. Sloan, Jr.
4. We have estimated the cost to the Department of this service to be $1,400 which represents the employee costs of the three-man crew that conducted the inspection.

5. The Department conducts bridge inspections on a two-year cycle both of bridges on the State Highway System and other publicly-maintained bridges. In the last cycle, we inspected 10,234 bridges on the State system and 1,194 bridges maintained by local governments.
6. To my knowledge, in the past 10 years, the Department has conducted two inspections of bridges that were not owned and maintained by public authorities. The first was a 2006 inspection of the bridge to Fripp Island that local authorities had requested the Department accept into its system for maintenance. We declined to accept the bridge. The second instance was the request that is the subject of the petition herein.

Further affiant saith naught.

John V. Walsh

John V. Walsh, Deputy Secretary for Engineering, SCDOT

Sworn and subscribed before me this
23 day of January, 2012

Notary Public
My commission expires: Dec. 15, 2021

Watson, Clem

From: Walsh, John
Sent: Tuesday, July 19, 2011 5:17 PM
To: Watson, Clem (WatsonJC@dot.state.sc.us)
Subject: FW: Woodside Road Issues-Bridges
Attachments: WS Road Issue-Bridges 7-12-11.pdf

Please discuss this with me. I need to get some bridges reviewed for safety /loading purposes.

Thanks

CHECK LOAD SAFETY (G-RAIL)

John Walsh, PE
Deputy Secretary for Engineering
SCDOT

Telephone 803.737.7900
Fax 803.737.5053
walshjv@scdot.org

COMMUNICATE W/ EBNER
CC: TOM YOUNG

☐ - GO FORWARD - ONE TIME ONLY

From: Tom Young [mailto:tyoung@tomyounglaw.com]
Sent: Wednesday, July 13, 2011 11:56 AM
To: Walsh, John
Cc: reggieebner@bellsouth.net
Subject: FW: Woodside Road Issues-Bridges

John:

My constituent Reggie Ebner tried to send this and thinks it came back. He asked me to forward. Thank you.

Tom Young

From: Reggie Ebner
To: Tom Young Jr.
Sent: Wed Jul 13 08:36:01 2011
Subject: Fw: Woodside Road Issues-Bridges
Tom,

Please forward to John Walsh. I get a failed delivery message.

Reggie

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:19 AM
To: Walsh John
Subject: Fw: Woodside Road Issues-Bridges

Resend due to delivery failure-

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:03 AM
To: Walsh John
Cc: Young Tom
Subject: Woodside Road Issues-Bridges

Mr. John Walsh,

As you are aware, Representative Tom Young and I have been working together to resolve road issues in Woodside Plantation Development in Aiken SC. Woodside Plantation currently has approximately 4000 residents and will grow to approximately 8000 residents. Over the last several years, a number of citizens in this community have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success.

The following information is for SCDOT to review and advise a path forward for bridges located in this development.

Attachments A, B, C, D and E are attached for background information.

I. Wooden Bridges

1. Attachment A-2, item A- states the developer/contractor is responsible to the City for infrastructure.
2. Attachment B-2, item 1-states that SCDOT is wholly responsible for bridges in the state system. (Note that bridges are in the City and the City does not have a bridge department nor standards for bridges)
3. Attachment D-1 requires culverts vs. wooden bridges.
4. Attachment B-4 states-REG 49-207(C)(4) states "Additions, deletions, or other revisions to sealed documents shall not be made unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions are made." (Note that proper documentation has not be brought forth for the change from culverts to wooden bridges.)
5. Attachment E-1 is a picture of one of the wooden bridges and culverts installed in the roads.
6. Attachment C-1 item A and C-3 item A state that "We could find no documents for compaction". Wooden bridges are located on Steeplechase and Grassy Creek lane. Attachment E-2 shows a typical road cross section over a sewer line. Compaction test were not performed on bridge approaches nor any road ways since the late 1990's.
7. Attachment A-2, item C implies that the property owners association are required to follow city ordinances and state statues.
8. Infrastructure in Woodside is use by all government agencies to provide services to citizens.
9. It is my personal understanding the City of Aiken and is responsible for infrastructure installation in Woodside Plantation.
10. Path forward:

- If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts.
- If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements.

II. Concrete Bridge

1. Concrete bridge installed on Spaulding Bridge Road in Woodside phase III, section 8, Crescent Point as shown on site drawings.
2. Design for bridge is on drawings S-1 thru S-5, by Moore and Associates, dated 7/7/06, M&A Job 060045.
3. No approvals from any government agency on these construction drawings
4. Personal request to review quality report, pile driving test reports, concrete test and compaction reports for installation have not been granted.
5. Path Forward:

- ? SCDOT will need to determine if concrete bridge can be certified for use.
- ? If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.

Please contact me if you need more information or to set up a meeting.

Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.

Thanks in advance for your assistance,

Reggie Ebner
PE TX#36726

City of Aiken Councilman for District 4
165 Foxhound Run
Aiken, SC 29803
803-642-6787
reggieebner@bellsouth.net

South Carolina
Department of Transportation

September 22, 2011

The Honorable Reggie Ebner
City of Aiken Councilman
165 Foxhound Run
Aiken, South Carolina 29803

Re: Woodside Plantation Bridge Inspection in Aiken County

Dear Councilman Ebner:

As a follow up to your request, our bridge inspection crews inspected the wooden bridge structures inside the Woodside Plantation. Enclosed is a summary and result of their inspection. The report is the format that SCDOT uses to inspect all of our bridges and utilizes the reporting criteria established by FHWA.

The bridges are all timber and are in good condition with just some minor problems noted in the reports. Timber is a very decorative and resilient material under controlled environmental and loading conditions. However, the ability to absorb impact from overweight vehicles which exceed the design loading will diminish this property as the loading cycles continue. Our staff did not identify any weight restrictions signs for the bridges. If the bridges have not been load rated, it is recommended that the appropriate owner of the bridges have them rated and post appropriate signage for vehicles using the bridges.

It should also be noted that the safety rails in place are essentially decorative and provide no significant ability to redirect traffic from a collision or to provide protection to pedestrians.

I hope that you find the enclosed material beneficial for your constituents.

Sincerely,

John V. Walsh

John V. Walsh, P.E.
Deputy Secretary for Engineering

JVW:mbw
Enclosure
ec: J. C. Watson, Chief Engineer for Operations
Jim Feda, Director of Maintenance
Jo Ann Woodrum, District Engineering Administrator
File: DSE/JCW

Post Office Box 191
Columbia, South Carolina 29202-0191

Phone: (803) 737-2314
TTY: (803) 737-3870

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, Plaintiffs, v. South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants.	IN THE CIRCUIT COURT C.A. NO. 2012-CP-40-1560 **Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross Motion for Summary Judgment**

NOW COME the Plaintiffs, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., by their undersigned attorney, and submit this Reply Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross Motion for Summary Judgment.

Plaintiffs first would show to the Court that Plaintiffs possess standing as taxpayers. Second, the SCDOT's dedication of public resources to private endeavors of private entities a matter of great public importance that warrants this Court's granting of public importance standing to the Plaintiffs.

Third, Plaintiff attaches an Aiken Bridge Inspection Investigation Report dated October 12, 2011 from the DOT's Office of the Chief Internal Auditor ("OCIA") ("Auditor's Report") to demonstrate further that there is no genuine issue of material fact, and Plaintiffs are entitled to judgment as a matter of law.

STATEMENT OF FACTS

On July 13, 2011, Reggie Ebner, a resident Woodside Plantation, in Aiken, SC sent an email to John Walsh, Deputy Secretary for Engineering at SCDOT, requesting DOT's assistance in a disagreement and potential legal dispute between Ebner and other members of the Home Owners Association of Woodside Plantation, on the one hand and developers of Woodside Plantation on the other (July 13 e-mail). Plaintiffs attach to this memo a better copy of Ebner's email and its attachments.

Ebner appears to have had two motives for his July 13 e-mail: (1) to obtain free engineering evidence (without having to engage the services of a private sector engineer who would have charged a fee) to support a claim against the developer and designer of Woodside Plantation for damages, and (2) to obtain SCDOT's commitment to repair and maintain their three private wooden bridges with State funds.

The July 13 e-mail alleged three engineering or construction flaws related to bridges in this private, gated community: (1) the unauthorized substitution of wooden bridges for specified concrete bridges requiring expensive maintenance by the HOA of Woodside Plantation; (2) the road failure over the sewer pipe, requiring expensive repairs by the HOA; and (3) defects in a concrete bridge requiring expensive repairs by the HOA. (See July 13 e-mail, Attachments A, B, C, D, and E). Ebner made the request to SCDOT without any evident knowledge or involvement of the Aiken City Council. SCDOT, contrary to its own long-standing policy, provided a professional engineering inspection and report to Ebner for his private dispute, without any cost or fee whatsoever.

As a matter of background, Ebner, a City Councilman for the City of Aiken, had earlier written to the City of Aiken asking, "What government entity is the Woodside

Property Owners Association responsible to for the well being of its citizens?" (July 13 e-mail, Attachment A-1). City officials replied to Ebner that Woodside Plantation Property Owners Association, Inc. was "responsible to its shareholders, not a governmental entity" (July 13 e-mail, Attachment A-2).

Ebner also sent questions to his State Representative, Tom Young about these issues. He said he wanted answers that "could be used in future legal proceedings" (July 13 e-mail, Attachment B-1). He asked, "What government agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges in located in South Carolina?" (July 13 e-mail, Attachment B-1).

Representative Young told Ebner that the "bridges in question are NOT on the state system" (capitalization in original), and "the Department is not responsible for maintaining these structures" (July 13 e-mail, Attachment B-2).

Instead of engaging a private sector structural engineer, and Ebner, ignoring the answers he had received, attempted to enlist the help of his Representative and Senator to pressure the SCDOT into inspecting and reporting on the wooden bridges, even though they are on private property in a gated community. Ebner requested, "If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts" (July 13 email). He further requested, "If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements." *Id.*

Finally, as to a concrete bridge in Woodside Plantation, Ebner requested, "SCDOT will need to determine if concrete bridge can be certified for use. If concrete

bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification." *Id.*

He further requested, "Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties." *Id.*

In summary, Ebner was asking the State to pay for the inspection and evaluation of these privately owned bridges. If the evaluation indicated a problem, he planned to use legal or political pressure to require the Developer or the City to replace the wooden bridges with metal culverts and to repair the concrete bridge and its approaches (July 13 email). He was trying to use the SCDOT as his unpaid expert witness.

His Representative and Senator passed along his request and appeared to endorsed his request to the SCDOT for the publicly financed inspection and report, and put political pressure on the SCDOT to inspect and report on these privately owned bridges, at public expense under the false suggestion that public school buses passed over these bridges. The affidavit of Edward D. Sloan, Jr., attached to Plaintiffs earlier memo, established that school buses did **not** pass over these bridges (Sloan Affidavit and exhibits).

After the SCDOT completed its inspection and made its report to Ebner and the legislators, the Commission of the DOT's Office of the Chief Internal Auditor ("OCIA") investigated the propriety of SCDOT's actions in using public funds for inspection of privately owned bridges. The Auditor issued an Aiken Bridge Inspection Investigation Report dated October 12, 2011 ("Auditor's Report") (attached). The investigation stemmed from concerns of SCDOT employees who warned Chief Engineer for Operations Clem Watson that the inspection of these bridges in a private gated community was

wrong. The Department acknowledged, "These bridges were not on the state's system. Inspection staff also had to ***create fake bridge ID numbers*** because the bridges were off system" (Auditor's Report) (emphasis added).

OCIA researched the law and confirmed with SCDOT's Chief Legal Counsel "that SCDOT has no obligation to inspect bridges on private property" (Auditor's Report). OCIA interviewed various SCDOT personnel under the Chief Engineer for operations. "Without any reservation, ***all personnel were certain the activity was wrong***, stated that they ***expressed reluctance to their supervisor***, and knew it would later resurface because it was ***against established policy***" (Auditor's Report) (emphasis added). Nevertheless, the Defendants ordered the investigation to proceed. The report concludes that Defendants decided to go forward with the inspection because school buses used the roads (Auditor's Report).

OCIA determined that the request for inspection "came from a city councilman but ***not from the City of Aiken***" (Auditor's Report) (emphasis added). Furthermore, [OCIA] found that the councilman [Ebner] is a resident of Woodside Plantation" (Auditor's Report). OCIA also determined that "no bus driver or citizen had complained to the school district about the bridges" (Auditor's Report). OCIA further determined that the Defendants did not seek SCDOT legal department's clarification on the issue (Auditor's Report). Finally, OCIA stated, "There is also the possibility that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners Association decides to sue the developer of the private gated community" (Auditor's Report).

LEGAL DISCUSSION

I. PLAINTIFFS POSSESS STANDING.

Defendants argue at some length that Plaintiffs do not possess taxpayer standing to address illegal expenditures by the SCDOT. On, the contrary, South Carolina courts have long recognized the right of a taxpayer to bring an action to contest an illegal government expenditure of taxpayer funds.

Perhaps the most analogous case is *Sloan v. School District of Greenville County,* 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000). In that case, Mr. Sloan challenged the school district's unlawful expenditure of taxpayer funds to build three schools, without competitive sealed bidding as the School District Procurement Code required. The Circuit Court dismissed the case for lack of standing. Mr. Sloan appealed, and the Court of Appeals reversed. In doing so, the Court of Appeals reviewed the history of taxpayer standing in South Carolina at great length. In light of the Defendants' arguments against taxpayer standing in the case at bar, Plaintiffs respectfully suggest that the Court of Appeals' extended discussion is especially appropriate. The Court ruled as follows:

> Sloan argues the trial court erred in holding he lacked standing to challenge the District's award of the contracts.
>
> A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing. *Blandon v. Coleman,* 285 S.C. 472, 330 S.E.2d 298 (1985). "Standing is 'a personal stake in the subject matter of a lawsuit.'" *Newman v. Richland County Hist. Preserv. Com'n,* 325 S.C. 79, 82, 480 S.E.2d 72, 74 (1997) (quoting *Bailey v. Bailey,* 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)). In *Florence Morning News, Inc. v. Building Comm'n,* 265 S.C. 389, 218 S.E.2d 881 (1975), the South Carolina Supreme Court held:
>
> > A **private person** may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom. '(I)t is

> not sufficient that he has merely a general interest common to all **members of the public.'**

Id. at 398, 218 S.E.2d at 884-85 (emphasis added) (quoting *Ex parte Levitt,* 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493 (1937)). Deciding the plaintiffs in *Florence Morning News* lacked standing, the Supreme Court specifically noted they did not "sue as taxpayers." *Id.* at 398, 218 S.E.2d at 885.

In the case at bar, Sloan is not maintaining this action as a "private person," nor is he maintaining it merely as a "member of the public." Sloan has pursued this action as a taxpayer of Greenville County.

In *Mauldin v. City Council,* 33 S.C. 1, 11 S.E. 434 (1890), the South Carolina Supreme Court examined the issue of taxpayer standing. [FN2] In *Mauldin,* taxpayers challenged the purchase of an electric plant by the city council as *ultra vires,* claiming the purchase increased their tax burden. *Id.* at 15, 11 S.E. at 434. The Court explained how taxpayers differ from other members of the general public and how taxpayers suffer harm from *ultra vires* acts. *Id.* at 18-21, 11 S.E. at 435-36. The *Mauldin* court stated:

> FN2. In *Mauldin,* the Supreme Court held that operation of certain utilities by cities and towns would be *ultra vires.* After *Mauldin,* the South Carolina Constitution was amended to allow cities and towns to operate water systems. *See Berry v. Weeks,* 279 S.C. 543, 309 S.E.2d 744 (1983) (explaining history of constitutional provisions relating to waterworks).

> The injury charged as the result of the acts complained of is a private injury in which the tax-payers of the county . . . are the individual sufferers, rather than the public. The people out of the county bear no part of the burden; nor do the people within the county, except the tax-payers, bear any part of it. It is therefore an injury peculiar to one class of persons, namely the tax-payers of the county . . . .

Id. at 20, 11 S.E. at 436 (quoting *Newmeyer v. Missouri & Miss. R.R. Co.,* 52 Mo. 81 (1873)). The Court held the taxpayers were "not the whole public, but comparatively a small part of it." *Id.* at 18, 11 S.E. at 435. The taxpayers "constitute a class specially damaged by the alleged unlawful act," and therefore have "a special interest in the subject-matter of the suit, distinct from that of the general public." *Id.* at 19, 11 S.E. at 436 (quoting *Mayor and City Council of Baltimore v. Gill,* 31 Md. 375, 394 (1869)).

A taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina. In *Sligh v. Bowers,* 62 S.C. 409, 40 S.E. 885 (1902), taxpayers of a school district challenged

the school district's plan to relocate a school building. The taxpayers alleged "all expenditures of the public money [on the new school] are without lawful authority." *Id.* at 411, 40 S.E. at 886. The taxpayers' standing to challenge the allegedly illegal expenditures was not in question, but the South Carolina Supreme Court, quoting the United States Supreme Court, held:

> This is an unlawful use of the public funds, which the court, in the exercise of its equitable powers, will enjoin. In *Crampton v. Zabriskie,* Mr. Justice Field used this language: "Of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county ... there is at this day no serious question."

Id. at 413, 40 S.E. at 887 (citation omitted) (quoting *Crampton v. Zabriskie,* 101 U.S. 601, 609, 25 L.Ed. 1070 (1879) [FN3]).

> FN3. Recently, in *United States v. City of New York,* 972 F.2d 464 (2nd Cir.1992), the court stated, "[M]unicipal taxpayer standing has ancient roots in our jurisprudence." *Id.* at 470 (citing *Crampton,* 101 U.S. at 609).

In *Kirk v. Clark,* 191 S.C. 205, 4 S.E.2d 13 (1939), a bondholder sued the County Board of Commissioners and the Treasurer of Chesterfield County to enjoin the misapplication and diversion of tax funds collected for the payment of his bonds. Although the plaintiff had standing as a bondholder, the South Carolina Supreme Court stated, "The principle is firmly settled in this State that a taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law." *Id.* at 210, 4 S.E.2d at 15.

In *Brown v. Wingard,* 285 S.C. 478, 330 S.E.2d 301 (1985), the plaintiff taxpayers sued the Mayor and City Council of Greenwood for illegally reimbursing expenses incurred at a convention. The defendants questioned the taxpayers' standing to bring the action. Holding the taxpayers had standing, the Supreme Court confirmed that taxpayers "have an interest in seeing that city officials disburse funds in a lawful manner." *Id.* at 480, 330 S.E.2d at 302.

Sloan v. School District of Greenville County, 342 S.C. 515, 518-21, 537 S.E.2d 299, 301-02 (Ct. App. 2000).

In the last fifteen years, the Supreme Court's jurisprudence of public importance standing and the standing of a South Carolinian to challenge unconstitutional actions by State officers has developed and expanded and been recognized repeatedly. *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

Although Plaintiff cited all these cases in the Complaint, paragraph 6, Defendants mention ***only one case*** in this long line of recent cases (Defendants Return, pp. 3-4). No Respondent has made a motion to argue against precedent, and they have given the Court no reason to depart from this strong line of precedent, upon which this Court can properly grant standing to Plaintiffs.

Defendants quote *Freemantle v. Preston*, a case where a citizen brought an action seeking to invalidate a severance agreement between a county and its former county administrator, contending the approval of the severance agreement violated the common law and South Carolina's Freedom of Information Act (FOIA). *Id.* at 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). This challenge to the SCDOT's dedication of public funds to

private endeavors is entirely distinguishable from *Freemantle*. In *Freemantle*, the Supreme Court ruled that the citizen lacked standing pursuant to the public importance exception to the general standing requirements to challenge the validity of a severance agreement between a county and its former county administrator. The Court ruled that because citizen sought monetary damages for himself in his common law causes of action, while claiming to represent the taxpayers of the county, his case directly conflicted with the purpose and spirit of the public importance exception; and the personnel choices of the county, even in the face of a seemingly excessive severance package, did not necessitate further guidance. *Freemantle* involved the disapproval of an individual citizen with the details of one former employee's private personnel matters.

> This nexus between the public importance exception and the need for future guidance from the Court is invariably linked to a need for and entitlement to injunctive relief. That Appellant sought monetary damages for himself in his common law causes of action, while claiming to represent the taxpayers of Anderson County, directly conflicts with the purpose and spirit of the public importance exception. Moreover, the personnel choices of Anderson County, even in the face of a seemingly excessive severance package, do not necessitate further guidance. Thus, we affirm the circuit court's finding that this action does not warrant invocation of the public importance exception.

Id. at 192, fn.14).

In contrast, in the case at bar, neither Plaintiff is seeking monetary damages, and the matter at stake is far more important than the amount of an individual's severance contract. In this case, the SCDOT has violated the S.C. Constitution's prohibition against using public funds and resources for private purposes. Defendants provided a private individual and homeowner's association with professional engineering services to gather evidence to support their private legal claims although the evidence demonstrates that

they knew the illegality of their actions. The citizens of this State have a strong public interest in ensuring that State government does not violate the Constitution.

Defendants argue that because the Supreme Court denied Plaintiff's Petition for Original Jurisdiction, it ruled that Plaintiffs' claims are not of sufficient public importance to merit an exception to standing requirements. Yet, a ruling declining to consider a case in original jurisdiction at the Supreme Court does not indicate that it is not of sufficient public importance for purposes of standing. It indicates that the Supreme Court in its discretion did not wish to fast track that particular case. The standard for public importance standing includes (1) a need for future guidance on the subject matter; (2) and a benefit to all the citizens of the State or local government whose actions are being challenged. *Freemantle* at 197.

The Supreme Court recently rejected an argument similar to the Defendants' argument, based upon Article III, § 11 in *Anderson v. South Carolina Election Commission,* 397 S.C. 551, 725 S.E.2d 704 (2012). The Republican Party argued that the Supreme Court lacked jurisdiction to address the legal requirement that a candidate for the General Assembly file a Statement of Economic Interest. The Supreme Court disagreed.

> The Republican Party claims this Court lacks subject matter jurisdiction over the legislative races because the General Assembly has exclusive authority over disputes involving legislative elections. South Carolina Const. Art. III, § 11 provides, "Each house shall judge of the election returns and qualifications of its own members." Accordingly, this Court has declined to opine on issues where the Constitution delegates authority to the General Assembly. *South Carolina Public Interest Found. v. Judicial Merit Selection Comm'n,* 369 S.C. 139, 632 S.E.2d 277 (2006). Here we are not asked to judge a disputed legislative election but rather to interpret a statute. ***The construction of a statute is a judicial function and responsibility.*** *JRS Builders, Inc. v. Neunsinger,* 364 S.C. 596, 614 S.E.2d 629 (2005). Accordingly, we reject the argument that this Court lacks subject matter jurisdiction in this case.

Id, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (emphasis added).

Just as "the construction of a statute is a judicial function and responsibility," so too, is the construction of a section of the Constitution. Just as the Supreme Court ruled that the plaintiffs in *Anderson* properly possessed standing and the Court possessed jurisdiction to interpret and apply the statute to members of the General Assembly, so also in the case at bar, this Court possesses jurisdiction to interpret the Constitutional prohibition on dual office holding and to apply it to members of the General Assembly.

The South Carolina Constitution Article X, § 5 requires that taxes (public funds) be spent for public purposes. Article X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). S.C. Constitution, Article X, § 11 provides:

> (t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, ***company, association, corporation***, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

Id. (emphasis added). The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967). "[A]ll legislative action ***must serve a public*** rather than a private ***purpose***." *State ex rel McLeod v. Riley* 276 S. C. 323, 328, 278 S.E. 2d 612, 615 (1981) (emphasis added).

The South Carolina Attorney General has issued two opinions that such expenditures for primarily private purposes are illegal. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990) (attached); The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005) (attached). In the Aughtry opinion, the issue was whether the Richland County Council could expend public monies for the scraping of private roads or drive-

ways, where such scraping is primarily for private purposes. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990). The Attorney General concluded that such use would be illegal pursuant to South Carolina Constitution in Article X, § 5 and various State Supreme Court opinions. *Id.*

In the Ramsey opinion, the issue was whether the City of Gaffney could move a storm drain that was located on church property, and which drained only the church property. The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005). The church wanted the drain moved to build a new building. Again, the Attorney General issued an opinion that such an expenditure must be primarily for public use, and in those circumstances, the expenditure would be primarily for private benefit. *Id.* Thus, the Attorney General concluded that the expenditure would be unconstitutional. Accordingly, the critical inquiry in determining constitutionality under Art. X, § 5 is whether an expenditure primarily serves a ***public purpose***.

A legislative determination of a public purpose is entitled to some deference. A court will not overrule that judgment absent the clearest of evidence. In this case, there is no legislative determination that the inspection of private bridges fulfills a public purpose. This inspection contravened the standard practices of the DOT, which presumably fulfill the legislative intent. Absent some legislative determination, the language of the Constitution would control: "The credit of . . . the State . . . shall [not] be pledged . . . for the benefit of any . . . association." S.C. Constitution, Art. X, § 11. Similarly, Art. X, § 5 states that any tax "shall distinctly state the ***public*** purpose."

The factual record establishes that the bridge inspections in the case at bar were ***not for a public purpose***, even though the public might have benefited incidentally. Art.

X, § 5 requires that the main benefit be public, rather than for some private entity. An individual member of City Council of Aiken (who lived in the private gated community)—not the City itself—requested that the SCDOT spend public funds to inspect privately built, privately owned bridges, in his own private, gated community (**Exhibit A**). In addition, only a single State Representative and a single State Senator—not the entire General Assembly—endorsed the request.

In response to this political pressure, Defendants SCDOT and Walsh ordered SCDOT inspectors to inspect three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution (Auditor's Report).

Defendants asserted as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose. The approved bus routes published on the official website for the School District of Aiken County demonstrate that no public school bus on any official route traverses the three private bridges at issue (Affidavit of Edward D. Sloan Jr., Exhibit C, Published Bus Routes).

Although federal law may require states to inspect "all highway bridges on ***public*** roads" (23 USC § 151; 23 CFR § 650.307 emphasis added), federal law does not require such inspections of ***private*** bridges on private property, nor does South Carolina law authorize such inspections.

CONCLUSION

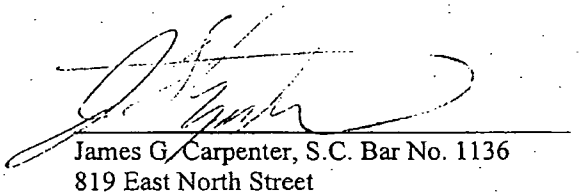
Because the inspection of these private bridges did not serve a public purpose, sufficient to justify the use of public funds to perform services on private property, the inspection and expenditures were illegal and unconstitutional.

WHEREFORE, Plaintiffs pray the Court:

1. To declare that the SCDOT's inspection and reports on of three privately built, privately owned bridges on private property in a private, gated community violates South Carolina Constitution Article X, §§ 5 and 11;
2. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
3. To grant such other and further relief as the Court deems just and proper.

September 16, 2012

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



James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

JULY 13, 2011 E-MAIL

Watson, Clem

From: Walsh, John
Sent: Tuesday, July 19, 2011 5:17 PM
To: Watson, Clem (WatsonJC@dot.state.sc.us)
Subject: FW: Woodside Road Issues-Bridges
Attachments: WS Road Issue-Bridges 7-12-11.pdf

Follow Up Flag: Follow up
Due By: Wednesday, July 20, 2011 8:30 AM
Flag Status: Completed

Please discuss this with me. I need to get some bridges reviewed for safety /loading purposes.

Thanks

John Walsh, PE
Deputy Secretary for Engineering
SCDOT

Telephone 803.737.7900
Fax 803.737.5053
walshjv@scdot.org

From: Tom Young [mailto:tyoung@tomyounglaw.com]
Sent: Wednesday, July 13, 2011 11:56 AM
To: Walsh, John
Cc: reggleebner@bellsouth.net
Subject: FW: Woodside Road Issues-Bridges

John:

My constituent Reggie Ebner tried to send this and thinks it came back. He asked me to forward. Thank you.

Tom Young

From: Reggie Ebner
To: Tom Young Jr.
Sent: Wed Jul 13 08:36:01 2011
Subject: Fw: Woodside Road Issues-Bridges
Tom,

Please forward to John Walsh. I get a failed delivery message.

Reggie

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:19 AM
To: Walsh John
Subject: Fw: Woodside Road Issues-Bridges

Resend due to delivery failure

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:03 AM
To: Walsh John
Cc: Young Tom
Subject: Woodside Road Issues-Bridges

Mr. John Walsh,

As you are aware, Representative Tom Young and I have been working together to resolve road issues in Woodside Plantation Development in Aiken SC. Woodside Plantation currently has approximately 4000 residents and will grow to approximately 8000 residents. Over the last several years, a number of citizens in this community have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success.

The following information is for SCDOT to review and advise a path forward for bridges located in this development.

Attachments A, B, C, D and E are attached for background information.

I. Wooden Bridges

1. Attachment A-2, item A- states the developer/contractor is responsible to the City for infrastructure.
2. Attachment B-2, item 1-states that SCDOT is wholly responsible for bridges in the state system. (Note that bridges are in the City and the City does not have a bridge department nor standards for bridges)
3. Attachment D-1 requires culverts vs. wooden bridges.
4. Attachment B-4 states-REG 49-207(C)(4) states "Additions, deletions, or other revisions to sealed documents shall not be made unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions are made." (Note that proper documentation has not be brought forth for the change from culverts to wooden bridges.)
5. Attachment E-1 is a picture of one of the wooden bridges and culverts installed in the roads.
6. Attachment C-1 item A and C-3 item A state that "We could find no documents for compaction". Wooden bridges are located on Steeplechase and Grassy Creek lane. Attachment E-2 shows a typical road cross section over a sewer line. Compaction test were not performed on bridge approaches nor any road ways since the late 1990's.
7. Attachment A-2, item C implies that the property owners association are required to follow city ordinances and state statues.
8. Infrastructure in Woodside is use by all government agencies to provide services to citizens.
9. It is my personal understanding the City of Aiken and is responsible for infrastructure installation in Woodside Plantation.
10. Path forward:

- If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts.
- If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements.

II. Concrete Bridge

1. Concrete bridge installed on Spaulding Bridge Road in Woodside phase III, section 8, Crescent Point as shown on site drawings.
2. Design for bridge is on drawings S-1 thru S-5, by Moore and Associates, dated 7/7/06, M&A Job 060045.
3. No approvals from any government agency on these construction drawings
4. Personal request to review quality report, pile driving test reports, concrete test and compaction reports for installation have not been granted.
5. Path Forward:

? SCDOT will need to determine if concrete bridge can be certified for use.
? If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.

Please contact me if you need more information or to set up a meeting.

Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.

Thanks in advance for your assistance,

Reggie Ebner
PE TX#36726

City of Aiken Councilman for District 4
165 Foxhound Run
Aiken, SC 29803
803-642-6787
reggieebner@bellsouth.net

Att. A-1

September 8, 2010

To: Roger LeDuc

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

Subject: Woodside Road Issues-SC Freedom of Information Request #2

Dear Roger,

This is a SC Freedom of Information Request in relation to infrastructure installed in Woodside.

A. What government entity is the Developer/contractor responsible to/for infrastructure installation with the exception of common areas?

B. What government entity is responsible for the installation of dams and repair of dams?

C. What government entity is the Woodside Property Owners Association responsible to for the well being of citizens?

Sincerely,
Reggie Ebner
Reggie Ebner

Reggie Ebner

From: "Roger LeDuc" <RLeDuc@CityofAikenSC.gov>
To: "'Reggie Ebner'" <reggieebner@bellsouth.net>
Sent: Thursday, September 23, 2010 8:45 AM
Subject: FW: Reggie Ebner FOIA Request

Reggie,

In response to your request of September 8,2010.

A. The developer/contractor is responsible to the City for infrastructure installation such as water, sewer and storm drainage.
B. The State of South Carolina is responsible for dam approval and inspection.
C. See below

Roger

From: Ben Moore
Sent: Wednesday, September 22, 2010 5:21 PM
To: Roger LeDuc
Cc: Gary Smith; Richard Pearce; Larry Morris
Subject: FW: Reggie Ebner FOIA Request

Roger.

Below for your review is my proposed answer to question C of Reggie Ebner's FOIA request. The question was "What government entity is the Woodside Property Owner's Association responsible to for the well being of citizens?" My response is based on my research and Gary's suggested response.

Let me know your thoughts. I can send this separately or we can send along with our answers to A and B. My understanding is that we already knew what our response would to the first two questions.

Thanks,

Ben

Dear Mr. Ebner.

According to the below link from the South Carolina Secretary of State, Woodside Plantation Property Owners' Association, Inc. is a South Carolina nonprofit corporation. Typically, a nonprofit corporation is responsible to its shareholders, not to a governmental entity. A nonprofit corporation may be subject to regulation by state agencies if it engages in certain activities. The Official Comment to §33-31-301 states, "Many nonprofit corporations are subject to regulation as a result of the nature of their activities. Hospitals, colleges, secondary schools and health maintenance organizations, for example, are subject to extensive regulation."

You or your attorney should request an opportunity to review a copy of this corporation's Bylaws in order to better understand the organizational structure of this corporation. The City of Aiken does not have any authority to review the actions taken by this corporation unless there is a violation of city ordinance or a state statute that the city is authorized to enforce.

9/27/2010

A-3

Thank you for your request and we hope this adequately answers your question.

http://www.scsos.com/index.asp?n=18&p=4&s=18&corporateid=9852

Thank you.

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9/27/2010

Reggie Ebner

From: "Reggie Ebner" <reggieebner@bellsouth.net>
To: "Young, Tom" <tyoung@attorneyssc.com>
Sent: Monday, September 06, 2010 11:38 PM
Subject: Woodside Infrastructure Issues-Bridges

Tom,

Need some guidance on how to find out who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges in the City of Aiken.

The City has advised me in writing they are not responsible for bridges since they do not have an approved inspector; however they have allowed three wooden bridges and one concrete bridge to be installed in Woodside. It appears that the Developer got the Woodside Property Owners Association to agree to install the wooden bridges

Key questions are

1 What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?

2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?

3.Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

Please advise what is the proper procedure to get technical answers to these questions that will could be used in future legal proceedings?

I will be glad to send a SC Freedom of Information letter if needed

It would be helpful to have the answers in hand by September 14th if possible

Thanks.

Reggie

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "'Reggie Ebner'" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 8:19 AM
Subject: your questions -- follow up

Here is what I received last night from SCDOT in response to your questions. I am attempting to contact someone at LLR this morning for number 3:

1. What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?

For bridges on the state highway system, SCDOT would be wholly responsible, however, in this instance, the bridges in question are NOT on the state system. We believe these streets in the subdivision belong to the City of Aiken. SCDOT does inspect locally owned bridges 20-ft. or greater in length but the Department is not responsible for maintaining these structures.

2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?

For bridges located on the state highway system, SCDOT's current practice does not permit new highway bridges to be constructed using timber. SCDOT does however have bridges in the existing state highway system inventory that contain timber components. Locally owned bridges such as these could be timber depending on the requirements of the City.

3.Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

We recommend that this question be directed to the South Carolina Department of Labor, Licensing and Regulation.

See Last Page

Representative Tom Young
South Carolina House District 81
Aiken County
P.O. Box 651
Aiken, South Carolina 29802
Tel: (803) 649-0000
Fax: (803) 649-7005
www.reptomyoung.com
**** See Tom's website for weekly legislative updates ****

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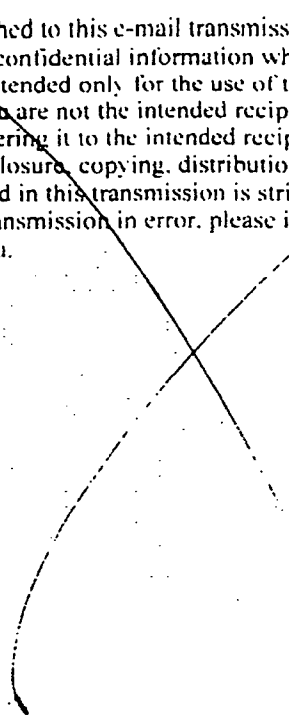

B-4

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "'Reggie Ebner'" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 10:35 AM
Subject: answer to number 3 of your questions

Reggie:

I.I.R sent me the below as an answer to number 3:

I believe the following Regulation applies to the situation outlined by Mr. Young:

Reg. 49-207(C)(4): "Additions, deletions, or other revisions to sealed documents shall not be made, unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions were made."

Representative Tom Young
South Carolina House District 81
Aiken County
P.O. Box 651
Aiken, South Carolina 29802
Tel: (803) 649-0000
Fax: (803) 649-7005
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9/27/2010

C-1

July 26, 2010

To: Roger Leduc
City Manager
City of Aiken

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

Subject: Woodside Road Issues-SC Freedom of Information Request

Dear Roger,

This is a SC Freedom of Information Request for infrastructure installed in Woodside. All information is in the public domain and required to meet specifications. Request is for either review of documents at the appropriate City Office or a copy for the following:

A. Documents for review required for compaction by City of Aiken Design Specifications: #7.36, 7.37, 9.33, 9.34, 20.2 and 26.3 for the infrastructure on the following streets:
   1. West Pleasant Colony
   2. Steeplechase
   3. Grassy Creek Lane
   4. Sea Grass Lane
   5. Pink Dogwood Circle
   6. Three Runs Creek Way
   7. Highland Reserve Court
   8. Foxhound Run
   9. Spaulding Bridge Road
   10. Common Wealth Way
   11. Mockernut Circle

B. Copy of letter verifying change of design from culverts to wooden bridges on Grassy Creek Lane and Steeplechase. If have been approved, provide for review all testing documents for piles, abutments and bridge certification of use.

C. Copy of letter verifying design for repair of "Big Dig" on Foxhound Run was approved by appropriate government entity. Provide for review compaction documents as required by City of Aiken Design Standards as listed in "A". Also provide for review documentation for embankment construction in the roadway per section 19 of design specification.

C C-2 C

D. Copy of letter verifying approval of concrete bridge on Spaulding Bridge Road. If have approved. provide for review all documents for testing of piles, abutments and bridge certification of use.

E. Provide statement of certification that asphalt used on the streets named in "A" meet or exceed state specifications.

F. Provide statement of certification that the lake formed by the roadway dam located at the intersection of Plantation and West Pleasant Colony was approved for installation and dam is constructed per appropriate engineering standards.

G. Provide statement verifying what entity is responsible for installation and inspection of code and ordinances per city, state and federal codes and specifications in common areas.

H. Provide statement verifying what entity is responsible for installation and inspection of American Disabilities Act in relation to walkways/pathways.

Sincerely,

Reggie Ebner

C-3 Received 8-30-10

Memorandum—City of Aiken

To: Roger LeDuc

From: Larry G. Morris, Public Works Director

Date: August 27, 2010

Re: Ebner FOIA Request Woodside Roads

Due to the voluminous files on the Woodside Projects, it has required several days to go through all of the files listed in the letter dated 7-26-2010. The following are our findings:

A) We could find no documents for compaction.

B) An email to Al, then president of the WPPOA, and Melanie, director of the WPPOA, was sent on 12/14/2006 stating that I had no problem with the use of wooden bridges however recommending that the WPPOA have their engineer certify the weight limit on the bridge. A copy of the email is attached.

C) The City did not certify the Fox Hound Run repair. The Woodside Development Company was instructed to obtain the services of an engineer to design and certify the repair. The City did not inspect the repair but again instructed the Development Company to obtain the services of an Engineer for the project.

D) The City of Aiken does not have the engineering expertise to certify any type of structure. It is the responsibility of the Development Company to have their structural engineer inspect and certify any bridge construction.

E) Asphalt tests are no in the file. No certification can be provided.

F) The lake referenced was shown on the development plans. The City again does not have the expertise to inspect or certify structures such as dams.

G) Work in the common areas does not fall under public works observation.

H) Work on walkways on private roads does not fall under public works observation.

C C

C-4 Ted ~ File ~

Larry Morris

From: Larry Morris
Sent: Thursday, December 14, 2006 5:15 PM
To: 'Maine99@aol.com'; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: RE: Wooden Bridges

Good Afternoon Al

I have no problem with their use. They will look better than concrete. The one on a slant will be an interesting design and installation. They do need to be designed for the concrete truck weight as we discussed earlier this week. My recommendation to the POA is require Woodside to have their engineer certify the weight limit so there are no problems with concrete trucks or moving vans in the future.

Larry

From: Maine99@aol.com [mailto:Maine99@aol.com]
Sent: Thursday, December 14, 2006 9:51 AM
To: Larry Morris; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: Wooden Bridges

Larry,
Good morning,Kent Baldwin would like to move forward on placing contracts for the 3 bridges that we discussed.Knowing you will be leaving to visit your parents shortly for the holidays I would like to know if,at this time,you recommend the use of these wooden bridges or hold off?
Thanks,
Al

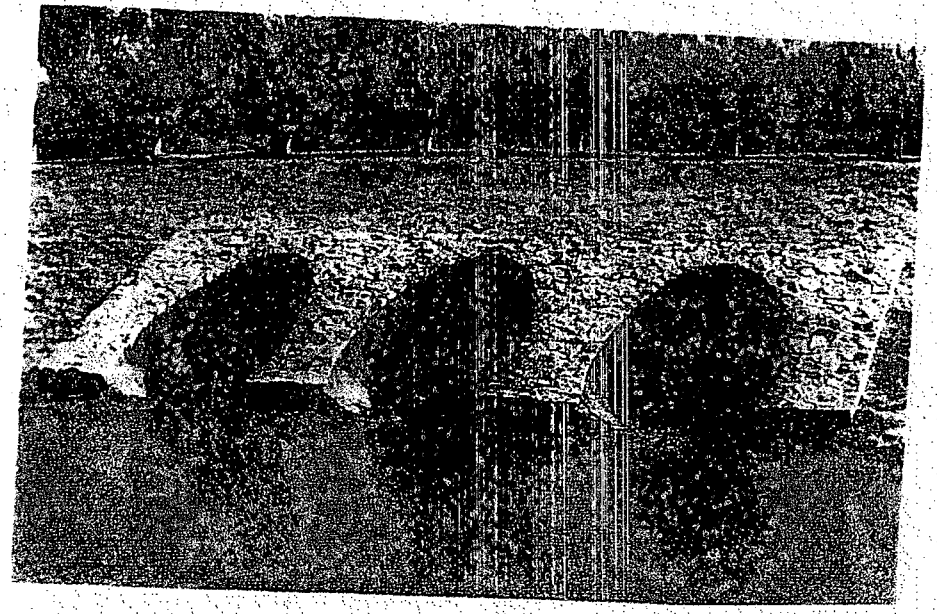
12/16/2006

LINE #
B1-FES
B2-B1
B3-B1
B4-B3
Copied From:
Woodside Plantation
PHASE III
SHEET #4
J.P. No 22867
June 6, 2005
Drawn & Stamped
By Southern
Partners, Augusta, GA
Approved
By City
1-16-07
STR# A3 DWT
TOP = 372.36
INV = 367.36
STR# B4 W
TOR = 376.55
WEIR = 375.55
INV = 368.30
STR# B3 SWT
TOP = 348.14
INV = 343.14
STR# B2 SWT
TOP = 353.02
INV = 348.02
STR# B1 SWT
TOP = 345.34
INV = 340.34
STR# C2A DWT
STR# C2 DWT
TOP = 338.57
INV = 332.00
18" FES
INV = 330.00
24" FES
INV 340.14
STR# E2 DWT
TOP = 347.44
INV = 342.44
24" FES
INV 341.74
STR# E3 DWT
TOR = 347.44
INV = 342.94
STR# E1 JB
TOR = 349.88
INV = 341.90
STR# E5 SWT
TOP = 354.50
INV = 350.00
STR# E7 W
TOP = 379.77
WEIR = 378.77
INV = 374.77
STR# E6 W
TOP = 378.
WEIR = 378.
INV = 369.
IN = 372.07
18" FES
INV = 364.00
T.B.M. - TOP OF EX. SAN. M.H. ELEV. = 375.83
Existing Storm System (Typ)
SYSTEM A
SYSTEM B
SYSTEM E
OFFROAD STORM LINE E1
OFFROAD STORM LINE E2
Sand
Grass
D-1

Att
4-23-10
E-1

WOODEN BRIDGES NOT PER DESIGN
AND NOT ALLOWED PER STATE

SHOULD BE CULVERTS AS PER DESIGN



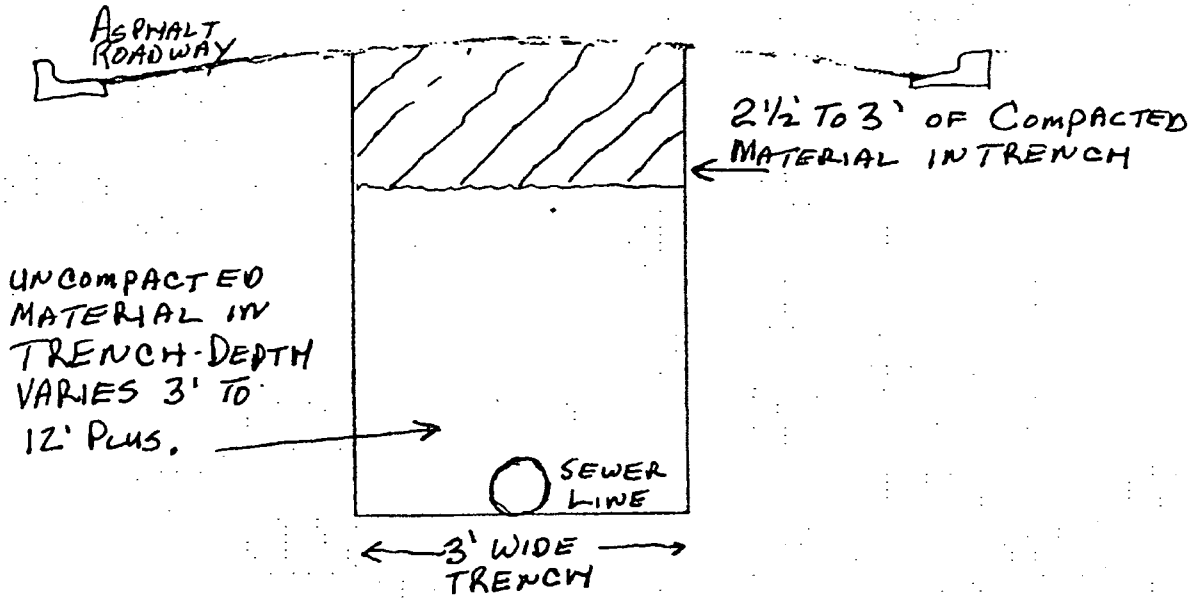
ATTACH: E-2

WOODSIDE ROAD ISSUES

TYPICAL ROAD SKETCH
ON
FOXHOUND RUN

THIS SKETCH BASED ON SOIL BORING AND COMPACTION TEST MADE ON FOXHOUND RUN IN 2007 AFTER ROAD FAILURE OVER SEWER.

NOTE: BY OBSERVING OTHER STREETS CONSTRUCTED IN WOODSIDE, BEGINNING IN 1999/2000, THIS TYPICAL ROAD SKETCH MAY APPLY TO THE BASE AND SUBASE OF THESE ROADS.



End of document
March 5, 2008
RDE

SCDOT
Commission

Office of the Chief Internal Auditor

MEMORANDUM

To: SCDOT Commission Audit Committee

From: Robin Wilkes, Chief Internal Auditor RWW

Date: October 20, 2011

Subject: Aiken Bridge Inspection Investigative Report

Attached is a report prepared after a thorough investigation of an issue reported to us by employees at the district level. This report has been provided to Secretary St. Onge for his use in determining if further action should be taken by him.

This report is considered confidential by us because it involves personnel issues and would only be provided to higher authorities who have a legal right to access such documents.

We will be glad to discuss our findings with you in executive session at the October 20 Audit Committee meeting.

SCDOT
Commission

OFFICE OF THE CHIEF INTERNAL AUDITOR

To: Secretary Robert St. Onge, Secretary of Transportation

From: Paul Townes, CPA- Deputy Chief Internal Auditor

Re: Aiken Bridge Inspection Investigation

Date October 12, 2011

On September 20, 2011, OCIA was informed of some issues that concerned an employee. One of these issues was the use of SCDOT employees to perform bridge inspection work on private property. Based upon this information, OCIA conducted an investigation, which included interviews of appropriate personnel and reviews of relevant documents. We found the following:

On August 18, 2011 Chief Engineer for Operations Clem Watson sent a request via email to District 7 DEA Jo Ann Woodrum to coordinate the inspection of three bridges located in Woodside Plantation, a private gated community in Aiken, SC. These inspections were conducted and reports dated August 23, 2011 were sent to Deputy Secretary John Walsh. Prior to the emailed request from Mr. Watson, several conversations about the inspections occurred and some employees warned Mr. Watson that it was wrong to inspect privately owned bridges. Some employees indicated that they have received requests to do work on private property before and informed the requesting party that it was against policy. Mr. Watson discussed the concerns with Mr. Walsh but Mr. Walsh directed the inspections take place.

Since the bridges were off system, employees expressed confusion over which allotment code to use for recording the inspections. They were instructed to not use the federal charge code as these bridges were not on the state's system. Inspection staff also had to create fake bridge ID numbers because the bridges were off system.

OCIA researched applicable laws to determine if the inspections were proper. According to 23 CFR 650, SCDOT must inspect all highway bridges located on public roads. 23 USC 101 defines a public road as any road or street under the jurisdiction and maintained by a public authority and open to the public. We confirmed our interpretation of the law with SCDOT's Chief Legal Counsel, who stated that SCDOT has no obligation to inspect bridges on private property.

OCIA interviewed various personnel under the Chief Engineer for operations. Without any reservation, all personnel were certain the activity was wrong, stated that they expressed reluctance to their supervisor, and knew it would later resurface because it was against established policy. Both Mr. Watson and Mr. Walsh maintained there was a grey area.

Mr. Watson indicated that the request for the inspections came from a local politician who utilized SC Representative Tom Young to assist him in obtaining services from SCDOT on private property. Mr. Watson stated that Mr. Walsh determined from Representative Young that the bridges were located on private property but that the roads were used by school buses. Since buses were using the roads in a private development, Mr. Walsh and Mr. Watson concluded that the roads were public and that the inspections would be proper.

Mr. Walsh stated that he was contacted by a city councilman from Aiken via email in addition to Representative Young to determine who is responsible for ensuring infrastructure safety. Mr. Walsh assumed the City of Aiken was interested in taking over the roads within this private development and his impression was that that the city wanted to know the condition of the bridges before a possible takeover. He stated that he considered the request for the inspections as one coming from a governmental entity. Also, he stated that safety of the children on the school buses was the reason he used his judgment to make the decision. He stated that he would probably do the same thing tomorrow.

OCIA investigated the request and found that it came from a city councilman but not from the City of Aiken. Furthermore, we found that the councilman is a resident of Woodside Plantation. OCIA contacted the City of Aiken and verified that the City of Aiken does not maintain or own the roads in Woodside Plantation. We found that on July 26, 2011 SCDOT personnel made a direct inquiry to the City of Aiken and verified that the roads and bridges were not city owned but private property. We also contacted the Engineering Department of the City of Aiken and inquired if there was any discussion of acquiring the roads. We were told there has been no discussion.

OCIA reviewed the website for Woodside Plantation and it clearly states under the safety tab that it is a gated community. The people we spoke to from the City of Aiken emphasized that if they acquired the roads, the gates would have to come down. Mr. Watson expressed some reservations once he became aware that the community was gated. Neither Mr. Watson nor Mr. Walsh checked with SCDOT Aiken Maintenance to get an understanding of the Woodside Plantation community before accepting the request.

OCIA contacted the Aiken County Public Schools and spoke with the bus transportation section. Both employees that we spoke to stated that no bus driver or citizen had complained to the school district about the bridges. In fact, the district has a protocol for suspending bus service if the route has safety issues. The district sends one representative with a representative from the SC Department of Education to inspect the safety issue. If an unsafe condition exists, the bus is withdrawn from the route. Therefore, the primary responsibility for the safety of buses is the school district not SCDOT.

During our discussions with Mr. Watson and Mr. Walsh, they both indicated that these inspections were in a grey area. They both indicated that the request and subsequent action by SCDOT were outside of the norm. We did not find where they sought the legal department's clarification on the grey area. Additionally, SCDOT has not verified with legal counsel whether liability exists to SCDOT. By issuing an inspection report, SCDOT may have incurred an exposure to a lawsuit as a defendant if something happens in the future even though the bridges are outside of its jurisdiction. There is also the possibility

that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners association decides to sue the developer of the private gated community.

As stated earlier, we were informed during several interviews that employees did not want to perform the inspections because they felt it was wrong to inspect private property. They however complied with this request because it came from executive level management. ; Deviations from federal and state regulations must be avoided. Any deviations from standard department operations should be clearly justified to the employees performing the function to avoid SCDOT creating an ethical conflict for these employees.

1990 WL 599297 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 4, 1990

*1 1. Public funds may not be expended for private purposes, but may only be expended for public purposes. Thus, Richland County Council may not enact an ordinance which expends public funds primarily for a private purpose and may not provide for the scraping of private roads or driveways with public funds where such is primarily for a private purpose.

2. Our Supreme Court has concluded that the determination of what constitutes a public purpose is a decision for the legislative branch, in this instance, Richland County Council. Thus, Richland County Council must conclude that a particular expenditure of public funds is for a public purpose before such funds may be spent.

3. With respect to private road maintenance, an opinion issued during the administration of former Attorney General Daniel R. McLeod indicates that where a landowner reserves a right to revoke his dedication of road property to the public, the maintenance of such a road at public expense is unconstitutional because such would primarily serve a private purpose. Implicitly, this opinion also concluded that any such dedication should be irrevocable, in order for constitutional standards to be met.

4. Therefore, where driveways or roads are being scraped with the use of public funds, such must be for a public, not a private, purpose. Cases in other jurisdictions indicate that one way such may be done constitutionally is where the road property has previously been conveyed irrevocably by deed from the landowner to the county in the form of a dedication for public use. See, Wine v. Boyar, 33 Cal. Rptr. 787 (1963).

5. While we have not found any authorities rendered by our Supreme Court directly addressing the kind of ordinance being considered here, we have located an Order issued by the Honorable Jonathan McKown, dated October 22, 1984, which substantially deals with this question. Judge McKown held that roads should neither be built, nor maintained, on private property at public expense, unless certain stringent guidelines are followed, namely that there has been an irrevocable conveyance of such property by the landowner for public use; that such instrument is recorded in the county courthouse; and that there is a determination by the county that "the public benefit and use [is] substantial...." Judge McKown also held that roads should not be built "except in exceptional circumstances or [on a] bona fide emergency basis."

6. The Ordinance in question here appears to require a deeding from the landowner to the county, together with certain other conditions, primarily that any scraping must be done as a means for allowing emergency and other county vehicles to get through. Of course, we would presume that if such a proposal is implemented, the county would insure that a particular property owner conveying property for public use, possessed title sufficient to grant such a conveyance.

7. Our research also indicates that there is authority in other jurisdictions which concludes that public safety alone represents a legitimate public purpose, and that where an ordinance designed to promote public safety provides for the maintenance of private roads or streets, such is valid. Klink v. Monroe Tp., 436 A.2d 545 (1981). See also, 18 McQuillin, Municipal Corporations, § 53.44 at 246. Therefore, it could be argued that because Richland County, in this Ordinance, requires that scraping be done on roadways only for emergency vehicle passage, such a finding is sufficient to meet the public purpose in that it promotes public safety.

*2 We decline to follow these cases however, because, consistent with Judge McKown's Order referenced above, other authority suggests that a much stricter standard is preferable where the maintenance of roadways at public expense is involved. These cases in other jurisdictions suggest that in the enactment of an ordinance such as here, there must not only be a determination of a need to promote public safety, but that there also must be an irrevocable dedication of the private property to the public, before an ordinance meets the public purpose test. Here, Richland County, in its ordinance, requires both a determination of necessity for emergency vehicle passage, as well as a public dedication before a road may be scraped. Because both requirements are contained in the ordinance, a court would probably conclude that Richland County's determination of public purpose is constitutionally valid on its face. Moreover, based on Judge McKown's ruling, if Richland County, in its

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acceptance of the dedication of a particular roadway, concludes that the public benefit in that instance is substantial, then the proposed ordinance would also be constitutional as applied in a given situation.

8. As is our policy, this Office comments upon the legal issues relevant here. Whether or not Richland County wishes to adopt the ordinance under consideration, as a matter of public policy, is entirely a matter for council to consider.
C. Dennis Aughtry, Esquire
Richland County Attorney

QUESTIONS:

May public funds be constitutionally expended by Richland County Council for the maintenance of private roads or driveways? Is the enclosed ordinance constitutional?

DISCUSSION AND CONCLUSION:

PROPOSED ORDINANCE

The proposed ordinance provides for the dedication of roads for scraping; the proposal states:

No work may be performed on any road not already maintained by the County unless such road be dedicated by recorded instrument to the public, and the following conditions are satisfied:

1) Such road is the only access for one or more property owners or residents and at least one of the properties to be accessed is used as a primary residence;

2) Emergency medical services, sheriff's department vehicles and other county vehicles cannot, in the lawful performance of their duties, gain full and immediate access to a residence unless road scraping is performed.

When such roads are dedicated and the above-cited conditions are noted, the Richland County Public Works department may perform only such work necessary to allow full and immediate access to the affected residences by emergency medical service, sheriff's department vehicles and other county vehicles.

Such proposal would amend Section 21-7 of the present Richland County Code.

Attached to the proposed ordinance were copies of forms proposed to be utilized in the dedication process. The first is entitled "Dedication of Roadway and Hold Harmless Agreement." The form would set forth the legal description of the property to be dedicated "unto the public for public use." The habendum clause states that Richland County would hold the dedicated roadway "for the benefit of the public" subject to specified terms and conditions. The form would be dated and signed by the property owner and chairman of county council and also by two witnesses each for the property owner and the county. Two probate forms, to be signed by witnesses to the parties' signatures and notarized, were also attached. Upon execution these documents would presumably be filed with the Richland County Register of Mesne Conveyances.

Constitutional Concern

*3 Article X, Section 5 of the Constitution of the State of South Carolina provides in relevant part that "[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." This Office has opined on numerous occasions that use of county equipment on private property, within the context of Article X of the State Constitution, is generally prohibited. See Ops. Atty. Gen. dated September 30, 1987; June 11, 1975; January 9, 1976; October 26, 1977; February 10, 1975; September 12, 1975; December 9, 1975; March 12, 1979; and January 31, 1980.

Public Purpose

To determine what constitutes a public purpose, the reasoning found in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975), is relevant:

As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof. ...

Id., 265 S.C. at 162. To be a public purpose, the advantage to the public must be direct, not merely indirect or remote. Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). The court in Anderson stated that each case must be determined on its own

merits, considering each situation.

This Office has never squarely addressed the situation where a property owner actually conveys by deed a piece of property for the public use. Thus, the situation is novel from a legal standpoint. To determine whether a public purpose exists in the situation you have referenced, it is necessary to examine the concept of dedication, who benefits, and the duty or responsibility of the political subdivision accepting the dedication. While I present the legal considerations as follows, I stress that it is ultimately a matter for Richland County Council to consider and determine that a public purpose exists and that road maintenance should be undertaken in a given situation. As our Supreme Court has stated, "[i]t is uniformly held by courts throughout the land that the determination of public purpose is one for the legislative branch." Nichols v. South Carolina Research Authority, 290 S.C. 415, 426, 315 S.E.2d 155 (1986). "The question of whether an Act [or in this instance an ordinance] is for a public purpose is primarily one for the legislature." Park v. Greenwood County, 174 S.C. 35, 41, 176 S.E. 870, 872 (1934).

Dedication

As stated in Derby Heights, Inc. v. Gantt Water and Sewer District, 237 S.C. 144, 116 S.E.2d 13 (1960),

Dedication is the intentional appropriation of land, or of an easement therein, for some proper public purpose. ... It is not a unilateral transaction; for its completion there must be acceptance by the public, of the property, for the particular purpose.

Id., 237 S.C. at 149-150. Furthermore,

"The essence of dedication is that it shall be for the use of the public at large. *** Properly speaking, there can be no dedication to private uses, nor for a purpose bearing an interest or profit in the land, as distinguished from general public uses. ..."

*4 "There is no such thing as a dedication between the owner and individuals. The public must be a party to every dedication. *** In short, the dedication must be made to the use of the public exclusively, and not merely to the use of the public in connection with a user by the owners in such measure as they may desire."

Safety Building & Loan Company v. Lyles, 131 S.C. 542, 544-45, 128 S.E. 724 (1922). A dedication for street purposes is a dedication to the public at large. Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584 (1923).

How dedication may be effectuated was discussed in Anderson v. Town of Hemingway, 269 S.C. 351, 237 S.E.2d 489 (1977):

[D]edication involves not only an offer to dedicate, but an acceptance thereof, either express or implied, by a public authority having power to pass upon the matter.

It is generally accepted that to constitute a valid dedication, there must not only be an intention on the part of the owner to dedicate a property to the public use, but that such intention must be manifested in a positive and unmistakable manner. It need not be made by deed or other writing, but may be effectually and validly made by acts or verbal declarations. It may also be implied from long use by the public of the land claimed to be dedicated.

Id., 269 S.C. at 353-54. Our court's statements appear to be in accord with the common law doctrine that "no particular formality is necessary to effect a dedication." 23 Am.Jur.2d Dedication § 27.

Examining the above-described documents in light of the foregoing general law as to dedication, it would appear on the face of the documents that the roadways subject of the dedication documents are being turned over by the landowner to the County for the benefit of the public. (Of course, in a given factual situation, it might be shown that such roadway was not open to the public, notwithstanding the documents to the contrary. Other questions would then arise in conjunction with that roadway which are not considered herein.) Such intent would be readily inferred from the plain, clear language in the documents. It is beyond argument that maintenance of a public road constitutes a public purpose for which public resources (funds, equipment, personnel, etc.) may be expended. I would also note that the ordinance under consideration requires that any scraping must be done for the passage of certain emergency vehicles.

Once a political subdivision has accepted a dedication of land for use as a street or roadway, that political subdivision has a duty to keep the street or roadway open, to maintain it in good repair. 26 C.J.S. Dedication § 55; Harshbarger v. County of Jerome, 107 Idaho 805, 693 P.2d 451 (1984); United States Bung Mfg. Co. v. City of Cincinnati, 73 Ohio. App. 80, 54 N.E.2d 432 (1943); Sarty v. Millburn Township, 28 N.J.Super. 199, 100 A.2d 309 (1953); Miller v. Fowle, 92 Cal. App. 2d 409, 206 P.2d

1106 (1949). Failure to do so could subject the political subdivision to liability. 26 C.J.S. Dedication § 55. The political subdivision would exercise its discretion as to the nature and extent of necessary repairs or maintenance.

Previous Opinion and Other Law

*5 In a previously-rendered opinion of this Office dated June 20, 1972, this Office examined the constitutionality of Florence County's use of public resources to maintain a dirt road leading to a chicken farm. The owner gave the county a revocable easement over this land for the purpose of maintaining the road for public use. The opinion stated:

Two methods of acquiring property for public roads are eminent domain and dedication. It has been stated, however, that the reservation of the right to revoke defeats the dedication. See McQuillin, The Law of Municipal Corporations, Dedication, Section 33.10 at page 658 (1964). Were it otherwise the property owner would receive the benefit of county maintenance since he may revoke the easement at will. It is the opinion of this office that such would be inconsistent with the constitutional prohibition against the use of public funds on private property.

This prior opinion only underscores more definitely the need for some action to be taken by the property owner which will leave no question that the road is being irrevocably conveyed by the landowner to the county for public use if public funds or resources are to be used for the maintenance thereof. See also Op.Atty.Gen. dated August 1, 1986 (public funds may be expended to pave a roadway leading to an industrial park, with agreement by the current property owner that the property will be dedicated to the public, in this case the State of South Carolina; essential to the conclusion of this opinion was the fact that industrial development clearly meets the public purpose test as stated in cases such as Nichols, supra).

There is authority in other jurisdictions which concludes that public safety alone represents a legitimate public purpose and that where an ordinance designed to promote public safety provides for the maintenance of private roads or streets, such is valid. Klink v. Monroe Tp., 436 A.2d 545 (1981). See also, 18 McQuillin, Municipal Corporations, §§53.44 at 246. Therefore, it could be argued that because Richland County, in this ordinance, has mandated that scraping be done on roadways only for emergency vehicle passage, such a finding is sufficient in that it promotes public safety.

We decline to follow these cases, however, because other authority suggests that a much stricter standard is preferable where the maintenance of roadways at public expense is involved. These cases suggest that, in the enactment of an ordinance such as here, there must not only be a determination of a need to promote public safety or some other public purpose, but that there must also be an irrevocable dedication of the private property to the public, before an ordinance meets the public purpose test.

Opinion of the Justices, 560 A.2d 552 (Me. 1989) is a good example. There, a statute provided for the maintenance of private roadways. The legislature found that the maintenance of private roadways promoted public safety in that it insured "adequate access and egress for police, fire and emergency vehicles, as well as other vehicles traveling to and from those residences."

*6 The Court, nevertheless, ruled the statute unconstitutional because it did not promote a public purpose. The Court emphasized that the statute provided that the public "has no legal right of travel" on the roads. The Court warned that, without a public dedication, any such statute is unconstitutional.

Any possible consent by the private owners to the public's use of the road at most would arise only by inference from the absence, at the time of expenditure, of any barrier or sign "hav[ing] the effect of discouraging public travel." But even that questionable implicit consent could disappear at the whim of owners who subsequently put up a "no trespassing" sign or similar barrier. Any indirect public benefits derived from the proposed public expenditures upon private roads from which the public is or may be barred are outweighed by the public detriment.

560 A.2d at 555. It is apparent from the Court's citation of authorities in this case that the decision turns on the fact that the Legislature did not insure public access. Clearly, the Court was willing to give great deference to a legislative determination of public purpose, but was unwilling to approve any statute where public dedication was not provided for. Consistent with the idea that the "essence of dedication is that it shall be for the use of the public at large", one Court has stated,

[t]he distinguishing characteristic of a public way is that it is open to general public use, and it is the right to travel upon the street, and not the exercise of the right which makes the street public. Its character is not determined by the number of persons who actually use it; if it is open, it is inmaterial that but few persons are in a position to make use of it, or that one person is most benefited by it... . [T]he fact that the terminus of the dedicated street fails to connect with another public road, making of it a technical dead end, [does not] deprive it of its public character... .

Measured by the foregoing standard the alley is clearly a public way and for a public purpose.

Dorris v. Hawk, 292 P.2d 417 (Okl. 1956).

While we have not found any authorities rendered by our Supreme Court directly addressing the kind of ordinance being considered here, we have located an Order issued by the Honorable Jonathan McKown, dated October 22, 1984, which substantially deals with this question. Judge McKown held that roads should neither be built, nor maintained, on private property at public expense, unless certain stringent guidelines are followed, namely that there has been an irrevocable conveyance of such property by the landowner for public use; that such instrument is recorded in the county courthouse; and that there is a determination by the county that "the public benefit and use [is] substantial...." Judge McKown also held that roads should not be built "except in exceptional circumstances or [on a] bona fide emergency basis."

*7 Here, Richland County, in its ordinance, requires both a determination of necessity for emergency vehicle passage, as well as a public dedication before a road may be scraped. Because both requirements are contained in the ordinance, a court would probably conclude that Richland County's determination of public purpose is constitutionally valid on its face. Moreover, based on Judge McKown's ruling, if Richland County, in its acceptance of a particular roadway, concludes that the public benefit in that instance is substantial, then the proposed ordinance would also be constitutional as applied in a given situation.

As is our policy, this Office comments upon the legal issues relevant here. Whether or not Richland County Council wishes to adopt the ordinance in question, as a matter of public policy, is entirely a matter for County Council.
Sincerely,

Charles W. Gambrell, Jr.
Deputy Attorney General

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2005 WL 469070 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 3, 2005

*1 The Honorable Wayne C. Ramsey
Member
Gaffney City Council
P. O. Box 2109
Gaffney, South Carolina 29342

Dear Mr. Ramsey:
You have requested an opinion "about the City of Gaffney doing work on private property." You note that the Gaffney City Council has "had a request to move a storm drain that is located on church property." You indicate that "the current drainpipe only drains church property" and no other private property. You further state that "[n]o city street storm water goes into this system" and that "[t]he church wants the line moved so they can build a new building." You seek "an opinion on using taxpayer money to do this work that only benefits private property."

Law / Analysis
Of course, it is the policy of this Office to issue opinions to municipal or county councils as a body and not to a single member thereof. It is not clear from your letter as to whether you are requesting an opinion on behalf of the entire Town Council of Gaffney or simply as one member thereof. However, since we have addressed your question in numerous prior opinions, we will review these for you herein.

This office has repeatedly recognized that public funds must be used for public and not private purposes. See, e.g., Opinion of the Attorney General dated October 8, 2003 citing decisions of the South Carolina Supreme Court in Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E.2d 596 (1923). In an opinion dated August 29, 2003, we advised that, "[T]he Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose." Moreover, Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes. While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described by our Supreme Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) as follows:

(a)s a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof...Legislation (i.e., relative to the expenditure of funds) does not have to benefit all of the people in order to serve a public purpose.

See also: WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000); Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986); Carll v. South Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331 (1985); Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). An opinion of this office dated December 18, 2000 commented that the constitutional requirement of "public purpose...was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises." Furthermore, Article X, Section 11 of the State Constitution provides that:

*2 (t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

This provision proscribes the expenditure of public funds "for the primary benefit of private parties." State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement". Elliott v. McNair, supra.

In Nichols, the court established the following test to determine whether the "public purpose" requirement has been met:

(t)he Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be

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considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

318 S.E.2d at 163. In Bauer v. S.C. State Housing Authority, 271 S.C. 219, 256 S.E.2d 869 (1978), the Supreme Court warned that "(i)t is not sufficient that an undertaking bring about a remote or indirect public benefit to categorize it as a project within the sphere of public purpose."

Applying these general principles of constitutional law, we have recognized on numerous occasions that counties and municipalities cannot expand public funds or use equipment or employees to perform work on private property unless a public purpose can be demonstrated. See, e.g. Op. S.C. Atty. Gen., April 2, 1987 ["(t)his Office has opined on numerous occasions that county equipment and personnel ... may not be used for work on private property."]; Op. S.C. Atty. Gen., August 2, 1985 ["this Office has ruled on numerous occasions that public funds or other resources could not be used to perform work or otherwise improve private property."]; Op. S.C. Atty. Gen., January 9, 1976 [removing dead animals from private property is a proper public purpose for the health and safety of the community and is thus permissible under the State Constitution]; Op. S.C. Atty. Gen., Op. No. 3968 (February 10, 1975) [a statute authorizing public funds or equipment to be used on private property for no public purpose is invalid]; Op. S.C. Atty. Gen., February 26, 1971 [use of county prison labor on private property for no public purpose violates the State Constitution]; Op. S.C. Atty. Gen., August 18, 1967 [county may not use road machinery of county for private purposes].

Of course, church property is private property. See, Op. S.C. Atty. Gen., January 6, 1978 [church property is considered non-commercial private property].

The Supreme Court of Texas, in Ex Parte Conger, 163 Tex. 505, 357 S.W.2d 740, 742 (1962) stated the following with respect to the question of using public funds primarily for the benefit of a church:

*3 The complaint against Commissioner Conger was that by implied consent he allowed county-owned machinery to be used for the benefit of private parties in blading and scraping off two lots in the town of McCamey so that the members of a church would have a place to park their cars while attending religious services. The employee who did this work had been instructed by Commissioner Conger not to use the county equipment on private property. He testified, however, that 'I had had permission to use the equipment on the lands wherein the Lions Club had given the church permission, and I just presumed that if it was all right for me to use them for a parking area on one it would be all right to use it on another lot for the same purposes.' Work performed on privately owned property to furnish parking facilities for the use of members in attending services at their church is not for a public use or purpose, whether that work consists in scraping off weeds or paving the lot or excavating for a foundation. The matter does not turn on the extent of character of work, but rather for whose benefit it was performed. A denominational church is a private institution, privately owned and operated. ...

Thus, it is clear that the general constitutional prohibitions against using public funds for private purposes or expending public funds for work on private property apply with equal force to church property.

Conclusion

Your letter indicates that the City's funds would be expended to remove a storm drain on church property, and that this cost would serve no public purpose. However, the State Constitution protects taxpayers against a governmental entity's spending public funds for private purposes. As stated above, the constitutional requirement of public purpose "was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises." Thus, assuming these facts, such an expenditure of public funds as described in your letter would be violative of the South Carolina Constitution.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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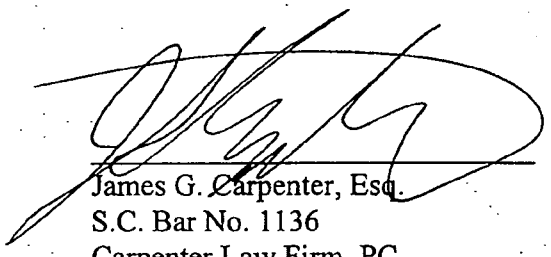
Certificate of Counsel

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



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

APPELLANTS' BRIEF

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STATEMENT OF THE CASE

The South Carolina Department of Transportation ("SCDOT") spent public funds for inspecting and reporting on three privately owned bridges in a private, gated community, which were not on the SCDOT system. Appellants, the South Carolina Public Interest Foundation ("SCPIF" or "the Foundation") and Edward D. Sloan, Jr. individually and as a South Carolina taxpayer representing the taxpayers sought declaratory judgment under the Uniform Declaratory Judgment Act that this expenditure violated the S.C. Constitution's prohibitions of expending public funds for private purposes and pledging the full faith and credit of the State for the benefit of private individuals, associations, or corporations. S.C. Const. Art. X, §§ 5, 11 (Rev. 2009).

The Circuit Court ruled that the Appellants lacked standing and that the issues raised were moot (R. p. 4). Appellants asserted that Mr. Sloan possessed taxpayer standing, and that both the Foundation and Mr. Sloan possessed standing based on the public importance of ensuring that the agencies of this State act within the boundaries of their constitutional powers, particularly when spending public funds. Furthermore, Appellants argued that these acts and expenditures were capable of repetition yet evading review, and were therefore justiciable. The public importance of these matters also created an exception to the doctrine of mootness. The Court denied public importance standing to the Foundation and to Mr. Sloan, in spite of the fact that the Respondents and other agencies of the State could again spend public funds for private purposes without citizens' effective prior knowledge or review (R. p. 5). The Circuit Court ruled that Mr. Sloan lacked standing as a taxpayer (R. pp. 4-5).

Second, the Circuit Court ruled that the SCDOT was legitimately investigating the bridges under the City of Aiken's police powers and its power to abate public nuisances (R. pp. 6-9).

Third, the Circuit Court ruled that SCDOT's expenditure was not such a gross wrongdoing as to require a Court to rule on the merits (R. p. 4). Appellants contended that this expenditure of taxpayer funds to benefit a private HOA was a significant constitutional matter that requires a declaratory judgment. The Circuit Court granted Summary Judgment for the Respondents on the merits (R. pp. 9-10).

STATEMENT OF FACTS

On July 13, 2011, Reggie Ebner, a resident of Woodside Plantation in Aiken, S.C. sent an email to John Walsh, Deputy Secretary for Engineering for the SCDOT, requesting SCDOT's assistance in a disagreement and potential legal dispute between Ebner and the developers of the Woodside Plantation neighborhood (R. pp. 34-51).

Ebner claimed to be an engineer licensed in Texas. Ebner's July 13 email alleged three engineering or construction flaws related to the bridges: (1) the substitution of wooden bridges for design-specified metal culverts, which would require expensive maintenance by the HOA; (2) the road failure over the sewer pipe, which would require expensive repairs by the HOA; and (3) defects in a concrete bridge, which would require expensive repairs by the HOA (R. pp. 38-51).

Ebner had earlier written to the City of Aiken asking, "What government entity is the Woodside Property Owners Association responsible to for the well being of its citizens?" (R. p. 38). City officials had replied to Ebner that the HOA was "responsible to its shareholders, not a governmental entity" (R. p. 39).

Ebner also sent questions to his State Representative, Tom Young about these issues. He wanted answers that "could be used in future legal proceedings" (R. p. 41). He asked, "What government agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?" (R. p. 41). Representative Young told Ebner that the "bridges in question are NOT on the state system" (capitalization in original), and "the Department [of Transportation] is not responsible for maintaining these structures" (R. p. 42).

Instead of engaging a private sector structural engineer, Ebner disregarded the answers he had received and attempted to enlist the help of his Representative and Senator to pressure the SCDOT into inspecting and reporting on the wooden bridges, even though they are on private property in a gated community. Ebner requested, "If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts" (R. p. 36). He further requested, "If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements." (R. p. 36).

Finally, as to a concrete bridge in Woodside Plantation, Ebner requested, "SCDOT will need to determine if concrete bridge can be certified for use. If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification." (R. p. 37). He further requested, "Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties." (R. p. 37).

In summary, Ebner was asking the State to pay for the inspection, evaluation, and expert opinion regarding these privately owned bridges. If the evaluation indicated a problem, he planned to use legal or political pressure to require the developer to replace the wooden bridges with metal culverts and to repair the concrete bridge and its approaches (R. pp. 36-37). He was attempting to engage the SCDOT as his unpaid and politically connected expert witness.

His Representative and Senator passed along his request to the SCDOT, and they appeared to endorse his request for the publicly financed inspection and report. These

two legislators appeared to exert political pressure on the SCDOT to inspect and report on these privately owned bridges, at public expense under the mistaken impression that public school buses passed over these bridges. However, the Affidavit of Edward D. Sloan, Jr. and the approved bus routes published on the official website for the School District of Aiken County demonstrate that no public school bus on any official route traverses any of the three bridges at issue (R. pp. 31, 110-119).

After the SCDOT completed its bridge inspection and made its report to Ebner and the legislators, the DOT's Chief Internal Auditor ("Auditor") investigated the propriety of SCDOT's actions in using public funds to inspect bridges not in the SCDOT's system. The investigation stemmed from concerns of SCDOT employees who warned Chief Engineer for Operations Clem Watson that the inspection of these off-system bridges violated established policy. The Auditor issued an Aiken Bridge Inspection Investigation Report ("Auditor's Report") dated October 12, 2011. (R. pp. 171-174). The Department acknowledged, "These bridges were not on the state's system. Inspection staff also had to ***create fake bridge ID numbers*** because the bridges were off system" (R. p. 172). (emphasis added).

The Auditor researched the law and confirmed with SCDOT's Chief Legal Counsel "that SCDOT has no obligation to inspect bridges on private property." (R. p. 172). The Auditor interviewed various SCDOT personnel under the Chief Engineer for operations. "Without any reservation, ***all personnel were certain the activity was wrong***, stated that they ***expressed reluctance to their supervisor***, and knew it would later resurface because it was ***against established policy.***" (R. p. 172). (emphasis added). Nevertheless, the SCDOT official had ordered the investigation to proceed. The report

concludes that the SCDOT decided to go forward with the inspection because school buses used the roads. (R. p. 173). The Auditor also determined that "no bus driver or citizen had complained to the school district about the bridges." (R. p. 173).

The Auditor determined that the request for inspection "came from a city councilman but ***not from the City of Aiken.***" (R. p. 173). (emphasis added). Furthermore, the Auditor found that "[Ebner] is a resident of Woodside Plantation." (R. p. 173). The Auditor further determined that the SCDOT did not seek its own legal department's clarification on the issue. (R. p. 173). The SCDOT Chief Internal Auditor found that contrary to its long-standing policy, SCDOT provided an engineering inspection and report to Ebner, without any cost or fee whatsoever. (R. pp. 172-174).

Finally, the Auditor stated, "There is also the possibility that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners Association decides to sue the developer of the private gated community." (R. pp. 173-174).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN FAILING TO GRANT APPELLANTS PUBLIC IMPORTANCE STANDING.

The Supreme Court has repeatedly recognized, developed, and expanded jurisprudence of public importance standing and the standing of a South Carolinian to challenge unconstitutional actions by State officers. *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997). The Circuit Court erred in failing to follow this long line of cases affording public importance standing on similar issues.

The Court of Appeals addressed an expenditure in violation of the Procurement Code of the School District of Greenville County. This Court found both taxpayer standing and public importance standing:

> Our decision to allow Sloan to proceed with this suit does not rest entirely on his ***status as a taxpayer*** of Greenville County. Recently, in *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999), the Supreme Court held "a court may confer standing upon a party ***when an issue is of such public importance as to require its resolution for future guidance***." *Id.* at 531, 511 S.E.2d at 75. In *Baird,* the Appellants alleged Charleston County committed an *ultra vires* act by ***exceeding its statutory authority***

> to issue hospital bonds. The Court explained the case impacted a profound public interest—the public health and welfare—and stated ***the citizens of Charleston County "have a significant interest in ensuring that their county acts within the legal parameters established by the legislature*** for funding hospital development." *Id.* Accordingly, the Supreme Court held the Appellants had standing to proceed. *Id.* at 531, 511 S.E.2d at 75-76.
>
> In this case, the ***public interest involved is the prevention of the unlawful expenditure of money raised by taxation***. "Public policy demands a system of ***checks and balances*** whereby taxpayers can hold public officials accountable for their acts.... Taxpayers must have ***some mechanism of enforcing the law***." *Eastern Missouri Laborers Dist. Council,* 781 S.W.2d at 47.

Sloan v. School District of Greenville County, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (2000) (emphasis added). The Courts of this State have ruled that the manner in which public funds are spent is of "immense public importance."

> The ***expenditure of public funds*** pursuant to a competitive bidding statute is of ***immense public importance***. Requiring that contracts only be awarded through the process of competitive sealed bidding demonstrates the lengths to which our government believes it should go to ***maintain the public's trust and confidence in governmental management of public funds***.

Sloan v. School District of Greenville County, 342 S.C. 515, 524, 537 S.E.2d 299, 303 (2000) (emphasis added). If the statutes that require competitive sealed bidding in the expenditure of taxpayer funds are matters of great public importance, Constitutional provisions forbidding the expenditure of public funds for private purposes are matters of even greater public importance.

The Court of Appeals expanded on this analysis in *Sloan v. Greenville County*.

> ***There is a keen public interest in the stewardship of public funds and a strong need to provide guidance for future procurement decisions.*** Our inability to provide any effective relief in this case should not be a barrier to the courts consideration of this question of exceptional public interest.

Id. 356 S.C. 531, 554, 590 S.E.2d 338, 350 (2003) (emphasis added). The "keen public input interest in the stewardship of public funds" is even greater in the Constitutional prohibitions of expenditures of public funds for private purposes, because the ends or the result is forbidden and not just the means or manner of the selection of source for the expenditure.

The Circuit Court erred in failing to grant the Foundation and Mr. Sloan standing because of the great public importance of ensuring that the State does not violate the constitutional prohibitions that govern its expenditures.

The Supreme Court made a similar ruling in *Sloan v. Dept. of Transportation,* the *Ravenel Bridge* case.

> Under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cty.,* 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). This Court has never held that there must be no other potential plaintiffs with a greater interest in the case or some other nexus, as the respondents now argue.

Id., 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). The standard for public importance standing includes (1) a need for future guidance on the subject matter, and (2) a benefit to all the citizens of the State or local government whose actions are challenged. *Freemantle v. Preston,* 398 S.C. 186, 197, 728 S.E.2d 40 (2012). Similarly, the issue in this case is one of great public importance and requires future guidance, as Appellants could find no case law directly on point for the subject of an agency expending public funds for private purposes and interests.

SCPIF and Mr. Sloan do not seek monetary damages. Furthermore, constitutional violations by the SCDOT and other State agencies are more critical to the citizens of South Carolina than the termination of an employee's employment contract. In this case,

the SCDOT has violated the S.C. Constitution's prohibition against using public funds and resources for private purposes. Although they knew the illegality of their actions, the SCDOT officials provided professional engineering services to a private individual seeking to support his and his private legal claims (R. pp. 172-174). The citizens of this State have a strong public interest in ensuring that State government does not violate the substantive provisions of the South Carolina Constitution.

The Supreme Court recently rejected an argument similar to the SCDOT's argument based upon Article III, § 11 in *Anderson v. South Carolina Election Commission,* 397 S.C. 551, 725 S.E.2d 704 (2012). In *Anderson*, the Republican Party argued that the Supreme Court lacked jurisdiction to address the legal requirement that a candidate for the General Assembly file a Statement of Economic Interest. The Supreme Court disagreed.

> Here we are not asked to judge a disputed legislative election but rather to interpret a statute. ***The construction of a statute is a judicial function and responsibility***. *JRS Builders, Inc. v. Neunsinger,* 364 S.C. 596, 614 S.E.2d 629 (2005). Accordingly, we reject the argument that this Court lacks subject matter jurisdiction in this case.

Id., 397 S.C. 551, 555, 725 S.E.2d 704, 706 (emphasis added).

Just as "the construction of a statute is a judicial function and responsibility," so too is the construction of a section of the South Carolina Constitution. *Anderson v. S.C. Election Commission,* 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012). Just as the Supreme Court ruled that the Appellants in *Anderson* properly possessed standing and the Court possessed jurisdiction to interpret and apply the statute to members of the General Assembly, so also in the case at bar, this Court possesses jurisdiction to interpret the Constitutional prohibition on expenditures of public funds for private purposes and to apply it to the facts of this matter.

The Circuit Court mistakenly relied on *Freemantle v. Preston*, in which a citizen brought an action seeking to invalidate a severance agreement between a county and its former county administrator, contending the approval of the severance agreement violated the common law and South Carolina's Freedom of Information Act (FOIA). *Id.* at 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). In *Freemantle*, the Supreme Court ruled that the citizen lacked standing pursuant to the public importance exception to the general standing requirements to challenge the validity of a severance agreement between a county and its former county administrator. The Court ruled that because ***the citizen sought monetary damages for himself*** in his common law causes of action while claiming to represent the taxpayers of the county, his case directly conflicted with the purpose and spirit of the public importance exception. The Court ruled that the personnel choices of the county, even in the face of a seemingly excessive severance package, did not require further guidance.

The *Freemantle* Court also said: "[S]tanding is not inflexible and standing ***may be conferred upon*** a party when an issue is of such public importance as to require its resolution for future guidance." [*ATC South, Inc. v. Charleston County*, 380 S.C. 191] 198, 669 S.E.2d [337,] 341 (2008)] (quoting *Davis v. Richland Cnty. Council,* 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007) (citation omitted))" (emphasis added). The Court noted that *Freemantle* involved the disapproval of an individual citizen with the details of one former employee's private personnel matters.

> This nexus between the public importance exception and the need for future guidance from the Court is invariably linked to a need for and entitlement to injunctive relief. ***That Appellant sought monetary damages for himself in his common law causes of action***, while claiming to represent the taxpayers of Anderson County, ***directly conflicts with the purpose and spirit of the public importance exception***. Moreover, the

> personnel choices of Anderson County, even in the face of a seemingly excessive severance package, do not necessitate further guidance. Thus, we affirm the circuit court's finding that this action does not warrant invocation of the public importance exception.

Id. at 192, fn. 14) (emphasis added).

The Foundation and Mr. Sloan's challenge to the SCDOT's dedication of public funds to private endeavors is entirely distinguishable from *Freemantle*.

II. THE CIRCUIT COURT ERRED IN FAILING TO ACKNOWLEDGE SLOAN'S TAXPAYER STANDING.

The Circuit Court ruled that Mr. Sloan lacks taxpayer standing to address illegal expenditures by the SCDOT (R. pp. 4-5). South Carolina courts have long recognized the right of a taxpayer to bring an action to contest an illegal government expenditure of taxpayer funds.

In this case, the Circuit Court erred in denying taxpayer standing because both the means and the ends of the expenditure are unconstitutional. This is not merely a case of procedural unconstitutionality, but rather a case of an unconstitutional expenditure of public funds, which the S.C. Constitution forbids. In South Carolina, taxpayers possess broad standing to bring such actions and request such judicial relief.

The Supreme Court recounted this long-standing right in *Myers v. Patterson*:

> As a general rule, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally. *Shillito v. City of Spartanburg,* 214 S.C. 11, 51 S.E.2d 95 (1948). An exception to this rule exists when the act sought to be enjoined is an unlawful diversion of public funds, such as the ***expenditure of public funds*** under an alleged ***unconstitutional*** statute. *Id.* at 22, 51 S.E.2d at 97. In such cases, a ***taxpayer*** who may be compelled to pay the assessment, or ***who has contributed*** to the sum jeopardized, is considered to have ***sufficient interest to enjoin the illegal act.*** *Id. See also Kirk v. Clark,* 191 S.C. 205, 4 S.E.2d 13 (1939) (the principle is firmly settled in this State that ***a taxpayer may maintain an action in equity***, on behalf of himself and all other taxpayers, ***to restrain***

> ***public officers from paying out public money for purposes unauthorized by law***). Because the plaintiffs have alleged that the ***challenged expenditure of tax revenues violates the constitution***, we find that they have ***standing*** to bring this action and turn to the merits of their claim that the Legislature lacks authority to divert SHIMS tax revenue to a use different from that for which they were levied.

Id. 315 S.C. 248, 251, 433 S.E.2d 841, 843 (1993) (emphasis added).

The Supreme Court also acknowledged this right of taxpayer standing in *Ladson Road.*

> Generally, "a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained." *Sloan v. Wilkins,* 362 S.C. 430, 436, 608 S.E.2d 579, 582-83 (2005). **Nonetheless, "[a] taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina,"** *Sloan v. School Dist. of Greenville County,* 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct.App.2000), and **indeed has been repeatedly recognized as to Sloan himself.** *See, e.g., id.; Sloan v. Department of Transp.,* 365 S.C. at 304, 618 S.E.2d at 878-79; *Greenville County I,* 356 S.C. at 548, 590 S.E.2d at 347.
>
> * * *
>
> Likewise, in this case, **Sloan has standing because he has alleged** a misuse of the statutory emergency procurement provision and therefore **an unlawful expenditure by public officials**.

Sloan v. Dept. of Transportation, 379 S.C. 160, 169-171, 666 S.E.2d 236, 241 (2008) (emphasis added).

The most extensive discussion of this issue is by the Court of Appeals in *Sloan v. School District of Greenville County,* 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), a decision which the Supreme Court discussed at some length in *Ladson Road.*

> We find *Sloan v. School Dist. of Greenville County* is particularly instructive on this issue. In that case, the School District procured construction contracts in February 1998 for three middle schools pursuant to its own procurement code's emergency exception to the competitive sealed bid procedure. The District justified the need for the emergency

> procurement because it wanted the construction of the schools completed before school started in August 1999. **The Court of Appeals found Sloan had standing**, stating as follows: "the public interest involved is the prevention of the **unlawful expenditure** of money raised by taxation. **Public policy demands** a system of checks and balances whereby taxpayers can hold public officials accountable for their acts. **Taxpayers must have some mechanism of enforcing the law.**" *Id.* at 523, 537 S.E.2d at 303 (citation, quotation marks, and alteration omitted).

Sloan v. Dept. of Transportation, 379 S.C. 160, 170, 666 S.E.2d 236, 241 (2008) (emphasis added).

In *Sloan v. School District*, Mr. Sloan challenged the school district's unlawful expenditure of taxpayer funds to build three schools without competitive sealed bidding as the School District Procurement Code required. The Circuit Court dismissed the case for lack of standing. Mr. Sloan appealed, and the Court of Appeals reversed. The Court ruled that Mr. Sloan possessed taxpayer standing and discussed the nature of taxpayer standing at length.

> In the case at bar, Sloan is not maintaining this action as a "private person," nor is he maintaining it merely as a "member of the public." ***Sloan has pursued this action as a taxpayer*** of Greenville County.
>
> In *Mauldin v. City Council,* 33 S.C. 1, 11 S.E. 434 (1890), the South Carolina Supreme Court examined the issue of taxpayer standing. In *Mauldin,* taxpayers challenged the purchase of an electric plant by the city council as *ultra vires,* claiming the purchase increased their tax burden. *Id.* at 15, 11 S.E. at 434. The Court explained how ***taxpayers differ from other members of the general public*** and how ***taxpayers suffer harm from ultra vires acts***. *Id.* at 18-21, 11 S.E. at 435-36. The *Mauldin* court stated:
>
> > The injury charged as the result of the acts complained of is a private injury in which the ***tax-payers of the county . . . are the individual sufferers, rather than the public***. The people out of the county bear no part of the burden; nor do the people within the county, except the tax-payers, bear any part of it. ***It is therefore an injury peculiar to one class of persons, namely the tax-payers*** of the county . . . .
>
> *Id.* at 20, 11 S.E. at 436 (quoting *Newmeyer v. Missouri & Miss. R.R. Co.,*

> 52 Mo. 81 (1873)). The Court held the taxpayers were "not the whole public, but comparatively a small part of it." *Id.* at 18, 11 S.E. at 435. The ***taxpayers "constitute a class specially damaged*** by the alleged unlawful act," and therefore have "a special interest in the subject-matter of the suit, distinct from that of the general public." *Id.* at 19, 11 S.E. at 436 (quoting *Mayor and City Council of Baltimore v. Gill,* 31 Md. 375, 394 (1869)).

Sloan v. School District of Greenville County, 342 S.C. 515, 518-21, 537 S.E.2d 299, 301-02 (Ct. App. 2000) (footnote omitted) (emphasis added).

Taxpayers are a distinct subset of residents. In *Myers v. Patterson*, 315 S.C. 248, 433 S.E.2d 841 (1993), taxpayers sued the Treasurer, Commissioners and Executive Director of the South Carolina Highways and Public Transportation Commission. The Treasurer was diverting funds raised by a gasoline tax to another purpose, and the Supreme Court ruled that the taxpayers had sufficient interest, by virtue of having ***paid the gasoline tax***, to have ***standing*** to contest the diversion. The Court acknowledged that a plaintiff ordinarily must allege damage to himself different from that sustained by the public generally, but also noted the exception to the rule: an unlawful diversion of public funds.

> In such cases, ***a taxpayer*** who may be compelled to pay the assessment, or ***who has contributed to the sum jeopardized***, is considered to have sufficient interest to enjoin the illegal act. [*Shillito v. City of Spartanburg,* 214 S.C. 11, 22, 51 S.E.2d 95, 97 (1948)]. *See also Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13 (1939) (the principle is firmly settled in this State that ***a taxpayer may maintain an action in equity***, on behalf of himself and all other taxpayers, to restrain public officers from ***paying out public money for purposes unauthorized by law***).

315 S.C. 248, 251, 433 S.E.2d 841, 843 (1993) (emphasis added). Just as the taxpayers in *Myers v. Patterson* possessed standing to sue the South Carolina Highways and Public Transportation Commission because they had contributed to the sum at issue, so also in the case at bar, Mr. Sloan has contributed, as a taxpayer to the jeopardized sum. The Court of Appeals in *Sloan v. School District*, and the Supreme Court in *Ladson Road*

granted Sloan taxpayer standing because "taxpayers must have some mechanism of enforcing the law." Accordingly, this Court should rule that Mr. Sloan possessed taxpayer standing as a "mechanism of enforcing the law."

The Circuit Court ruled that a taxpayer possesses no standing if his individual interest is *de minimis* (R. p. 4). The Circuit Court failed to cite any authority supporting a *de minimis* rule. Furthermore, such a rule is contrary to South Carolina case law granting standing to taxpayers to challenge illegal expenditures, such as *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948) in which the taxpayer had contributed a mere $6.28, and *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), in which the issue was a few hundred dollars of travel expenses divided among all the taxpayers of the City of Greenwood. In *Brown v. Wingard*, although the amount of taxpayer funds was small, the Court held that taxpayers "have an interest in seeing that city officials disburse funds in a lawful manner." *Id.* at 480, 330 S.E.2d at 302.

In *Myer v. Patterson*, as in the case at bar, the taxpayers had contributed to the fund at issue by paying gasoline taxes. In these cases, the Courts could have, ***but refrained from***, adopting or acknowledging a *de minimis* rule. The Circuit Court's newly minted *de minimis* rule ignores and violates South Carolina precedent. The "unlawful diversion of public funds" creates "an exception to the rule" that generally requires Appellants "to allege and prove damage to themselves different in character from that sustained by the public generally." *Myers v. Patterson,* 315 S.C. 248, 433 S.E.2d 841 (1993).

Similarly, in *Shillito v. Spartanburg*, 214 S.C. 11, 51 S.E.2d 95, 99 (1948), the Court ruled, "An apparent exception to this rule exists when the act sought to be enjoined

is an unlawful diversion of public funds." *Id.* at 99. The Court then ruled that a citizen should also be granted standing "to contest the expenditure of public funds under an alleged unconstitutional statute." *Id.* A long line of opinions addressing this issue have never applied the *de minimis* rule to taxpayer standing. *Mauldin v. City Council*, 33 S.C. 1, 11 S.E. 434 (1890); *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13 (1939); *Brown v. Wingard*, *Sloan v. School Dist. of Greenville Cty.*

Furthermore, this *de minimis* rule is contrary to the opinion of other jurisdictions that have considered this issue.

> [I]f a plaintiff is a taxpayer the amount of the damage is immaterial. The money interest of the complaining party, if there is any, is sufficient, although infinitesimal.

18 Eugene McQuillin, *The Law of Municipal Corporations* § 52.13 *Citizens' and Taxpayers' Suits* (3d ed. 1993) (citing *Brockman v. City of Creston*, 79 Iowa 587, 44 N.W. 822 (1890) (A court cannot deny a taxpayer relief because his interest as a taxpayer is inconsiderable.); *Chippewa Bridge Co. v. City of Durand*, 122 Wis. 85, 106 Am.St.Rep. 931, 99 N.W. 603 (1904) ("A court will not stop to inquire respecting plaintiff's standing further than to determine whether he is a taxpayer ... even if personal loss to him would be infinitesimal."); *Suarez v. Police Jury of Parish of St. Bernard*, 203 La. 680, 14 So.2d 601 (1943) ("The fact that the taxpayer's interest might be small and not susceptible of accurate determination is not sufficient to deprive him of the right."); *Aichele v. Borough of Oaklyn*, 1 N.J.Super 621, 64 A.2d 924 (1948) ("[T]he standing of one otherwise qualified to question the resolution is not to be determined by the mere matter of dollars and cents involved."); *Saenz v. Lackey*, 533 S.W.2d 237, 522 S.W.2d 237 (1975) ("[W]hen a taxpayer brings an action to restrain the illegal expenditure by the

commissioners' court of tax money he sues for himself, and that his interest in the subject matter is sufficient to support the action.").

As a practical matter, in every taxpayer action, the individual taxpayer by definition will possess only a very small personal financial interest in the portion of the illegal expenditure by any public body. Accordingly, the Circuit Court's rule that a *de minimis* interest in any expenditure effectively disqualifies any taxpayer from bringing a taxpayer action and will effectively eliminate all taxpayer actions except those brought by the absolute wealthiest of our citizens.

Chief Justice Toal warned against such a result in her dissent in *Newman v. Richland County Historic Preservation Commission.*

> If citizens were barred from bringing all lawsuits that concern governmental action, then there would be no opportunity to remedy governmental abuse. . . . A moderate balance is achieved by granting citizens standing when they bring actions alleging *ultra vires* acts by a governmental agency, while denying citizens standing to challenge discretionary actions.

Id. at 325 S.C. 79, 480 S.E.2d 72, 75 (1997).

South Carolina Courts have consistently granted taxpayers standing to contest illegal government expenditures. *Sloan v. School District of Greenville County*, 342 S.C. 515, 524, 537 S.E.2d 299 303-304 (S.C. App. 2000); *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13, 15 (1939); *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948); *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985); and *Myers v. Patterson*, 315 S.C. 248, 433 S.E.2d 841 (1993).

III. THE CIRCUIT COURT ERRED IN FAILING TO APPLY MULTIPLE EXCEPTIONS TO MOOTNESS.

The Circuit Court ruled that because the inspection was completed, and the expenditure was made, the action was moot (R. pp. 5-6). However, South Carolina courts have recognized three exceptions to the doctrine of mootness.

> First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. *E.g., id.; Sloan v. Department of Transp.*, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (1996). "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State,* 345 S.C. at 568, 549 S.E.2d at 596. Third, "if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.; accord Sloan v. Department of Transp.*, 365 S.C. at 303, 618 S.E.2d at 878.

Sloan v. Dept. of Transportation, 379 S.C. 160, 168, 666 S.E.2d 236, 240 (2008) ("Ladson Road").

A. This Matter Is Capable of Repetition, Yet Evading Review.

This matter falls within the first exception to the doctrine of mootness: it is capable of repetition, but evades review. The basic unlawful element of the expenditure was a State agency's dedicating taxpayer funds to the private purposes of a private individual and private association. The first public notice of the unlawful expenditure was (as is always the case with such an expenditure) after it had been made. This scenario is capable of repetition.

The South Carolina Supreme Court applied this standard in the "*Ravenel Bridge*" case, which held that the manner of selection of source of procurement of the Arthur Ravenel Bridge was unlawful, being by request for proposals instead of by competitive

sealed bids.

> The DOT contends this case should be dismissed as moot because the construction contracts have been awarded and fully performed. We disagree.
>
> "[A]n appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." *Curtis v. State,* 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

Sloan v. Dept. of Transportation, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). In *Ravenel Bridge*, the Supreme Court ruled that use of the request for proposal process was designed to accelerate the procurement process. The Court ruled, "Clearly, this issue is capable of repetition, yet will usually evade review. Accordingly, despite mootness, we will address the merits." *Id.*

> The standard is *capable* of repetition, not *likelihood* of repetition.
>
> The party bringing the action need only show the issue raised is *capable* of repetition and **is not required to prove there is a "reasonable expectation" the issue will arise again**. *Byrd [v. Irmo High School],* 321 S.C. at 431-32, 468 S.E.2d at 864 (finding South Carolina has adopted the "lenient" approach to evading review analysis).

Sloan v. Greenville County, 356 S.C. 531, 554-555, 590 S.E.2d 338, 351 (2003) (italics in original; bold and underline added). The SCDOT and other State agencies are capable of continuing to dedicate public funds to private endeavors and keep the public uninformed until some accidental disclosure of the expenditure, which could surface years after the expenditure and thereby evade review.

In the *Ladson Road* case, the Supreme Court explained its reasoning on the standard of capable of repetition, yet evading review.

> We find the issue of whether the DOT properly authorized the emergency procurement is one that is capable of repetition, yet will usually evade review.[FN6] For example, here an emergency procurement came four years into the construction project, which was then ***completed within about six months.*** The project was completed only a few months after Sloan filed

> suit and well before the parties filed motions for summary judgment. Therefore, the "capable of repetition but evading review" exception to mootness applies here.

Sloan v. Dept. of Transportation, 379 S.C. 160, 168, 666 S.E.2d 236, 240 (2008). If the manner of selection of source for the Ravenel Bridge was an issue capable of repetition, yet evading review, then certainly a project completed within a day or two meets the standard of capable of repetition, yet evading review. This exception to the mootness doctrine should apply here.

In footnote 6 in *Ladson Road*, the Supreme Court explained the standard "capable of repetition." "Although the DOT maintains this case is not capable of repetition because of its unique facts, we do not agree that this situation—a construction project which experiences substantial delays and then requires a replacement contractor—is particularly unique." *Id.* at n. 6. Likewise, any state agency's temptation to use public funds for a private purpose is not "particularly unique." It is capable of repetition, yet evading review.

B. This Matter is of Great Public Importance.

This case also falls within the second exception, public importance. Please see the discussion of public importance. The analysis that supports public importance standing (Section I, above) also supports a public importance exception to the doctrine of mootness.

> In our discussion of Sloan's ***standing*** to bring this action, this court has already found in an analogous case that the "expenditure of public funds pursuant to a competitive bidding statute is of ***immense public importance***." *Sloan [v. School District]*, 342 S.C. at 524, 537 S.E.2d at 303. ***The same rationale applies with respect to mootness***.

Sloan v. Greenville County, 356 S.C. 531, 554, 590 S.E.2d 338, 350 (2003) (emphasis added).

In *Ladson Road*, analyzed the great public importance exception to the doctrine of mootness this way:

> This Court has noted "the limited nature of the exception for questions of 'imperative and manifest urgency.'" *Sloan v. Greenville County,* 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004) (*Greenville County II*). In *Greenville County II,* we held that ***where judicial guidance exists*** on the legal issue presented, ***there is no imperative and manifest urgency*** for an advisory opinion.
>
> ***In the instant case, however, there is no case law*** specifically addressing the DOT's authorization of an emergency procurement. Because this is a matter of public importance which ***could occur*** at any time (given the inherent unpredictability of emergencies), we find there is an urgent nature to this issue.
>
> Accordingly, even though the Ladson Road Project was completed in 2005, we will address the other issues raised in the case.

Sloan v. Dept. of Transportation, 379 S.C. 160, 169, 666 S.E.2d 236, 240 (2008). Similarly, there is no case law on the subject of an agency expending public funds for private purposes and interests, and this kind of expenditure "could occur at any time."

The Court made a similar ruling in the *Ravenel Bridge* case. "None of these cases required the plaintiff to show the absence of any other potential plaintiffs with a greater interest or any other nexus. Accordingly, ***despite the mootness in the present case,*** we find Sloan has standing ***to raise this issue.***" *Id.,* 365 S.C. 299, 304-5, 618 S.E.2d 876, 879 (2005). This Court should rule, like the *Ladson Road* Court, and the *Ravenel Bridge* Court, it should address the issue, even though it is technically moot.

C. This Matter May "Affect Future Events or Have Collateral Consequences."

Finally, the third exception to mootness applies. This ruling may "affect future events or have collateral consequences." The Supreme Court in *Ladson Road* also found this third exception to the doctrine of mootness. "Moreover, a decision on the merits of

this case certainly will affect future events, *to wit,* how the DOT decides to authorize emergency procurements in the future." *Id.* Likewise, the Supreme Court in the *Ravenel Bridge* case ruled that its decision would affect future events.

The constitutional provisions at issue apply not only to the SCDOT, but also to all agencies and branches of State government. There are no cases that interpret and apply these Constitutional provisions, and this ruling provides guidance to all agencies and departments of State government. Like the decisions in *Ladson Road* and *Ravenel Bridge*, a decision in this case will affect how the DOT and other South Carolina State agencies decide questions involving the use of public funds for private purposes.

IV. THE CIRCUIT COURT ERRED IN RULING THAT THE SCDOT WAS LEGITIMATELY ASSISTING A MUNICIPALITY.

The Auditor's Report demonstrated that there was no genuine issue of material fact as to the constitutionality of this expenditure. However, the expenditure violated S.C. Const. Art. X, §§ 5 and 11's prohibitions against either expending public funds for private purposes or pledging the State's full faith and credit for private purposes.

Despite the clear statement in the Auditor's Report that the City of Aiken was not involved in the request from Mr. Ebner, the Circuit Court stated that it agreed with the unsubstantiated allegation of the Respondents:

> The Department's position is that the ***city's investigation of the bridges*** was a legitimate exercise of a municipality's delegated police power to insure the health, safety, and welfare of persons within its boundaries as well as its power to abate public nuisances; and that ***SCDOT is authorized to assist local governments*** in these activities within areas of its expertise under its primary enabling statute. S.C. Code Ann., § 57-3-110(7) (Rev. 2006).

(R. pp. 2-3). (emphasis added). The Circuit Court also expressed his reluctance to "insert [. . .] itself into routine decisions of the State Highway Engineer as to when and

where to provide ***assistance to local governments***" (R. p. 5). (emphasis added)). The Circuit Court seemed to adopt the Department's assertion that "it has no interest in using its inspectors to inspect private bridges outside the occasional event that ***another governmental agency*** may request its assistance in doing so for a legitimate public purpose" (R. p. 5) (emphasis added). Similarly, the Circuit Court stated, "the inspection of the bridges was legitimately ***within the City's police power*** and the decision by Walsh to assist it was well within the Department's enumerated powers ***to assist other governmental entities*** in areas of its expertise" (R. p. 5) (emphasis added).

The source of the Department's authority, to assist municipalities, as endorsed by the Circuit Court, is S.C. Code Ann. § 57-3-110, which authorizes the Department to:

> 7) instruct, ***assist***, and cooperate with the agencies and departments, and ***bodies politic***, and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, ***if requested by such government authorities***, supervise or ***furnish engineering supervision*** for the construction and improvement of roads and ***bridges***, provided such duties do not impair the attention to be given the highways in the state highway system;

Id. (emphasis added). Accordingly, the Circuit Court ruled,

> Through the forgoing statute, the legislature has conferred discretion upon the Department as to when it will ***assist local governments***. . . . Here, the Department properly responded to ***a request from City of Aiken officials*** and representatives for assistance in an area of the Department's expertise. ***The City had authority to make the request*** and the Department had authority to respond to it.

(R. p. 9) (emphasis added).

The flaw in all the Circuit Court's analysis is that ***the City of Aiken did not request the assistance of the Department of Transportation***. The Auditor noted, "The City of Aiken does not maintain or own the roads in Woodside Plantation," but they are "private property." (R. p. 173). One man, Reggie Ebner, who happened to serve on

Aiken City Council, requested the help of the Department, for a personal dispute he had with Woodside Plantation. The City of Aiken did not endorse Ebner's request. The City of Aiken had specifically declined to help Mr. Ebner. Ebner admitted this to Tom Young on September 6, 2010:

> ***The City has advised me in writing they are not responsible for bridges*** since they do not have an approved inspector; however they have allowed three wooden bridges and one concrete bridge to be installed in Woodside. It appears that the Developer got the Woodside Property Owners Association to agree to install the wooden bridges.

(R. p. 41) (emphasis added).

The City of Aiken had no ownership interest in the roads and bridges inside the Woodside Plantation (R. p. 39). The Auditor noted, "The City of Aiken does not maintain or own the roads in Woodside Plantation," but they are "private property." (R. p. 173). As demonstrated above, the City of Aiken had, in effect, washed its hands of the dispute between Mr. Ebner and the developers of Woodside Plantation. ("The city of Aiken does not have any authority to review the actions taken by this Corporation unless there is a violation of city ordinance or state statute that the city is authorized to enforce.") (R. p. 39). The City did not want to get involved in this dispute. It told Ebner that the dispute was a private one between the homeowners and the developers of Woodside Plantation. ("Typically, a nonprofit corporation is responsible to its shareholders, not to a governmental entity.") (R. p. 39). The bridge inspections and reports, requested by Mr. Ebner, were not for a public purpose. They were to create evidence for a private dispute ("Please advise what is the proper procedure to get technical answers to these questions that will could be used in future legal proceedings?") (R. p. 41).

Aiken City Council, requested the help of the Department, for a personal dispute he had with Woodside Plantation. The City of Aiken did not endorse Ebner's request. The City of Aiken had specifically declined to help Mr. Ebner. Ebner admitted this to Tom Young on September 6, 2010:

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Similarly, Article X, § 5 states that any tax "shall distinctly state the public purpose."

Article X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). In that case, the Supreme Court ruled that an act that authorized "the issuance of general obligation bonds in the amount of $5,000,000 in order to finance an "alcohol fuel development loan program" was primarily for the benefit of private parties and only incidentally benefiting the public. It was therefore unconstitutional. *Id.*, 276 S.C. 323, 328, 278 S.E.2d 612, 615 (1981). Finally, the Court ruled that "all legislative action must serve a public rather than a private purpose." *State ex rel McLeod v. Riley* 276 S. C. 323, 328, 278 S.E. 2d 612, 615 (1981).

The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967). In *Elliot*, the Court ruled that the Industrial Revenue Bond Act was for a public purpose as part of an established legislative policy of improving the industrial climate of the state.

In the case at bar, the three inspections served a private rather than a public purpose. They did not further an improvement to the public as a whole, but rather functioned to benefit an individual, or at best, a private homeowners' association in a gated community. They contravened the Constitutional provisions that require that expenditures serve a public purpose.

CONCLUSION

The wrongful and illegal expenditure of public funds by a state agency is a matter of great public importance, and supports "public importance" standing. Mr. Sloan also possesses taxpayer standing to challenge unconstitutional expenditures by government officials.

All three longstanding exceptions to the doctrine of mootness apply to this case, and the Court should rule on the important questions presented, despite the Respondents' claim of mootness.

The Circuit Court erred in ruling that the City of Aiken had requested assistance from the DOT. Clearly, it was a request from a private party for assistance in a private dispute.

Finally, the inspection and report of these three privately built, privately owned bridges on private property in a private, gated community did not serve a public purpose, and their inspection at public expense violated South Carolina Constitution Article X, §§ 5 and 11.

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 12-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

PROOF OF SERVICE

The undersigned attorney hereby certifies that he served a copy of Appellant's Final Brief upon counsel for the Respondents by US Mail, postage prepaid this Thursday, June 20, 2013, addressed as follows:

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2012-213599

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs,

Of whom Edward Sloan is the Appellant,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants,

Of whom South Carolina Department of Transportation is the Respondent.

Brief of Respondent

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the trial court correctly found that plaintiffs lacked standing to prosecute their suit and that his case is moot?

2. Whether the State Highway Engineer's decision to provide assistance to the City of Aiken at its request was a proper exercise of his duties?

3. Whether the actions of the State Highway Engineer herein were for a legitimate public purpose and not for the benefit of a private party?

STATEMENT OF THE CASE

Plaintiffs sued under the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10, *et seq.*, for a determination that the Department's and defendant John V. Walsh's ("Walsh") actions in dispatching a three-man bridge inspection crew to inspect and report on the condition of three privately-owned bridges in the Woodside Plantation subdivision in Aiken at the request of a city councilman was contrary to certain provisions of the South Carolina Constitution requiring that public funds be spent only for public purposes and that the full faith and credit of the State not be pledged for the benefit of a private individual, company, association, or corporation.[1]

The parties submitted the matter to the Circuit Court for Richland County on cross-motions for summary judgment. The motions were heard on September 19, 2012, before the Honorable L. Casey Manning. Judge Manning issued a written order on November 21, 2012, denying plaintiff's motion and granting defendant's and dismissing the complaint. R.p. 2-10. The court found that the plaintiffs did not have standing as a taxpayer because they did not suffer in any definite way that differed from the public

[1] S.C. Code Ann., Const. art. X, §§5, 11 (Rev. 2009).

generally. Further, the court held that the matter was moot in that the actions complained of had been completed and an order of the court would have no effect in reversing them. The court further found that the exceptions to lack of constitutional standing and mootness—that the matter was of such public importance that resolution is necessary for future guidance or that the acts were capable of repetition but generally will evade review—were not present. On the merits, the court found that inspection of bridges is within the city's general police power to insure the health, safety, and general welfare of its citizens as well as under its power to abate public nuisances. The Department was within its authority in assisting the city pursuant to its general enabling statute allowing it to assist "bodies politic" in the State areas of its particularized expertise. S.C. Code Ann. §57-3-110(7) (Rev. 2006).

Appellant served his notice of appeal on December 7, 2012.

STATEMENT OF FACTS

We will not set forth an independent statement of facts but adopt those found by the trial court in its Order as the only relevant facts needed to decide this case.

In response to appellant's statement of facts, we first object to the statement that the inspection staff had to "create fake bridge ID numbers" as unnecessarily pejorative. SCDOT's bridge inspection forms are designed for use by its inspectors in completing their functions under the federal bridge inspection program. That program, included in the federal-aid-to-highways acts, 23 U.S.C. §131, 23 C.F.R. Part 650, Subpart C (2011), requires state departments of transportation to conduct periodic inspections of all publicly-owned bridges in the state regardless of whether or not they are on the state

system.[2] In order to use the computerized form, a bridge number must first be entered. Because the bridges at issue were not part of the program, numbers had to be created.

We will respond to appellant's facts regarding the "chief internal auditor" in our responses to his arguments regarding that issue below. We note here, however, that, with regard to the statement that the Department's engineer could be called as an expert witness in a lawsuit without compensation, neither the auditor nor appellant explained how an individual may be forced to give expert testimony in court without his consent. Appellant's Brief, page 6.

Argument

I. The trial court correctly found that the plaintiff's lacked standing to prosecute their suit and that his case is moot.

Appellant cites and discusses a large number of cases on the issue of standing of a party to invoke judicial power to review acts of government officials including many of his own past cases where he was successful in causing the appellate courts to hear his claims. Standing is decided on the facts of each case. The cases stand for the same judicial rules regarding the grant of standing which the trial court correctly summarized in its order.

Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception. ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008). Appellant asserts constitutional standing. Constitutional standing is "an essential and unchanging part of

[2] Congress enforces the federal highway acts under the spending clause to avoid the 10th amendment. South Dakota v. Dole, 483 U.S. 203, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987). There is no requirement that South Carolina comply with the act and create a bridge inspection program, only that it be penalized by withdrawal of federal matching funds for failure to do so.

the case or controversy requirement of Article III." ATC, supra, citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed2d 351 (1992). To have standing, one must generally have a personal stake in the subject matter of the lawsuit, *i.e.,* one must be a *real party in interest.* Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). Additionally, a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. Baird, supra, citing Citizens of Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992). A taxpayer lacks constitutional standing when he "suffers in some *indefinite* way in common with people *generally."* Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012) citing ATC South, 380 S.C. at198, 669 S.E.2d at 341 quoting Frothingham v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923) (emphasis added); see, also, Bodman v. State of S.C. and SCDOR, (Shearouse Adv. Sh., May 8, 2013). Here, as the trial court correctly noted, the plaintiff, Mr. Sloan, is a resident of Greenville. The events at issue took place in Aiken. He never asserted that he had ever used the bridges in question nor that he is a member of the Woodside Plantation HOA. Thus, his only interest in the matter is as a payer of the 16 cents per gallon gas that went to pay the inspectors' wages. The trial court was correct that this interest was not concrete and particularized to the extent that it would justify the court in inserting itself into routine discretionary decisions by the State Highway Engineer.[3]

[3] Mr. Walsh's official statutory title is Deputy Secretary for Engineering. We use the traditional title for that post of State Highway Engineer because we think it is more descriptive.

Nevertheless, an exception to the general standing rule has often been recognized where an issue is of such public importance that its resolution is required for future guidance. Baird, supra; Freemantle, supra. Here, appellant has cited no past instance where the State Highway Engineer used public funds to improve private property. The lack of resources to maintain SCDOT bridges has been well reported. He would have no interest in spending the scarce resources available on non-SCDOT bridges. As Mr. Walsh stated in his affidavit to the trial court, in only one instance in his memory did the Department conduction an inspection of a non-government-owned bridge. That was the bridge to Fripp Island. The Department conducted the inspection per a request as here from local authorities who had requested that the Department take the bridge into its System. R.p. 132-33. Future guidance from the Court is not needed where appellant has shown no ongoing constitutional violations by respondent that need correcting.

Regarding taxpayer standing, appellant is correct that a taxpayer, on that basis alone, may sue to enjoin an unconstitutional expenditure of public funds. However, that is not the case here. The General Assembly has imposed a sixteen cents per gallon tax on gasoline and diesel fuel. S.C. Code Ann. §12-28-310 (Supp. 2012). A portion of the revenues raised by that user fee are turned over to the Department of Transportation for the "purposes of that department." S.C. Code Ann. §12-28-2720 (Supp. 2012). The purposes of the Department (its powers and duties) include:

> (7) instruct, assist, and cooperate with the agencies and departments, and bodies politic, and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

S.C. Code Ann. § 57-3-110 (Rev. 2006). Here the State Highway Engineer decided that a minimal amount of the Department's resources be used to assist the city in a bridge engineering matter under the above subsection. It was not a constitutional diversion of public funds nor *ultra vires.* Rather, it is specifically authorized by subsection (7) above.

A related doctrine to standing is that of mootness. A court will not pass on moot and academic questions or make an adjudication where there is no actual controversy. Sloan v. S.C. Dep't. of Transportation, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). The bridge inspections herein occurred and were completed in a single afternoon and Mr. Walsh's report back to the local officials followed shortly thereafter. R.p. 53-122. There are three exceptions to the mootness doctrine. First, if the issue is capable of repetition but generally will evade review, the appellate court can take review. Id. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Id. Third, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. Id.

Appellant claims the Department's actions are capable of repetition but generally will evade review. His argument in this respect rests on this bare assertion with nothing more. While it is true, as appellant states, that a litigant need not prove that there is a "reasonable expectation" that a government officer will act in the future in an unconstitutional manner, something more than speculation that such an occurrence is possible should be required. As mentioned above, the State Highway Engineer has no reason nor incentive to spend highway dollars on private property where little exists for

performing his own duties with respect to the State Highway System. Appellant has pointed out no past occurrences nor shown any inclination to do so in the future. As has been held in many cases, "In the absence of any proof to the contrary, there is a presumption that public officers have properly discharged the duties of their office and have faithfully performed those duties with which they are charged." Whitmire v. Cass, 213 S.C. 230, 49 S.E.2d 1 (1948).

Regarding the exception to the standing rules in matters of great public importance, the trial court was correct that this decision by the State Highway Engineer was a routine decision to assist a local government, requests he handles daily granting some and rejecting others. The General Assembly has conferred this discretion on him and the Department. Courts are not particularly suited to make engineering decisions of this nature. See, e.g., Guerard v. Whitner, 276 S.C. 521, 280 S.E.2d 539 (1981) (Judicial discretion in a non-judicial field should not be substituted for that of the appropriate administrative agency. "Any other interpretation of the contested language would eviscerate the judgment and expertise of the Coastal Council.")

Regarding the third exception to mootness—that the decision of the trial court will affect future events or have collateral consequences for the parties—neither element is present here. As the trial court noted, other public bodies do not have bridge inspection crews. This Court's decision cannot have collateral consequences between the parties hereto because the single issue in this case was decided by the circuit court on cross-motions for summary judgment by agreement between the parties. The Department and Mr. Sloan do not have a general relationship with each other regarding bridge inspections.

II. The State Highway Engineer's decision to provide assistance in the case was a proper exercise of his duties.

Appellant, on the basis of his own research and that of the SCDOT Commission's Chief Internal Auditor, delves deeply into the internal politics of the Aiken city government and concludes, for the merits of his case, that the request for assistance with the bridges did not come from the City of Aiken but from a disgruntled city councilman with a vendetta against the Woodside Plantation homeowners' association. This research, concluding that Mr. Ebner and other members of the city government did not like each other very much, may be interesting to him and the auditor but is irrelevant to the issues herein. The only relevant question is whether Mr. Walsh, upon receipt of a reasonable request from a city councilman forwarded him by a State representative and endorsed by the State senator for the district believed at the time that the request was from the city. Mr. Ebner could have been (and might be) chairman of the streets and roads subcommittee or the like. There are 278 incorporated municipalities in South Carolina, 46 counties, and an incredible number of other "political subdivisions." Each has its own forms of government and lines of authority. No State official can be expected to know the authority of each public official that makes a request of him. An inquiry by a city councilman, a State representative, and a senator, is certainly sufficient color of authority under which to act.

Appellant relies on the opinions of the auditor for a number of his arguments on the merits. The Court should not. The Chief Internal Auditor is appointed by the Commission and is not an officer of the Department itself. S.C. Code Ann. §57-1-360 (Supp. 2012). He is not a lawyer; nor does he appear to be particularly well versed in the arts of reason and logic. Among the "findings" of the report, the auditor states that the

federal bridge inspection program does not require inspection of private bridges nor is that activity authorized by State law. Thus, according to the auditor, the Department created an "ethical conflict" for its employees by asking them to "deviate from federal and State law." R.p. 172-74. Because the inspections are not "required" by federal law does not mean it is *ultra vires* the Department's authority. The Department of Transportation is a creature of the General Assembly of South Carolina which has expressly directed it to assist other levels of government where possible in areas of its expertise. S.C. Code Ann. §57-3-110(7) (Rev. 2006).

Appellant and the auditor then proceed to assign to the bridge inspectors themselves the authority to decide the law by noting that they warned the Chief Engineer for Operations that the inspections were "wrong."[4] Finally, the auditor notes that SCDOT did not seek "any legal clarification" on this matter. This overlooks the fact that the auditor did not seek legal advice either. Had he asked, he would have been told that it is perfectly proper for the State Highway Engineer to respond to requests for assistance from local governments.

III. The actions of the State Highway Engineer herein were for a legitimate public purpose and did not benefit a private party.

In his argument in section V., appellant states the underlying grounds for his lawsuit that the inspections functioned to benefit an individual or, at best, a private homeowners' association in a gated community. However, the circuit court was correct in its Order in questioning how the State's entering private property without the consent of the owners to inspect their bridges could be interpreted as "benefitting" the

[4] That government employees often complain about having to work is not a revelation of any import.

homeowners' association or its members? The result of the inspection was that the bridges were sound. However, had structural deficiencies been found, the city would have been within its authority to require them to be repaired or replaced at the owners' expense. The inspections served a governmental purpose, the protection of the health, safety, and welfare of the public, a legitimate exercise of the city's police power. The Department was authorized to assist the city under its general enabling statute.

Conclusion

The Circuit Court correctly found that appellant lacked standing to sue the Department under the facts of this case. The action taken by the Department was a legitimate exercise of the Department's delegated powers to respond to a request for assistance from a duly incorporated municipality seeking to perform legitimate duties under the police power to protect its citizens. The Order of the Circuit Court dismissing the complaint should be affirmed.

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I certify that this brief complies with Rule 211(b), SCACR.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

APPELLANTS' REPLY BRIEF

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STATEMENT OF FACTS

Respondents' Brief asserts many facts for the first time that do not appear in the record or that the trial court record does not support. Some of the assertions relate to background matters that merely set up a discussion of the issue.[1] Some unsupported assertions relate to Department of Transportation budgetary matters that the record does not support.[2] Many of the Respondents' unsupported assertions are more serious and consequential, which the trial court record refutes. Appellants will deal with them in more detail below.

"This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered." *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473,475 (1933). *See also* Rule 210(h), SCACR (stating an appellate court may not consider a fact that does not appear in the record).

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[1] "SCDOT's bridge inspection forms are designed for use by its inspectors in completing their functions under the federal bridge inspection program" (Respondents' Br., p. 2).
"That program . . . requires state departments of transportation to conduct periodic inspections of all publicly-owned bridges in the state, regardless of whether or not they are on the state system" (Respondents' Br., pp. 2-3).
"In order to use the computerized form, a bridge number must first be entered" (Respondents' Br., p. 3).
"Because the bridges at issue were not a part of the program, numbers had to be created" (Respondents' Br., p. 3).
"There is no requirement that South Carolina comply with the [Federal Highway Act] and create a bridge inspection program, only that it be penalized by withdrawal of federal matching funds for failure to do so." (Respondents' Br., p. 3, n. 2).

[2] "The lack of resources to maintain SCDOT bridges has been well reported" (Respondents' Br., p. 5).
"[The State Highway Engineer] would have no interest in spending, the scarce resources available on non-SCDOT bridges" (Respondents' Br., p. 5).

ARGUMENT

I. RESPONDENTS FAILED TO DISTINGUISH MANY IMPORTANT CASES ON STANDING RELATED TO THE EXPENDITURE OF PUBLIC FUNDS.

In their initial brief, Appellants South Carolina Public Interest Foundation and Edward D Sloan, Jr. relied on many South Carolina cases in support of their arguments that the court should grant them both taxpayer standing and public importance standing. Respondents failed to address or distinguish these important cases.

A. Respondents Failed to Distinguish Cases Granting Public Importance Standing.

Appellants cited the *Ladson Road* case, which analyzed the great public importance of an expenditure of public funds under an emergency exception:

> This Court has noted "the limited nature of the exception for questions of 'imperative and manifest urgency.'" *Sloan v. Greenville County,* 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004) (*Greenville County II*). In *Greenville County II,* we held that ***where judicial guidance exists*** on the legal issue presented, ***there is no imperative and manifest urgency*** for an advisory opinion.
>
> ***In the instant case, however, there is no case law*** specifically addressing the DOT's authorization of an emergency procurement. Because this is a matter of public importance which ***could occur*** at any time (given the inherent unpredictability of emergencies), we find there is an urgent nature to this issue.
>
> Accordingly, even though the Ladson Road Project was completed in 2005, we will address the other issues raised in the case.

Sloan v. Dept. of Transportation, 379 S.C. 160, 169, 666 S.E.2d 236, 240 (2008) (*Ladson Road*). The key factor in analyzing the "public importance" issue in *Ladson Road* was the lack of "case law specifically addressing" the legal issues of the case. In the case before the Court now, there is no case law addressing a governmental official's decision

to expend public funds for a private purpose. Respondents addressed *Ladson Road* only fleetingly, and failed to address its application to the public importance basis for standing or the public importance exception to mootness in this case.

Appellants also cited *Sloan v. Greenville County:* "***There is a keen public interest in the stewardship of public funds and a strong need to provide guidance for future procurement decisions.***" *Id.,* 356 S.C. 531, 554, 590 S.E.2d 338, 350 (Ct. App. 2003). Respondents failed to address *Sloan v. Greenville County* and the public importance of the stewardship of public funds.

> Under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution ***for future guidance.***" *Baird v. Charleston Cty.,* 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). This Court has never held that there must be no other potential plaintiffs with a greater interest in the case or some other nexus, as the respondents now argue.

Sloan v. Dept. of Transportation, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005) (emphasis added) (*Ravenel Bridge*). In *Ravenel Bridge*, the Court ruled that the issue of the method of selecting the source of procurement with public funds was a matter of great public importance. In *Ravenel Bridge*, Sloan did not argue that the procuring of the construction of a bridge was unlawful *per se;* Sloan argued that selecting the source of the procurement through requests for proposals was unlawful when the statute specifically called for competitive sealed bidding. In the case at bar, ***the expenditure itself*** is unlawful, not just the means of procurement, and therefore the issue is of even greater public importance. Respondents also failed to distinguish the *Ravenel Bridge* case and the effect of its holding on public importance standing.

The South Carolina Supreme Court granted Mr. Sloan public importance standing in *Sloan v. Hardee*, and accepted the matter in its "original jurisdiction to address

whether Respondents, Commissioners for the South Carolina Department of Transportation (DOT), were appointed in violation of S.C. Code Ann. § 57-1-330(A) (2006)." *Id.*, 371 S.C. 495, 497, 640 S.E.2d 457, 458 (2007). In *Hardee*, the issue was whether certain DOT Commissioners were serving more than "one consecutive term." The Supreme Court ruled,

> We find this matter of sufficient public interest as to confer standing on Petitioners. *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); *Baird v. Charleston Cty.,* 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its ***resolution for future guidance***).

Id. 371 S.C. 495, 497, 640 S.E.2d 457, 458 (2007) (emphasis added). Respondents also failed to address *Hardee* and its holding on the public importance of the issues.

The legal issues raised by the Appellants are novel and require resolution for future guidance. Neither Appellants nor Respondents cite any case law addressing the expenditure of public funds on behalf of a private citizen, or in connection with a dispute between two private parties. The lack of case law on point indicates that this issue calls for judicial guidance.

B. Respondents Failed to Distinguish Cases Granting Taxpayer Standing.

"Taxpayers must have ***some mechanism of enforcing the law.***" *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (2000 Ct. App.) (emphasis added) *quoting Eastern Missouri Laborers Dist. Council,* 781 S.W.2d at 47. That "mechanism of enforcing the law" is a taxpayer civil action. As demonstrated in Appellants' Initial Brief, many South Carolina cases have recognized that right.

In the *Ladson Road* case, the Supreme Court recognized that Sloan was entitled not only to public importance standing, but also to taxpayer standing in his case against

the Department of Transportation. The Court ruled,

> "A ***taxpayer's standing*** to challenge unauthorized or illegal governmental acts ***has been repeatedly recognized*** in South Carolina," *Sloan v. School Dist. of Greenville County,* 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct.App.2000), and indeed has been repeatedly recognized ***as to Sloan himself.*** *See, e.g., id.; Sloan v. Department of Transp.,* 365 S.C. at 304, 618 S.E.2d at 878-79; *Greenville County I,* 356 S.C. at 548, 590 S.E.2d at 347.
>
> * * *
>
> Likewise, in this case, ***Sloan has standing because he has alleged*** a misuse of the statutory emergency procurement provision and therefore ***an unlawful expenditure by public officials.***

Sloan v. Dept. of Transportation, 379 S.C. 160, 169-171, 666 S.E.2d 236, 241 (2008) (emphasis added) (*Ladson Road*).

In this case, as in *Ladson Road*, Appellants have "alleged . . . an unlawful expenditure by public officials." If Sloan's payment of gasoline taxes was sufficient to give him taxpayer standing in *Ladson Road*, his payment of gasoline taxes should be sufficient to grant him taxpayer standing in this case. Respondents have failed to distinguish *Ladson Road*, or explain why that holding should not govern here.

Appellants also cited *Myers v. Patterson*, in which plaintiff DOT taxpayers who had contributed to the sum at issue were granted standing. The Court ruled, "***[A] taxpayer*** who may be compelled to pay the assessment, or ***who has contributed to the sum jeopardized***, is considered to have sufficient interest to enjoin the illegal act." *Id.*, 315 S.C. 248, 251, 433 S.E.2d 841, 843 (1993) (emphasis added). Respondents likewise failed to distinguish *Myers* or explain why its holding should not apply to this case. Again, the government agency in this case is the same as in *Myers* and *Ladson Road.*

II. RESPONDENTS FAILED TO DISTINGUISH IMPORTANT CASES ON MOOTNESS.

Appellants South Carolina Public Interest Foundation and Edward D Sloan, Jr. relied on many South Carolina cases supporting their arguments that exceptions to the doctrine of mootness applied to this case.

A. Respondents Failed to Distinguish Cases Finding Issues Cases Capable of Repetition, yet Evading Review.

Our Supreme Court ruled in *Ladson Road* that the issue of the misuse of the emergency procurement exception was capable of repetition but would evade review when the Department of Transportation took six months to complete the construction project. *Sloan v. Dept. of Transportation*, 379 S.C. 160, 169-171, 666 S.E.2d 236, 241 (2008).

In this case, the core issue is a State agency expending public funds for private purposes. That issue is certainly capable of repetition. As explained in the Appellants' Initial Brief, the standard is ***capable*** of repetition, not ***likelihood*** of repetition. However, without judicial guidance, there is not only a capability, but also a likelihood of repetition. The DOT Commission's Chief Internal Auditor found, "Some employees indicated that ***they have received requests to do work on private property before***" (R. p. 172) (emphasis added). Such requests are capable of repetition. Speaking hypothetically, a DOT employee asking other DOT employees to grade or work on the employee's residential driveway in the Fall of 2012 would be an expenditure of public funds for a private purpose. Hypothetically, DOT employees' using DOT equipment to set up a private hunting club would be an expenditure of public funds for private purposes. Similarly, a government official expending public funds to take a trip to visit a

mistress would be an expenditure of public funds for private purposes. Likewise, hypothetically, use of a State airplane to recruit college athletes could be an expenditure of public funds for private purposes. There are many other possible examples. Clearly, the issue is ***capable*** of repetition, and even ***likely*** to be repeated.

Second, such an issue is likely to evade judicial review. Such unconstitutional expenditures are not likely to be made in the open, but rather covertly. By the time the expenditure is discovered, any claim to enjoin the expenditure is moot. The Court in *Ladson Road* ruled that the six months it took to complete a construction project made it likely that the legal issue—unlawful use of the procurement code's emergency exception—would evade review. If six months is short enough to evade review, then certainly the one day to inspect these bridges is a short enough time period so that the conduct would evade review. Respondents have failed to explain why *Ladson Road's* analysis of this exception to the doctrine of mootness does not control this case.

Similarly, in the *Ravenel Bridge* case, the Court found that the issue was capable of repetition, yet evading review when the Department of Transportation used the request for proposals process in order to accelerate the construction time. *Sloan v. Dept. of Transportation*, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). The Court ruled,

> The DOT contends this case should be dismissed as moot because the construction contracts have been awarded and fully performed. We disagree.
>
> "[A]n appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." *Curtis v. State,* 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Additionally, "if a decision by the trial court may affect future events, ... an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.* Clearly, this issue is capable of repetition, yet will usually evade review. Accordingly, despite mootness, we will address the merits.

Id. Procuring construction of the Ravenel Bridge—even using requests for proposals—took much longer than inspecting the bridges in Woodside Plantation. If the legal issue in *Ravenel Bridge* was capable of repetition, yet evading review, then certainly the inspection of the bridges in this case was capable of repetition, yet evading review. Respondents do not distinguish the *Ravenel Bridge* case.

B. Respondents Failed to Distinguish Cases Finding a Public Importance Exception to the Doctrine of Mootness.

Appellants also cited cases holding that the public importance of the legal issue creates an exception to the doctrine of mootness. The analysis for the exception to the doctrine of mootness is the same as the analysis for public importance standing. Again, Respondents failed to distinguish these important cases or indicate why their holdings should not apply to this case.

III. RESPONDENTS PROFFER AN INVALID QUESTION ON THE MERITS.

As to the merits of the case, Respondents framed the following question: "The only relevant question is whether [State Highway Engineer] Mr. [John V.] Walsh . . . believed at the time that the request [for the bridge inspections] was from the city" (Respondents' Br. p. 8). This is not a valid statement of the issue. Walsh's belief is not relevant. This case is not a criminal case in which the Appellants must prove the Respondents' *mens rea*. It is not an employment disciplinary matter in which an employee's allegedly pure motives might make a difference. It is a citizen and taxpayer action alleging a Constitutional violation. The proper question is whether the expenditure of public funds was for a public purpose or for the benefit of private persons and private purposes. The standard is objective, not subjective. Respondents clearly failed the test.

However, even if the Respondents' proffered statement of the issue were relevant, Respondents would also need to demonstrate that Mr. Walsh's belief was ***reasonable***. As demonstrated herein, Mr. Walsh did ***not*** believe he was assisting the City of Aiken, and considering these facts, such a belief would not have been reasonable.

The evidence discussed herein demonstrates overwhelmingly that Mr. Walsh knew the request to inspect the bridges in a private, gated community did not come from the City. It came from Mr. Ebner, a private citizen, who was pursuing this issue for his own personal reasons. Furthermore, Ebner suggested to Walsh the specter of litigation between himself and the developers of the private, gated community. He wanted SCDOT's free, expert opinion on the structural soundness of the three bridges (R. pp. 36-37). Walsh was well aware of all these facts, but he ordered the expenditure of public funds for private purposes, nonetheless.

IV. RESPONDENTS WERE NOT ASSISTING THE CITY OF AIKEN.

Respondents spend most of their effort revisiting the merits of the case. Respondents make many new and unsupported assertions of fact to support the argument that they were assisting the City of Aiken with the bridge inspections. The unsupported assertions of fact include the following:

1. "Here, the State Highway Engineer, decided that a minimal amount of the Department's resources be used to assist the city in a bridge engineering matter" (Respondents' Br., p. 6).
2. "Mr. Walsh's report back to the local authorities followed shortly thereafter" (Respondents' Br., p. 6).
3. "[T]his decision by the State Highway Engineer was a routine decision to assist a local government" (Respondents' Br., p. 7).
4. "The General Assembly has conferred this discretion on [the State Highway Engineer] and the Department" (Respondents' Br., p. 7).

5. "The Department was authorized to assist the city under its general enabling statute" (Respondents' Br., p. 10).

All of these assertions contend, in one way or another, that the Respondents were assisting the City of Aiken. This contention is simply false. The contention of Respondents' counsel are unsupported by the record. The court may not consider facts and evidence, not contained in the Record on Appeal. Rule 210(h), SCACR; *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473,475 (1933).

A. Respondents Were Assisting a Private Citizen.

Respondents were assisting Reggie Ebner, a private citizen and resident of Woodside Plantation. The record is quite clear on this point. Walsh testified in his affidavit that the "bridges were not owned and maintained by public authorities" (R. p. 133, par. 6). In his letter to Mr. Ebner dated September 22, 2011, Walsh identified the bridges as being "***inside*** the Woodside Plantation" (R. p. 137) (emphasis added). Again in his letter, Walsh told Ebner, "If the bridges have not been load rated, it is recommended that ***the appropriate owner of the bridges*** have them rated and post appropriate signage for vehicles using the bridges." (R. p. 137) (emphasis added). Walsh ***knew*** that the City of Aiken was not "the appropriate owner of the bridges." (R. p. 137).

Second, contrary to Respondents' assertion, State Highway Engineer Walsh did ***not*** decide "that a minimal amount of the Department's resources be used ***to assist the city***" (Respondents' Br., p. 6). Walsh knew he was helping Ebner, a private citizen in a private dispute with a private, gated community. Again, the record is clear. Walsh's affidavit states that the request came from ***Ebner***, **not** from the City of Aiken (R. p. 132). It was ***Ebner***, who requested the Department's assistance. It was ***Ebner***, who noted that the City did not have a bridge department nor standards for bridges (R. p. 135, I.2.).

B. Respondent Walsh Knew He Was Helping a Private Citizen.

Ebner solicited the help of Representative Young to deliver his request for DOT assistance, but Walsh was not fooled. When Ebner sent his e-mail to Young, he identified himself simply as "Reggie Ebner" (R. p. 134). When Young sent Ebner's email to Walsh, he identified the source of the email as "my constituent, Reggie Ebner," not the City of Aiken (R. p. 134). The header of Ebner's initial email to Walsh likewise identifies the sender as "Reggie Ebner" (R. p. 135). Walsh did not respond to the City of Aiken. It was ***Ebner***, to whom Walsh forwarded copies of the inspectors' reports, not the City of Aiken, and not the city council (R. p. 132, par. 3). Likewise, SCDOT Commission's Chief Internal Auditor found, "Mr. Walsh determined from Representative Young that the bridges were on private property" (R. p. 173).

These facts, which ***are*** in the record, demonstrate that State Highway Engineer Walsh knew this inspection was ***not assisting the City of Aiken***, but was assisting Ebner, a private citizen.

C. Respondent Walsh Did Not "Report Back to the Local Authorities."

In support of their argument that Respondents were assisting the City of Aiken, Respondents contend, "Mr. Walsh's report back ***to the local authorities*** followed shortly thereafter." (Respondents' Br., p. 6). Respondents cite the inspection document and the Walsh letter to support this assertion.

Walsh did ***not*** report to the City of Aiken, nor to Ebner in his official capacity as a City Councilman for the City of Aiken. When Walsh wrote back to Ebner, he sent the letter to Ebner's home address, not to the City of Aiken, nor to City Council (R. p. 137). He identified the request for inspection as "your request," not a request of the City of

Aiken or some committee of the City Council. (R. p. 137).

Walsh also reported back to Representative Young and Senator Ryberg, but Young and Ryberg were not "local authorities;" they were members of the General Assembly, a statewide legislative body that has no "local authority" since the enactment of Home Rule. Therefore, Respondents' assertion that Walsh reported back to "the local authorities" is likewise incorrect.

D. Respondent Walsh's Decision Was Not "A Routine Decision."

Respondents assert that Walsh's decision was "a routine decision to assist a local government" (Respondents' Br., p. 7). Again, the evidence demonstrates that this assertion is false. Walsh admitted in his affidavit that the bridges were "***not owned and maintained by public authorities***" (R. p. 133, Par. 6). He also said this inspection of privately owned bridges was the ***first*** such inspection ***since 2006***. *Id.* There was nothing routine about it; it was extraordinary.

Similarly, the SCDOT's Chief Internal Auditor reported that the decision to inspect these privately owned bridges was not a routine matter:

> Prior to the e-mailed request from [Chief Engineer for Operations Clem] Watson, ***several conversations about the inspections occurred*** and some employees warned Mr. Watson that ***it was wrong to inspect privately owned bridges***. Some employees indicated that ***they have received requests to do work on private property before*** and informed the requesting party that ***it was against policy***. Mr. Watson ***discussed the concerns with Mr. Walsh*** but Mr. Walsh directed the inspections take place.
>
> * * *
>
> [The Office of the Chief Internal Auditor] interviewed various personnel under the Chief Engineer for operations. Without any reservation, all personnel were certain the activity was wrong, stated that ***they expressed reluctance to their supervisor***, and knew it would later resurface because ***it was against established policy***. Both Mr. Watson and Mr. Walsh

maintained there was a ***grey area.***

(R. p. 172). (emphasis added).

The Chief Internal Auditor further found, "During our discussions with Mr. Watson and Mr. Walsh, they both indicated that these inspections were ***in a grey area.*** They both indicated that the request and subsequent action by SCDOT were ***outside of the norm***" (R. p. 173) (emphasis added). If this decision was "in a grey area" and "outside the norm," it was not a "routine decision."

This decision was deliberate, improper, and far from routine. The Respondents deliberately decided to circumvent the law and inspect privately owned bridges in a gated community, knowing that the inspection was contrary to departmental policies and regulations, and without seeking legal counsel from the SCDOT's lawyers.

E. Respondents' Decision Was Not a Valid Exercise of Discretion.

Respondents argue that the expenditure of public funds to inspect privately owned bridges was not an unconstitutional expenditure of public funds. Instead, Respondents argue that they were assisting the City of Aiken, and therefore the expenditure was a legal and valid exercise of discretion. The overwhelming evidence in this case shows otherwise. The General Assembly has ***not*** "conferred this discretion on the State Highway Engineer or the Department of Transportation" (Respondents' Br., p. 7). This expenditure of public funds for a private purpose violates the South Carolina Constitution, as demonstrated in Appellants' Initial Brief. The General Assembly may not confer what the Constitution forbids.

F. Respondents Did "Create Fake Bridge ID Numbers."

Respondents object to the factual statement that their inspection staff had to

"create fake bridge ID numbers" (Respondents' Br., p. 2). SCDOT's Chief Internal Auditor made the statement. He is Respondents' agent or employee. The Auditor's Report is an admission of a party opponent. Respondents can have no valid objection to Appellants' use of the phrase. Finally, the statement is true; they did create fake bridge ID numbers. Appellants lifted the offending phrase directly from the Auditor's Report.

> Since the bridges were off system, employees expressed confusion over which allotment code to use for recording the inspections. They were instructed to not use the federal charge code as these bridges were not on the state's system. Inspection staff also had to ***create fake bridge ID numbers*** because the bridges were ***off system***.

(R. p. 172) (emphasis added).

V. RESPONDENTS WRONGLY DISPARAGED THE CHIEF INTERNAL AUDITOR.

In attempting to justify their unconstitutional activity, Respondents resort to "shooting the messenger" through unprofessional, unsupported, condescending, and disparaging assertions against the Chief Internal Auditor. Respondents opined: "[The Chief Internal Auditor] is not a lawyer; nor does he appear to be particularly well-versed in the arts of reason and logic" (Respondents' Br., p. 9). This condescending, *ad hominem* attack is not appropriate for an appellate brief, and does not merit further response. *See Ford Motor Co. v. EEOC*, 458 U.S. 219, 220, n. 1, 102 S.Ct. 3057, 3060 (1982) (denying, but declining to respond further to an *ad hominem* attack from the dissent).

Respondents also falsely alleged, "[the Chief Internal Auditor] did not seek legal advice" (Respondents' Br., p. 9). They further confidently asserted, "Had [the Chief Internal Auditor] asked, he would have been told that it is perfectly proper for the State Highway Engineer to respond to requests for assistance from local governments." *Id.*

Again, Respondents are incorrect. As part of his investigation, the Chief Internal Auditor not only researched the law, but also ***sought legal advice*** from SCDOT's Chief Legal Counsel. Furthermore, he ***obtained sound legal advice***, and he recorded it in his Report:

> [The Office of the Chief Internal Auditor] researched applicable laws to determine if the inspections were proper. According to 23 CFR 650, SCDOT must inspect all highway bridges located on public roads. 23 USC 101 defines a public road as any road or street under the jurisdiction and maintained by a public authority and open to the public. ***We confirmed our interpretation of the law with SCDOT's Chief Legal Counsel, who stated that SCDOT has no obligation to inspect bridges on private property.***

(R. p. 172) (emphasis added).

It was the ***Respondents*** who failed to seek and obtain sound legal advice. The Chief Internal Auditor reports:

> During our discussions with Mr. Watson and Mr. Walsh, they both indicated that these inspections were in a grey area. They both indicated that the request and subsequent action by SCDOT were outside of the norm. ***We did not find where they sought the legal department's clarification on the grey area.*** Additionally, SCDOT has not verified with legal counsel whether liability exists to SCDOT.

(R. p. 173) (emphasis added).

The condescending, disparaging and false accusations against the SCDOT Commission's Chief Internal Auditor are a desperate attempt to discredit the damning evidence against them. The comments evidence a brief void of legal arguments or a comprehensive legal position. Here, it was easier to attack a person than to refute his findings.

CONCLUSION

Respondents decided ***unilaterally*** to expend public funds for a purely private and personal purpose. The inspectors created fake bridge numbers. The City of Aiken did not request assistance from the DOT. Respondents did not believe—and could not have reasonably believed—that they were assisting the City of Aiken. The inspection and report of these three privately built and privately owned bridges in a private, gated community did not serve a public purpose. Their inspection at public expense violated South Carolina Constitution Article X, §§ 5 and 11.

Appellants are taxpayers objecting to an illegal, unconstitutional expenditure of public funds to which they have contributed. This Court should hold that possess standing to litigate this issue as taxpayers.

Second, when a government official assumes that he possesses authority to use public funds for private purposes, that is a matter of great public importance and concern sufficient to justify the Appellants' standing.

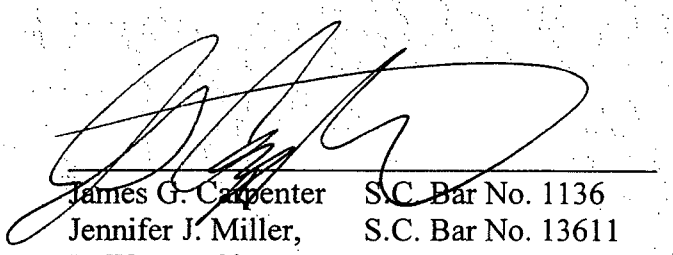
Third, judicial guidance on this issue would have great relevance to similar situations statewide.

Fourth, this kind of unconstitutional act is also capable of repetition, yet evading review, because such acts are ordinarily performed quickly and quietly, not in public. The bridge inspections were completed in one day.

Accordingly, this Court should reverse the Order and Judgment of the Circuit Court and award Appellants declaratory judgment on the merits.

Respectfully submitted,

THE CARPENTER LAW FIRM, P.C.



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June 20, 2013

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 12-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

PROOF OF SERVICE

The undersigned attorney hereby certifies that he served a copy of Appellant's Reply Brief upon counsel for the Respondents by US Mail, postage prepaid this Thursday, June 20, 2013, addressed as follows:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Appellants,

v.

South Carolina Department of Transportation and John V. Walsh, Deputy Secretary of Transportation for Engineering, Respondents.

Appellate Case No. 2012-213599

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5299
Heard December 9, 2014 – Filed March 4, 2015

AFFIRMED

James G. Carpenter and Jennifer J. Miller, both of Carpenter Law Firm, of Greenville, for Appellants.

Beacham O. Brooker, Jr., of Columbia, for Respondents.

SHORT, J.: South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated (collectively, Appellants), filed this declaratory judgment action against South Carolina Department of Transportation (SCDOT), and John V. Walsh, Deputy Secretary of

Transportation for Engineering at SCDOT. Appellants appeal, arguing the trial court erred in (1) failing to grant Appellants public importance standing, (2) failing to acknowledge taxpayer standing, (3) failing to apply exceptions to mootness, (4) ruling SCDOT was legitimately assisting a municipality, and (5) failing to find SCDOT used public funds for private purposes. We affirm.

FACTUAL BACKGROUND

Woodside Plantation (Woodside) is a gated housing development in the City of Aiken. As of July 2011, Woodside had approximately four thousand residents and was expected to grow to eight thousand residents. The City of Aiken refused to acquire the roads in Woodside unless the gates were removed.

Throughout 2010 and 2011, Woodside Plantation Property Owners' Association, Inc. and the City of Aiken[1] attempted to enlist SCDOT's assistance in inspecting three wooden bridges located in Woodside. Walsh emailed the Chief Engineer for Operations of SCDOT to discuss the issue, stating, "I need to get some bridges reviewed for safety/loading purposes." On August, 18, 2001, the Chief Engineer requested an inspection of the bridges in Woodside. A three-man SCDOT crew inspected the bridges on August 23, 2011. By affidavit, Walsh testified the estimated cost to SCDOT for the inspection was $1,400. Walsh also testified that in ten years, only one other private bridge had been inspected at the request of a local government–on Fripp Island in 2006. Walsh concluded the bridges were in good condition with minor problems. After the inspection, an employee reported improper use of SCDOT employees to SCDOT's Office of the Chief Internal Auditor (OCIA). OCIA investigated and determined "SCDOT has no obligation to inspect bridges on private property." OCIA notified the Secretary of SCDOT, Robert St. Onge, of its interpretation.

Appellants filed this declaratory judgment action seeking a declaration that SCDOT actions in inspecting the privately owned bridges in Woodside at the request of the City of Aiken violated Article X, sections 5 and 11 of the South Carolina Constitution. Appellants also sought costs and attorneys' fees under section 15-77-300 of the South Carolina Code. After receipt of cross-motions for summary judgment and a hearing, the circuit court granted SCDOT's motion for summary judgment and dismissed the complaint. This appeal followed.

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[1] A city councilman who lived in Woodside Plantation initiated the inquiries.

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STANDARD OF REVIEW

This is an action in equity. *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 544, 590 S.E.2d 338, 345-46 (Ct. App. 2003) (*Sloan 2003*) (finding a declaratory judgment action brought by a taxpayer citizen requesting declaratory relief is an action in equity). In an appeal from an action in equity tried by a judge, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775-76 (1976).

LAW/ANALYSIS

I. Public Importance Standing

Appellants argue the circuit court erred in failing to grant them standing based on public importance. We disagree.

"A plaintiff must have standing to institute an action. To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sloan 2003*, 356 S.C. at 547, 590 S.E.2d at 347 (citation and internal quotation marks omitted). "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception." *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.* at 199, 669 S.E.2d at 341. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *Id.*

In this case, we find Appellants do not have standing based on public importance. SCDOT has conducted its own audit and concluded its own actions were improper. Thus, there is no "future guidance" to be provided by this court.

II. Taxpayer Standing

Appellants next argue the circuit court erred in failing to grant them taxpayer standing. We disagree.

"A taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina." *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000) (*Sloan 2000*). "[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). "The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer." *Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941). "The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue." *Sloan 2003*, 356 S.C. at 549, 590 S.E.2d at 347 (quoting *Crews*, 197 S.C. at 49, 14 S.E.2d at 357-58). "For a plaintiff to have taxpayer standing, the party must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of her fellow taxpayers." *Id.*; *see also Baird*, 333 S.C. at 531, 511 S.E.2d at 75 (stating standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance).

For the same reasons we find Appellants do not meet the public importance basis for standing, we find they do not have taxpayer standing. In *Sloan 2000*, 342 S.C. at 522, 537 S.E.2d at 303, this court found a taxpayer had standing to challenge contracts entered into by the school district without following the prescribed competitive sealed bidding procedure. In *Sloan 2003*, 356 S.C. at 551, 590 S.E.2d at 349, this court again found a taxpayer had standing to challenge contracts entered into by the county without following the procurement procedures set out in the county code. The public interest involved was the prevention of the unlawful expenditure of money raised by taxation. *Id.* at 550, 590 S.E.2d at 348.

Unlike the *Sloan 2000* and *Sloan 2003* cases, we find Appellants do not have taxpayer standing here because there is not a public interest involved in preventing the unlawful expenditure of inspecting private bridges when SCDOT has already determined its own policy prohibits the action. *See Sloan v. Greenville Cnty.*, 361 S.C. 568, 571-72, 606 S.E.2d 464, 466 (2004) (*Sloan 2004)* (finding "no imperative or manifest urgency in obtaining an advisory opinion on the application of an obsolete procurement ordinance" in a challenge to procurement methods when two prior court of appeals opinions provided judicial guidance to Greenville County regarding its written determinations under a procurement ordinance and when the county ordinance had been amended to address the concerns).

III. Mootness

Appellants also maintain the circuit court erred in failing to apply several exceptions to the mootness doctrine. We disagree.

Before any action can be maintained, a justiciable controversy must be present. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Sloan 2003*, 356 S.C. at 546, 590 S.E.2d at 346. The court does not concern itself with moot or speculative questions. *Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) (*Ladson Road*). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (*Sloan 2009*). "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." *Id.* There are three exceptions to mootness. *Id.* at 535, 670 S.E.2d at 667.

> First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Application of the public interest exception requires the question at issue to be (1) of public importance, and (2) of imperative and manifest urgency. Third, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.

Id.

Relying on *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (*Ravenel Bridge*), Appellants argue they meet the first exception to

mootness because this matter is capable of repetition, yet evading review. We disagree.

In *Ravenel Bridge*, Sloan alleged SCDOT violated statutory bidding requirements for three construction projects. *Id.* at 302, 618 S.E.2d at 877-78. Our supreme court found the issue was not moot despite completion of the construction projects because the issue was capable of repetition yet usually evading review. *Id.* at 303, 618 S.E.2d at 878. Unlike the issue in *Ravenel Bridge*, we find the issue here is not capable of repetition yet evading review because SCDOT has independently determined its policy does not permit the inspection of private bridges. Accordingly, we find Appellants have failed to meet the first exception of mootness.

Appellants next argue they meet the second exception to mootness because the matter is of great public importance and of manifest urgency. We again find the matter does not support public importance standing and is not of manifest urgency because SCDOT has determined its own policy does not permit the action. *See Sloan 2004*, 361 S.C. at 571-72, 606 S.E.2d at 466 (reinstating the circuit court's dismissal of a challenge to procurement methods as moot based in part on the county's amendment to its ordinance).

Finally, Appellants argue they meet the third exception to mootness because the matter may "affect future events or have collateral consequences." Relying on *Ladson Road*, 379 S.C. at 160, 666 S.E.2d at 236, Appellants maintain this case will affect SCDOT and other State agencies in deciding questions involving the use of public funds for private purposes. We disagree.

In *Ladson Road*, Sloan filed a declaratory judgment action challenging SCDOT's decision to authorize an emergency procurement on a construction project in Charleston County. *Id.* at 166, 666 S.E.2d at 239. Our supreme court found the issue was not moot because "there [was] no case law specifically addressing the DOT's authorization of an emergency procurement . . . and . . . this [was] a matter of public importance which could occur at any time . . . ." *Id.* at 169, 666 S.E.2d at 240. However, in the present case, SCDOT has determined the inspection of private bridges is against its own policy. Thus, we find the matter will neither "affect future events [n]or have collateral consequences."

IV. Remaining Issues

Finally, Appellants argue the circuit court erred in finding SCDOT was legitimately assisting a municipality and in failing to find SCDOT violated Article X, sections 5 and 11 of the South Carolina Constitution. Based on our resolution of the issues of standing and mootness, we need not reach this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when resolution of another issue disposes of the appeal).

CONCLUSION

For the foregoing reasons, the order on appeal is

AFFIRMED.

HUFF and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

APPELLANTS' PETITION FOR REHEARING

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Appellants, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, hereby submit this **Petition for Rehearing**.

> Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court.

SCACR 221 (a).

This Court issued an opinion in this matter March 4, 2015. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, Appellate Case Number 2012-213599 (filed March 4, 2015) (herein: "Slip Opinion"). Appellants' Petition for Rehearing is based upon four grounds: (1) this Court mistakenly believed that Respondents[1] admitted that their conduct was wrongful; (2) Respondents have not admitted any wrongdoing; (3) taxpayer standing should be considered separately from public importance standing; and (4) the request for inspection of privately owned bridges came not from the City of Aiken, but from a private citizen.

I. THIS COURT MISTAKENLY BELIEVED THAT RESPONDENTS ADMITTED THAT THEIR CONDUCT WAS WRONGFUL.

Appellants respectfully suggest that this Court "misapprehended" Respondents' legal position on whether their conduct was wrongful. Throughout the opinion, this Court repeatedly stated that the Respondents had admitted that their conduct was wrongful, and/or unconstitutional.

A. This Court Mistakenly Believed That the Auditor Was an Agent of the Department.

This Court mistakenly believed that the findings of the Office of the Chief Internal Auditor were the same as admissions of the Respondent, the Department of Transportation. However, the

[1] Respondent Walsh, Deputy Secretary of Engineering resigned his office April 17, 2013

Office of the Chief Internal Auditor is **not** an official of the Department of Transportation, and Respondents **never** agreed with the findings of the Auditor.

First, the Auditor works for the Commission of the SCDOT, a separate entity, which is not the governing body of the SCDOT. The statute establishing the Office of the Chief Internal Auditor clarifies that the Auditor works for the commission, and not the Department.

> (A)The **commission** must appoint a chief internal auditor . . . . The **commission** also must provide professional, administrative, technical and clerical personnel . . . for the chief internal auditor . . . . Except as otherwise provided, any employees hired pursuant to this section **shall serve at the pleasure of the commission**.
>
> (B)(1) The chief internal auditor shall serve for a term of four years and **may be removed by the commission**. . . . The chief internal auditor must . . . possess any other experience **the commission may require**. . . . The **commission shall set the salary** for the chief internal auditor . . . .
>
> (2) . . . The **department . . . must fully cooperate** with the chief internal auditor in the discharge of his duties . . . .
>
> (3) The **commission is vested with the exclusive management and control** of the chief internal auditor.
>
> (C) The department, at its own expense, must provide appropriate office space . . . for the chief internal auditor and his support staff.

S.C. Code Ann. § 57-1-360 (emphasis added). In many ways, the Chief Internal Auditor is adversarial to, and a watchdog over, the Respondent Department of Transportation.

Although the Chief Internal Auditor issued a report finding that the inspection of the bridges was unlawful and improper, the Respondents never accepted those opinions of the Auditor. Instead, throughout this litigation, the Department has maintained that the inspections of privately owned bridges were a proper and lawful exercise of its discretion.

Respondents, in their brief, concurred: "The Chief Internal Auditor is appointed by the Commission and is **not** an officer of the Department itself. S.C. Code Ann. § 57-1-360." Brief of Respondent, p. 8 (emphasis added). The Respondents also admit that the Auditor and the bridge

inspectors "warned the Chief Engineer for Operations that the inspections were 'wrong'." Brief of Respondent, p. 9. But that warning did not change the Chief's opinion, or his conduct.

B. This Court Made Several Rulings on the Misapprehension That the Opinion of the Auditor Was the Opinion of the Department.

This Court's misapprehension of the adversarial relationship between the Auditor and the Department, and the conflicting opinions of the Auditor and the Department affected all the major parts of its ruling and opinion and caused the Court to reach multiple improper conclusions.

1. This Court denied public importance standing to the Appellants based on its misapprehension.

Because this Court believed that the Respondents had admitted the wrongdoing, and denied the Appellant's public importance standing to address Respondents' unconstitutional actions.

> "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." [*ATCS., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008)]. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *Id.*
>
> In this case, we find Appellants do not have standing based on public importance. **SCDOT has conducted its own audit and concluded its own actions were improper**. Thus, there is no 'future guidance' to be provided by this court."

Slip Opinion, p. 3 (emphasis added). In this Petition, Appellants will demonstrate that the underlined portion of the Court's opinion is inaccurate. Because the SCDOT has **not** "concluded its own actions were improper," there **is** a grave need for "'future guidance' to be provided by this court."

2. *This Court denied the Appellants **taxpayer** standing based on its misapprehension.*

This Court ruled, "For the same reasons we find Appellants do not meet the public importance basis for standing, we find they do not have taxpayer standing." Slip Opinion, p. 4. This Court also ruled,

> Appellants do not have taxpayer standing here because there is not a public interest involved in preventing the unlawful expenditure of inspecting private bridges when **SCDOT has already determined its own policy prohibits the action**.

Slip Opinion, p. 4 (emphasis added).

This ruling contains two errors first, the Court relies on its misapprehension that the Respondents admitted their own conduct to be unlawful; and second, this Court erroneously ruled that the standards for taxpayer standing are the same as those for public importance standing, which Appellants will address below in Section III.

3. *This Court refused to apply the "capable of repetition yet evading review," the first exception to the doctrine of mootness, based on its misapprehension.*

The first exception to the doctrine of mootness is when an issue is capable of repetition yet evading review. This Court's mistaken belief that the Respondents had admitted wrongful conduct governed the Court's finding that the issue was not capable of repetition yet evading review.

> [W]e find the issue here is not capable of repetition yet evading review **because SCDOT has independently determined its policy does not permit the inspection of private bridges**. Accordingly, we find Appellants have failed to meet the first exception of mootness.

Slip Opinion, p. 6 (emphasis added). As Appellants will demonstrate below, the Respondents made no such independent determination, and indeed the Respondents have maintained the **opposite** contention throughout this litigation. The Department will continue doing as it has done, because it sees see nothing wrong with its conduct. Because

the Respondents believe they did nothing wrong, this issue (the expenditure of public funds to benefit private property) is capable of repetition yet evading review.

4. *This Court refused to apply the second exception to the doctrine of mootness, the public importance exception, based upon its misapprehension.*

This Court ruled that the public importance exception to the doctrine of mootness did not apply in this case.

> Appellants next argue they meet the second exception to mootness because the matter is of great public importance and of manifest urgency. We again find the matter does not support public importance standing and is not of manifest urgency because **SCDOT has determined its own policy does not permit the action**.

Slip Opinion, p. 6 (emphasis added). Appellants will demonstrate below that the SCDOT has **not** "determined its own policy does not permit the action." However, their actions **do** violate the South Carolina Constitution, and this **is** an issue of great public importance and manifest urgency. Appellants should be granted public importance standing to address violation of the Constitution.

5. *This Court refused to apply the third exception to the doctrine of mootness, whether a decision of this Court will "affect future events or have collateral consequences," also based on its misapprehension.*

Like its previous decisions, this Court ruled that the third exception to the doctrine of mootness did not apply, and again based decision on the misapprehension of the Respondents' legal position.

> However, in the present case, **SCDOT has determined the inspection of private bridges is against its own policy**. Thus, we find the matter will neither "affect future events [n]or have collateral consequences."

Slip Opinion, p. 6 (emphasis added). Again, as to the third exception, Appellants will demonstrate below that the SCDOT has **not** "determined the inspection of private bridges is against its own policy." Therefore, the matter will "affect future events or have collateral

consequences." Thus, the mistaken belief that the Respondents have admitted wrongdoing controls the entire opinion and decision of this Court.

II. RESPONDENTS HAVE NOT ADMITTED ANY WRONGDOING.

Throughout this litigation, the Respondents have maintained that their inspection of private bridges at public expense was perfectly legitimate and lawful. In the Circuit Court, Respondents argued in their Memorandum in Support of Defendant's Return to Plaintiffs' Motion for Summary Judgment and Defendant's Cross Motion for Summary Judgment Motion for Summary Judgment that their conduct was **not improper**, but rather was within the bounds of the legitimate exercise of their discretionary authority to assist a municipality. They stated:

> The Department's position is that the city's investigation of the bridges was a legitimate exercise of a municipality's plenary police power to ensure the health, safety, and welfare of persons within its boundaries as well as its power to abate public nuisances; and that **SCDOT is authorized to assist local governments** in these activities within areas of its expertise under its primary enabling statute.

(R. p. 125).

Respondents also argued, "[T]he decision by Walsh to assist [the City] was well within the Department's enumerated powers to assist other governmental entities in areas of its expertise." (R. p. 128). Respondents concluded, "Here, the Department properly responded to a request from City of Aiken officials and representatives for assistance in an area of the Department's expertise. The City had authority to make the request and **the department had authority to respond to it**" (R. p. 130) (emphasis added). Of course, it was not the **City** investigating the bridges, and it was not the **City** requesting assistance. (R., pp. 34-51).

Nevertheless, the Circuit Court seemed to agree with the Respondents. The Circuit Court ruled,

> The Department's position is that the city's investigation of the bridges was a legitimate exercise of a municipality's delegated police power to ensure the health,

safety, and welfare of persons within its boundaries as well as its power to abate public nuisances; and that **SCDOT is authorized to assist local governments** in these activities within areas of its expertise under its primary enabling statute. S.C. Code Ann. § 57-3-110(7) (Rev. 2006).

* * *

For the reasons stated below, **the Court agrees with defendants** that the case should be dismissed.

(R. pp. 2-3) (emphasis added).

Later, the Circuit Court described the Defendants' use of public money to inspect private bridges as one of the "**routine decisions** of the State Highway Engineer as to when and where to provide assistance to local governments in areas of the Department's particularized expertise." R., p. 5 (emphasis added). The Circuit Court accepted the argument of the Respondents and ruled, "In any event, I find that **the actions of the defendants were not *ultra vires* or unconstitutional** under those proscriptions against using public funds for private benefit but were with the delegated powers of both the Department and the City of Aiken" (R., p. 10) (emphasis added).

Finally, on appeal Respondents argued, "the actions of the State Highway Engineer were for a legitimate public purpose." Brief of Respondent, pp. 9-10. In the Conclusion of their brief, Respondents asserted, "The action taken by the Department was a legitimate exercise of the Department's delegated powers to respond to a request for assistance from a duly incorporated municipality seeking to perform legitimate duties under the police power to protect its citizens." Brief of Respondent, p. 10.

Respondents have never admitted the error of their unconstitutional conduct. The fundamental basis of the Court of Appeals' decision throughout its opinion was that the Department had acknowledged a violation of their own policy and therefore did not need any guidance. This mistaken belief is fundamentally at odds with the record and legal position consistently asserted by the Respondents, and adopted by the Circuit Court. Accordingly, Appellants should be granted

public importance and taxpayer standing. Furthermore, the three exceptions to the doctrine of mootness apply: (1) the issue is capable of repetition yet evading review; (2) the issue, a constitutional violation, is a matter of great public importance and manifest urgency; and (3) a decision in this case will "affect future events or have collateral consequences."

III. TAXPAYER STANDING SHOULD BE ANALYZED SEPARATELY FROM PUBLIC IMPORTANCE STANDING.

In addition to denying the Appellants taxpayer standing based on its misapprehension of Respondent's legal position, this Court also intertwined the rationales for **taxpayer** standing with **public importance** standing. This Court ruled, "For the **same reasons** we find Appellants do not meet the public importance basis for standing, we find they do not have taxpayer standing." Slip Opinion, p. 4. Appellants respectfully suggest that the rationale for taxpayer standing is different from the rationale for public importance standing, and the denial of public importance standing does not mandate the denial of taxpayer standing. Taxpayer standing arises from unlawful **expenditures**; public importance standing arises from unlawful **acts**.

A. Taxpayer Standing Is Based on the Wrongful Expenditure of Public Funds to Which the Taxpayer Contributed.

South Carolina has long recognized a taxpayer's standing to bring actions alleging an unconstitutional or *ultra vires* expenditure by public officials and to request injunctive relief against the unlawful expenditure. The Supreme Court recounted this long-standing right in *Myers v. Patterson*:

> As a general rule, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally. *Shillito v. City of Spartanburg,* 214 S.C. 11, 51 S.E.2d 95 (1948). An exception to this rule exists when the act sought to be enjoined is an unlawful diversion of public funds, such as the ***expenditure of public funds*** under an alleged ***unconstitutional*** statute. *Id.* at 22, 51 S.E.2d at 97. In such cases, a ***taxpayer*** who may be compelled to pay the assessment, or ***who has contributed*** to the sum jeopardized, is considered to have ***sufficient interest to enjoin the illegal***

> ***act.*** *Id. See also Kirk v. Clark,* 191 S.C. 205, 4 S.E.2d 13 (1939) (the principle is firmly settled in this State that ***a taxpayer may maintain an action in equity***, on behalf of himself and all other taxpayers, ***to restrain public officers from paying out public money for purposes unauthorized by law***). Because the plaintiffs have alleged that the ***challenged expenditure of tax revenues violates the constitution***, we find that they have ***standing*** to bring this action and turn to the merits of their claim that the Legislature lacks authority to divert SHIMS tax revenue to a use different from that for which they were levied.

Id. 315 S.C. 248, 251, 433 S.E.2d 841, 843 (1993) (emphasis added).

The Supreme Court also acknowledged this right of taxpayer standing in *Ladson Road.*

> Generally, "a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained." *Sloan v. Wilkins,* 362 S.C. 430, 436, 608 S.E.2d 579, 582-83 (2005). **Nonetheless, "[a] taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina,"** *Sloan v. School Dist. of Greenville County,* 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct.App.2000), and **indeed has been repeatedly recognized as to Sloan himself.** *See, e.g., id.; Sloan v. Department of Transp.,* 365 S.C. at 304, 618 S.E.2d at 878-79; *Greenville County I,* 356 S.C. at 548, 590 S.E.2d at 347.
>
> * * *
>
> Likewise, in this case, **Sloan has standing because he has alleged** a misuse of the statutory emergency procurement provision and therefore **an unlawful expenditure by public officials**.

Sloan v. Dept. of Transportation, 379 S.C. 160, 169-171, 666 S.E.2d 236, 241 (2008) (emphasis added).

The most extensive discussion of this issue is by the Court of Appeals in *Sloan v. School District of Greenville County,* 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), a decision which the Supreme Court discussed at some length in *Ladson Road.*

> We find *Sloan v. School Dist. of Greenville County* is particularly instructive on this issue. In that case, the School District procured construction contracts in February 1998 for three middle schools pursuant to its own procurement code's emergency exception to the competitive sealed bid procedure. The District justified the need for the emergency procurement because it wanted the construction of the schools completed before school started in August 1999. **The Court of Appeals**

> **found Sloan had standing**, stating as follows: "the public interest involved is the prevention of the **unlawful expenditure** of money raised by taxation. **Public policy demands** a system of checks and balances whereby taxpayers can hold public officials accountable for their acts. **Taxpayers must have some mechanism of enforcing the law.**" *Id.* at 523, 537 S.E.2d at 303 (citation, quotation marks, and alteration omitted).

Sloan v. Dept. of Transportation, 379 S.C. 160, 170, 666 S.E.2d 236, 241 (2008) (emphasis added).

In this case, the Appellants contributed to the funds at issue, just as they contributed to the funds at issue in *Sloan v. Dept. of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008) (*Ladson Road*), and in *Sloan v. Dept. of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (*Ravenel Bridge*), both cases against the Department of Transportation. Accordingly, Appellants should be granted taxpayer standing because they contributed to the funds at issue, which Respondents wrongfully spent for the benefit of private property.

B. Public Importance Standing Is Based on the Public Importance of Contesting Unlawful Actions of Public Officials.

Unlike taxpayer standing, public importance standing is based on the public importance of the issues. Allegations of unconstitutional or *ultra vires* acts by public officials create issues of great public importance and support public importance standing.

The Court of Appeals addressed an expenditure in violation of the Procurement Code of the School District of Greenville County. An unlawful expenditure (supporting taxpayer standing) can also be unlawful act (supporting public importance standing). This Court found **both** taxpayer standing and public importance standing, and it addressed the interplay of the two kinds of standing.

> Our decision to allow Sloan to proceed with this suit does not rest entirely on his ***status as a taxpayer*** of Greenville County. Recently, in *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999), the Supreme Court held "a court may confer standing upon a party ***when an issue is of such public importance as to require its resolution for future guidance***." *Id.* at 531, 511 S.E.2d at 75. In *Baird,* the Appellants alleged Charleston County committed an *ultra vires* act by ***exceeding its statutory authority*** to issue hospital bonds. The Court explained the

> case impacted a profound public interest—the public health and welfare—and stated ***the citizens of Charleston County "have a significant interest in ensuring that their county acts within the legal parameters established by the legislature*** for funding hospital development." *Id.* Accordingly, the Supreme Court held the Appellants had standing to proceed. *Id.* at 531, 511 S.E.2d at 75-76.
>
> In this case, the ***public interest involved is the prevention of the unlawful expenditure of money raised by taxation***. "Public policy demands a system of ***checks and balances*** whereby taxpayers can hold public officials accountable for their acts.... Taxpayers must have ***some mechanism of enforcing the law***." *Eastern Missouri Laborers Dist. Council,* 781 S.W.2d at 47.

Sloan v. School District of Greenville County, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (2000) (emphasis added).

Taxpayer standing and the public importance standing are distinct concepts and should be analyzed individually. The Appellants respectfully suggest that the Court erred in considering the two concepts to be intertwined, or interdependent. Appellants further respectfully suggest that this Court mistakenly believed that its refusal to grant Appellants public importance standing also mandated the denial of taxpayer standing.

IV. THE REQUEST FOR INSPECTION CAME NOT FROM THE CITY OF AIKEN, BUT FROM A PRIVATE CITIZEN.

Appellants contended that a private citizen, Reggie Ebner, who claimed to be a licensed engineer in the state of Texas, who lived in the private gated community, and who happened to be a member of the Aiken City Council requested that the SCDOT inspect privately owned, privately constructed, privately maintained bridges in a private, gated community. The City of Aiken had refused to assist Ebner in his dispute with the owners and managers of the private gated community. The City told Ebner that he would have to deal with the developers and managers, and not the City of Aiken. Ebner then invoked the help of his State representative and State senator, who passed along his request for assistance to the Department of Transportation. (R. pp. 34-51). Appellants contend that the record is clear that the request did not come from the City of

Aiken, but at an absolute minimum, the documentary record submitted to the Circuit Court presents a genuine issue of material fact, and precludes summary judgment.

This Court ruled that it did not have to reach the issue of who issued the request for inspection of private bridges because of its disposition of the standing and mootness issues (Slip opinion, p. 7). However, as demonstrated herein, this Court misapprehended the legal position of the Department and should have ruled for Appellants on standing and mootness. Appellants respectfully suggest that the issue of whether the request came from the City of Aiken or from a private citizen, and the issue of whether respondents engaged in unconstitutional expenditure of public funds for private purposes preclude summary judgment for the Respondents, and require a remand for a trial on the merits of the Constitutional violation.

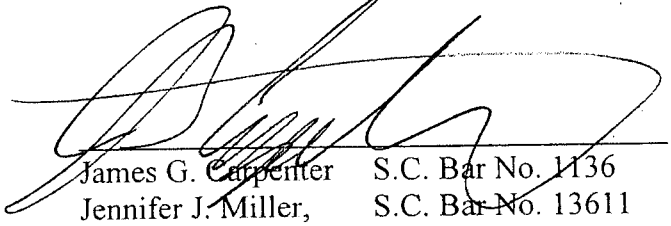
CONCLUSION

Because this Court mistakenly believed that the Respondents had admitted their conduct to be unlawful, this Court found no reason to rule on the unconstitutionality of the use of public funds to inspect privately constructed, privately owned, and privately maintained bridges in a private gated community. Respondents have not admitted their unconstitutional conduct, but rather, they have consistently maintained that their unconstitutional behavior was perfectly lawful and legitimate. The request for inspection services came from a private citizen in a private dispute with the managers of a private gated community.

WHEREFORE, Appellants pray the Court to:

1. rehear this action,
2. review the record,
3. withdraw its judgment and opinion,
4. reverse the judgment of the Circuit Court,
5. rule for the Appellants on issues of standing and mootness, and
6. remand for trial on the merits of the alleged constitutional violation.

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



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 12-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

PROOF OF SERVICE

The undersigned attorney hereby certifies that he served a copy of Appellant's Petition for Rehearing counsel for the Respondents by US Mail, postage prepaid this Friday, March 13, 2015, addressed as follows:

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2012-213599
Opinion No. 5299

South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs,

Of whom Edward Sloan is the Appellant,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants,

Of whom South Carolina Department of Transportation is the Respondent.

Respondent's Return to Petition for Rehearing

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Attorney for Respondent

March 31, 2015

Respondent, the South Carolina Department of Transportation, respectfully submits this Return opposing Appellant's Petition for Rehearing.

I. Guidance by way of declaratory judgment is unneeded because the Department agrees that it is unconstitutional to provide services to private parties.

Appellant seeks rehearing on the grounds that the general rules of standing and mootness should be waived because their case presents an issue of great public importance requiring guidance to the Department for the future. Thus, Petitioner claims his suit is justiciable. We believe the Court correctly decided these issues and should deny the request for rehearing.

The Department of Transportation does not use its employees, equipment, or other resources to improve private property. Employees who do so are subject to discipline under the Department's progressive discipline policy. That policy, enacted pursuant to regulations of the Budget and Control Board, S.C. Code Regulations 19.717 (Amended May 28, 2010)[1], stipulates three relevant offenses: "Mishandling of Department funds or documents," "Unauthorized Use of State Equipment or Property" and "Unauthorized Use of State Equipment or Property for Personal Gain." The first listed offense provides for a written reprimand to termination for the first offense, the second a written reprimand for the first offence, a five-day suspension for the second, and termination for the third. The third listed offense provides for a five-day suspension for the first offense and termination for the second. Additionally, the Department has a Chief Counsel who is well aware that the State Constitution prohibits the use of the State's credit to benefit an individual, company, or association. S.C. Code Const., art. V, §11 (Rev. 2009).

[1] The Board's authority, in turn, is under S.C. Code Ann. §8-11-230 (6). Declaratory relief will ordinarily be refused where a special statutory remedy has been provided or whether another remedy will be more effective or appropriate under the circumstances. Williams Furniture Corp. v. Southern Coatings & Chemical Co., 216 S.C. 1, 56 S.E.2d 576 (1949).

Finally, as we have argued heretofore, neither the Department nor its Deputy Secretary for Engineering have any motivation to use public resources to benefit private property having too few resources available to them to maintain the State Highway System.

A declaratory judgment by the courts is not needed. Appellant has demonstrated no ongoing practice by the Department in improving or benefitting private property. The was the import of Mr. Walsh's affidavit that over a ten-year period only one other inspection of a privately-owned bridge was made—of the bridge to Fripp Island which local authorities had requested that the Department take into its system for future maintenance. R.p. 133. The Department participates in the federal bridge inspection program which requires periodic inspections of all publicly-owned bridges in the State whether or not those bridges are on the State Highway System. 23 U.S.C. §131, 23 C.F.R. Part 650, Subpart C (2011). It does not inspect private bridges at the request of the owner thereof.

The incident in question involved a request by an individual, Reggie Ebner, who identified himself in his email to Representative Young and Mr. Walsh as "City of Aiken Councilman for District 4." R.p. 37. The Councilman noted that the City did not have a qualified bridge inspector nor did its codes contain specifications for bridges. R.p. 36. Thus, through Representative Young and Senator Ryberg, he requested the Department's assistance. *Id.* We have argued and the trial court held herein that the general enabling statute of the Department authorizes and instructs the Department to assist local governments in areas of its expertise. S.C. Code §57-3-110 (7) (Rev. 2006). Local governments are vested with plenary police power to abate public nuisances such as unsafe bridges. Thus, as the trial court correctly held, the City had the authority to make the request and the Department had the authority to respond to it. R. pp. 8-9.

Moreover, it is difficult to interpret the government acts herein a "benefitting" a private party or improving private land. Had the bridges proved unsafe, some governmental entity could have required their repair, destruction, or replacement. In this regard, we do believe the Court was incorrect that Woodside Plantation Property Owners' Association, Inc. requested the inspection. Rather, that entity, as owner of the bridges, was the party being inspected. The request for assistance originated solely with Mr. Ebner as an official with the City of Aiken. No action of either the Department or the City was unconstitutional.

II. Plaintiffs are not entitled to taxpayer standing under the facts of this case.

Petitioner is incorrect and this Court correct in its pronouncement of the case law precedents regarding taxpayer standing. The fact that Mr. Sloan is a taxpayer is insufficient to confer upon him standing to sue *per se.*

Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception. ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008). Appellant asserts constitutional standing. Constitutional standing is "an essential and unchanging part of the case or controversy requirement of Article III." ATC, supra, citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed2d 351 (1992). To have standing, one must generally have a personal stake in the subject matter of the lawsuit, *i.e.,* one must be a *real party in interest.* Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). Additionally, a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of

general interest common to all members of the public. Baird, supra, citing Citizens of Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992). A taxpayer lacks constitutional standing when he "suffers in some *indefinite* way in common with people *generally.*" Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012) citing ATC South, 380 S.C. at198, 669 S.E.2d at 341 quoting Frothingham v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923) (emphasis added); see, also, Bodman v. State of S.C. and SCDOR, (Shearouse Adv. Sh., May 8, 2013). Here, as the trial court correctly noted, the plaintiff, Mr. Sloan, is a resident of Greenville. The events at issue took place in Aiken. He never asserted that he had ever used the bridges in question nor that he is a member of the Woodside Plantation HOA. Thus, his only interest in the matter is as a payer of the 16 cents per gallon gas that went to pay the inspectors' wages. The trial court was correct that this interest was not concrete and particularized to the extent that it would justify the court in inserting itself into routine discretionary decisions by the State Highway Engineer.

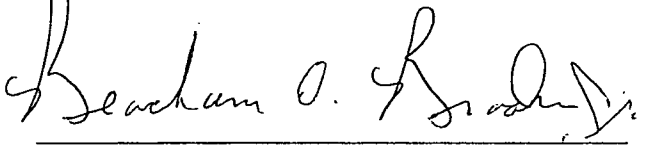
Nevertheless, an exception to the general standing rule has often been recognized where an issue is of such public importance that its resolution is required for future guidance. Baird, supra; Freemantle, supra. As we outlined above, the Department needs no such guidance in that its policy is to follow the Constitution as well as all statutes applicable to it. The issue does not need resolution because the Department agrees that it may not use its resources for private benefit. This includes providing inspection services for private bridge owners. This distinguishes this case from those cited in Petitioner's brief and in this Court's opinion, Sloan v. Dep't of Transportation, 365 S.C. 299, 618 S.E.2d 876 (2005) (Ravenel Bridge) and Sloan v. Dep't of Transportation, 379 S.C. 160, 666 S.E.2d 236 (2008) (Ladson Road). In those cases, the Department argued that the statutes governing its procurement allowed it to enter into design-

build contracts or utilize emergency procurement procedures to avoid competitive bidding respectively. Here, Respondent does not contest Appellant's view of the general law.

III. Conclusion.

The Court correctly denied Appellant standing to sue in that there is no justiciable controversy between the parties. The Appellant has not demonstrated a particularized interest in the subject matter and the events complained of are moot. We ask that rehearing be denied.

Respectfully submitted,



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March 31, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2012-213599
Case No. 2012-CP-40-1560

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the South Carolina Public Interest Foundation and Edward D. Sloan, Jr., Petitioners, with the **Respondent's Return to Petition for Rehearing** by U.S. Mail, postage prepaid, this 31st day of March, 2015, as follows:

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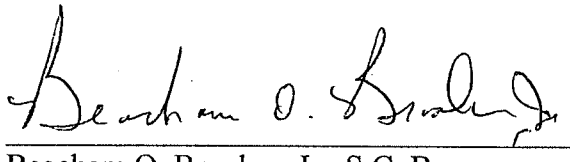

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March 31, 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

REPLY IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING

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Appellants, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually and on behalf of all others similarly situated, hereby submit this Reply in Support of their Petition for Rehearing.

This Reply will address three main points: (1) even in their Return to the Petition for Rehearing, Respondents do not admit that their conduct violated a constitutional prohibition, and therefore this case needs a judicial decision on whether this use of public resources for private purposes was unconstitutional, and Plaintiffs should be granted public importance standing; (2) the request that the Respondents inspect and report on the privately built, privately maintained, privately owned bridges in a private, gated community came not from the City of Aiken, but from a homeowner in the private gated community who was in a dispute with the developer, and therefore this wrongful expenditure of public funds for private purposes is sufficient to support the Plaintiff's taxpayer standing, because he contributed to the fund at issue; and (3) the request to inspect the bridges was unconstitutional, whether it originated from a private homeowner or from the City of Aiken; neither the City nor the Department is permitted to expend public funds for private purposes, and that unlawful expenditure is sufficient to support both taxpayer standing and public importance standing.

I. RESPONDENTS DO NOT ADMIT THAT THEIR CONDUCT VIOLATED A CONSTITUTIONAL PROHIBITION.

In their Petition for Rehearing, Petitioners argued that the Respondent had not admitted that their conduct was unconstitutional (Petition, pp 6-8). In their Return to the Petition, the Respondents are careful **not** to admit that their conduct violated a constitutional prohibition. Instead, Respondents contend that the DOT "agrees that it is unconstitutional to provide services to private parties," in general terms; and argues, in general terms, that "the Department of Transportation does not use its employees, equipment, or other resources to improve private

property." However, in this case, Respondents did exactly that. They used public funds to inspect and report on private bridges and they gave their report, **not to the City**, but to resident of the gated community, who had a dispute with the developer.

Respondents also argue, "Employees who [use public funds for private purposes] are subject to discipline under the Department's progressive discipline policy." Then, the Respondents engage in wholesale supplementation of the Record without seeking the permission of the Court to do so, but even in their abundant citation of matters outside the record, they do **not** say that anyone **was disciplined** for the conduct at issue in this case. The Record is bare of any such disciplinary action by the Respondents against any DOT employee. Indeed, had the DOT attempted to discipline its inspector, the inspector would have had a strong defense that he had objected to the unconstitutional directive, but was ordered to proceed with the unconstitutional inspection over his objections.

Respondents do not admit any unconstitutional conduct. Instead, they argue that they were simply assisting the City in its alleged duty to maintain the safety of the bridges. As demonstrated below, the City had repeatedly disclaimed any responsibility for those bridges. When Mr. Ebner made his request to the Department of Transportation, he included copies of his prior correspondence with the City in which the City refused to take responsibility for the design or inspection of the bridges, and instead directed Mr. Ebner to the developer or the property owners association of the private, gated community. The City's explicit statements declining (properly) to spend public funds to intervene in a private dispute are included in the Record. (*See* Section II, below.) Because the Respondents do not admit that their expenditure of taxpayer funds was unconstitutional, this case needs judicial guidance on whether this expenditure violated the Constitution, and this Court should grant plaintiffs public importance standing.

II. THE REQUEST CAME FROM A HOMEOWNER, NOT THE CITY OF AIKEN.

Respondents contend that they were simply assisting a municipality in its request for assistance as a matter of public safety. Therefore, they reason that the expenditure of taxpayer funds was not for a private purpose, and therefore there should be no taxpayer standing and furthermore, this taxpayer action should be found moot. However the record demonstrates that the request came not from the City, but from a private citizen who had a dispute with private residential development in which he lived.

Reggie Ebner identified himself as a City Councilman in making his request for assistance. However, Mr. Ebner also attached to his request materials that made it clear not only that Ebner rather than the City was the one making the request, but also that the City had refused to assist Ebner. Ebner wrote to the City Manager on July 26, 2010 requesting documentation under the Freedom of Information Act related to the bridges and culverts in Woodside Plantation (R. pp. 45-46). On August 27, 2010, the City responded to Ebner's request and told him that in 2006, the City had recommended that the Woodside Plantation Property Owners Association ("WPPOA") "have their engineer certify the weight limit on the bridge." As to another repair, the City had instructed WPPOA "to obtain the services of an engineer to design and certify the repair" (R. p. 47). As to the inspection for the repair, the City told WPPOA again "to obtain the services of an Engineer for the project" (R. p. 47). As to the concrete bridge, the City told Ebner, "it is the responsibility of the Development Company to have their structural engineer inspect and certify any bridge construction" (R. p. 47). As to the inspection of code and ordinances related to common areas, the City told Ebner that in Woodside Plantation, "Work in the common areas does not fall under public works observation" (R. p. 47). Finally, as to installation inspection and compliance with the Americans with Disabilities Act, the City told Ebner, "Work on walkways on private

roads does not fall under public works observation" (R. p. 47). Thus, the City made it abundantly clear to Ebner that the City had no responsibility to inspect or approve design of or repairs to bridges or roads in Woodside Plantation. As noted above, Ebner included this correspondence with his request for DOT's inspection of the same bridges.

On September 8, 2010, Ebner again made a Freedom of Information Act request to Roger LeDuc, of the City. He did not make this request as a member of City Council. He wrote the request on plain letterhead. The City again responded:

> Woodside Plantation Property Owners' Association, Inc. i.e. a South Carolina nonprofit corporation. Typically, a nonprofit Corporation is responsible to its shareholders, not to a governmental entity.
>
> * * *
>
> The City of Aiken does not have any authority to review the actions taken by this corporation unless there is a violation of city ordinance or a state statute that the city is authorized to enforce.

(R. p. 39).

It appears that Ebner already knew the answer from the City before he received the City's written response. On September 6, 2010, Ebner wrote to Tom Young, "**The City** has advised me in writing they are **not responsible for bridges** . . . ; however they have allowed three wooden bridges and one concrete bridge to be installed in Woodside. It appears that the **Developer got the Woodside Property Owners Association to agree** to install the wooden bridges" (R. p. 41) (emphasis added).

Tom Young wrote back to Ebner: "For bridges on the state highway system, SC DOT would be wholly responsible, however, in this instance, the bridges in question are NOT on the state system" (R. p. 42) (emphasis in original).

Ebner's dispute with the Woodside Plantation in this developers apparently sat on the back burner for nearly a year until July 13, 2011, when Ebner wrote to John Walsh soliciting the

assistance of the Department of Transportation in his dispute, asking for an expert opinion inspecting the bridges of Woodside Plantation at taxpayer expense (R. pp. 35-37).

When Ebner made his email request to the Respondent John Walsh, he wrote using his own private email account (R. pp. 35-37). He did not use a City email account (R. pp. 35-37). He did not use the City letterhead or logo (R. pp. 35-37). He did not say that the City was making the request (R. pp. 35-37). He did enlist the support of his legislators in his request for an expert opinion at taxpayer expense.

Because the Respondents expended taxpayer funds for purposes unauthorized by law, this taxpayer, who had contribute to the sum jeopardized possesses taxpayer standing to challenge this wrongful use of taxpayer funds.

At a minimum, the foregoing evidence raises a genuine issue of material fact about whether the inspection, performed at the request of Reggie Ebner, was for a public purpose or a private purpose. Plaintiffs contend it plainly was for a private purpose and for a private benefit to a private party. Respondents contend otherwise. This disagreement is a genuine issue of material fact, affecting the outcome of this case, which requires, at a minimum, this Court to reverse of the granting of summary judgment and remand the case for a hearing on the merits.

III. THE USE OF PUBLIC FUNDS FOR PRIVATE PURPOSES WAS WRONGFUL, REGARDLESS OF THE SOURCE OF THE REQUEST.

Respondents contend that they were simply assisting a municipality, at its request, with an issue of **public** safety. Plaintiffs contend the request came from a **private** party who had his own **private** purposes in making the request.

Furthermore, Plaintiffs contend that a request for an expenditure of public funds for a private purpose on private property is unconstitutional regardless of whether the request comes from a private party or a municipality. The Constitution prohibits a municipality and the

Department of Transportation from expending public funds for private purposes. Therefore, even if the Court were to find that the request for inspection of these privately owned bridges came from the City, or that the Defendants reasonably believed that the request came from the City, neither the DOT's belief, reasonable or not, nor the actual source of the request would validate unconstitutional conduct. Such expenditures are unconstitutional whether the acting party is a municipality or the Department of Transportation.

CONCLUSION

Respondents have not admitted their conduct violated a Constitutional prohibition, and the Court needs to rule and provide guidance about the unconstitutional conduct and grant Plaintiffs public importance standing.

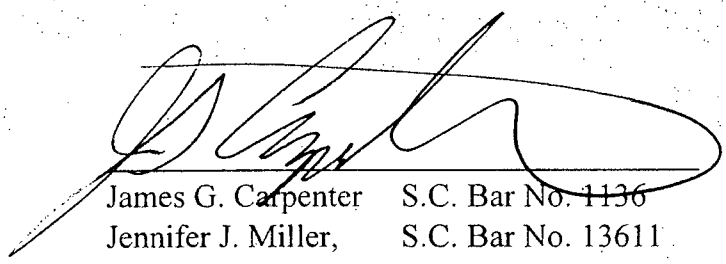
The request was not a legitimate request for assistance from a municipality. The request for inspection services came from a private citizen, in a private dispute with the managers of a private, gated community. The results of the inspection were reported to a private party. The expenditure was an unconstitutional use of taxpayer funds, and it is sufficient to support the Plaintiffs' taxpayer standing.

Finally, it is equally unconstitutional for a municipality to expend public funds for private purposes, as it is for the DOT. The source of the request does not validate an unconstitutional expenditure.

WHEREFORE, Appellants pray the Court to:

1. withdraw its prior opinion,
2. reverse the judgment of the Circuit Court,
3. rule for the Appellants on issues of standing and mootness, and
4. remand for trial on the merits of the alleged constitutional violation.

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



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April 6, 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 12-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

PROOF OF SERVICE

The undersigned attorney hereby certifies that he served a copy of Appellant's Reply in Support of Petition for Rehearing counsel for the Respondents by US Mail, postage prepaid this Monday, April 06, 2015, addressed as follows:

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The South Carolina Court of Appeals

South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Appellants,

v.

South Carolina Department of Transportation and John V. Walsh, Deputy Secretary of Transportation for Engineering, Respondents.

Appellate Case No. 2012-213599

ORDER

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

Thomas E. Huff J.

Paul E. Short, Jr. J.

J.

Columbia, South Carolina

cc:
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FILED
April 29, 2015